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Montana Code Annotated

Annotations 2006



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1301 E 6th Ave
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Telephone (406)444-3064 FAX (406)444-3036

Internet http://leg.mt.gov

Printed and Bound by
West, a Thomson business
610 Opperman Dr
Eagan MN 55123

2006 ANNOTATIONS to the MONTANA CODE ANNOTATED

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PREFACE TO VOLUME 3
(Annotations — February 2006)

Annotations to this volume include case notes of applicable court decisions through public domain citation 2005 MT 224, volume 328 Montana Reports page 354, volume 120 Pacific Reporter (3rd Series) page 382, volume 395 Federal Supplement (2nd Series) page 1362, volume 428 Federal Reporter (3rd Series) page 240, and volume 126 Supreme Court Reporter page 675. Digests of Montana Attorney General's opinions are provided through volume 51 opinion number 12 of the Report and Official Opinions of Attorney General. Citations to the Administrative Rules of Montana implementing or authorized by a section of law and adopted through Issue 24 of the 2005 Montana Administrative Register are also included.

Amendment notes listed under compiler's comments are intended to explain only amendments made in the year indicated and may not accurately reflect current statutory language because of subsequent amendment.

The annotations are provided as a convenience to the user and are not intended to be an exhaustive compilation of the law under a given statute or in a given area.

TITLE 15
TAXATION

Title Law Review Articles

Revenue and Finance Under Montana's 1972 Constitution, Towe, 51 Mont. L. Rev. 399 (1990).

CHAPTER 1
TAX ADMINISTRATION

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Attorney General's Opinions

State Participation in Spraying Program — Environmental Policy Act Triggered: State participation in a grasshopper spraying program in which the state paid up to one-third of the costs and provided financial management and technical expertise was a major state action in which compliance with the Montana Environmental Policy Act was required. 42 A.G. Op. 62 (1988).

Supplemental Assessments Against Banks — Confidentiality: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301. 35 A.G. Op. 59 (1974).

Chapter Collateral References

Validity, construction, and application of state laws imposing tax or license fee on possession, sale, or the like, of illegal narcotics. 12 ALR 5th 89.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Agricultural Land Taxation in Montana, 1984 Interim Report, Montana Legislative Council.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

Comparative Individual Tax Burdens in the Fifty States, 1977-78 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

State Tax Practice and Procedure, Shanahan. Tax for the General Practitioner, State Bar Legal Education Institute (December 1985).

Part 1
General Provisions

Part Compiler's Comments

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Losses in Revenue: Section 12, Ch. 11, Sp. L. May 2000, amended sec. 167, Ch. 584, L. 1999, as follows: "Section 167. Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to ~~[section 1 of Senate Bill No. 79]~~ 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to ~~current~~ the prior ~~year~~ year's mill levies. Except as provided in ~~subsections~~ subsection (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, ~~shall~~ must be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in ~~[section 1]~~ 15-10-420, is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)."

Calculating Levy: Section 165, Ch. 584, L. 1999, provided: "Extension of 1999 deadlines relating to property taxation. As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 56th legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1999, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Revenue Losses: Section 167, Ch. 584, L. 1999, provided: "Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to [section 1 of Senate Bill No. 79] [15-10-107], 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to current year mill levies. Except as provided in subsections (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, shall be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in [section 1] [15-10-420], is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)." Effective May 10, 1999, and terminates December 31, 2001.

Local Government and Court Funding and Structure Committee: Section 168, Ch. 584, L. 1999, provided: "Local government and court funding and structure committees — membership — purpose. (1) There is an interim local government funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees; and

(c) the following members appointed by the governor:

(i) two representatives of counties;

(ii) two representatives of cities and towns;

(iii) one county treasurer; and

(iv) one member from the state executive branch of government.

(2) The names of the committee members must be certified to the department of administration by July 1, 1999.

(3) There is an interim court funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees;

(c) one member appointed by the chief justice of the Montana supreme court; and

(d) the following members appointed by the governor:

(i) one member representing cities and towns;

(ii) one member representing counties;

(iii) one member representing the Montana judges association;

(iv) one member representing the Montana magistrates association; and

(v) one clerk of court.

(4) The names of the committee members must be certified to the department of administration by July 1, 1999.

(5) (a) The members of each committee shall select a presiding officer and may appoint other officers as considered necessary.

(b) The committees may adopt rules of procedure for conducting meetings.

(c) The presiding officer of each committee shall schedule meetings and shall direct the staff of the department of administration to give notice of the time and place of meetings to the committee members and to the public.

(6) (a) The purpose of the committees is to conduct a study of funding local government, including the courts, to ascertain the best method of allocating current and future resources, while providing a complementary funding relationship between local government and state government. This complementary funding relationship must provide stable and reliable revenue streams to local governments, including the courts. The study must explore regional concepts, as well as further lifting of local government revenue restrictions and de-earmarking of revenue to local governments. The complementary funding relationship must meet the criteria set forth in the following vision statement, adopted by the local government funding and school finance visioning group:

"We are dedicated to partnerships among the state, counties, cities, and school districts that are based on mutual trust and respect for local authority. This partnership will enable all governments to respond to the demands of their citizens in the 21st century through a mix of taxes and fees that is understandable, equitable, stable, and adequate. The collection and distribution system for these taxes and fees will be simple, efficient, accurate, and timely."

(b) The committees shall coordinate their work and shall report to each other after each meeting. The two committees shall meet together at least once every 6 months.

(c) (i) The committees shall make interim reports to the governor, the chief justice, and the leadership of each house of the legislature every 6 months.

(ii) The committees shall submit a written report to the legislature not later than December 1, 2000, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals to streamline the functions of local government, including courts and a complementary funding structure between state and local governments.

(7) (a) Each committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.

(b) The committees are attached to the department of administration for administrative and staff purposes. Further, the committees may request assistance from or the use of the resources of the legislative, judicial, and executive branch agencies to accomplish their studies.

(8) (a) Except as provided in subsection (8)(b), members of the committees must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committees must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business."

Funding — Appropriations: Section 169, Ch. 584, L. 1999, provided: "Funding — appropriations. (1) The committees established in [section 168] [not codified] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of administration.

(2) In addition to any funds received pursuant to subsection (1), there is appropriated $55,000 from the general fund to the committees created pursuant to the provisions of [section 168] [not codified] for the biennium for the operating expenses and personnel expenses of the committees.

(3) There is appropriated to the office of public instruction from the general fund $1,980,000 for BASE aid for the biennium ending June 30, 2001.

(4) There is appropriated to the office of public instruction from the general fund $2,229,934 for state reimbursements for motor vehicle fee reductions under 61-3-509.

(5) There is transferred from the general fund $691,246 for the fiscal year ending June 30, 2000, and $1,774,042 for the fiscal year ending June 30, 2001, to the state special revenue fund referenced in [section 1 of Senate Bill No. 79] [15-10-107].

(6) There is appropriated from the general fund $12,900,000 for the fiscal year ending June 30, 2000, and $54,934,392 for the fiscal year ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(1) through (5)] [not codified].

(7) There is appropriated from the general fund $1.5 million for the biennium ending June 30, 2001, to the department of revenue for the costs of administration.

(8) There is appropriated from the general fund $2.15 million for the biennium ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(6)] [not codified].

(9) There is appropriated from the general fund $600,000 to the department of revenue for the biennium ending June 30, 2001, for reimbursement to tax increment financing districts created pursuant to 7-15-4299.

(10) The governor shall include the sum of the reimbursements in this section in the present law base budget prepared for the 57th legislative session."

Task Force — Review of Taxation and Local Government Funding: Chapter 570, L. 1995, provided: "Section 3. Task force — review of taxation and local government funding. (1) There is a Montana tax policy task force to study all aspects of taxation in Montana and to make findings regarding the burden of state and local taxation borne by various segments of the state's economy and by various categories of individual taxpayers. The task force in its study shall consider but not limit itself to:

(a) the existing sources and levels of taxation, with particular attention given to the classification of property and the taxable percentages applied to that property, and an evaluation of the sources and levels of taxation;

(b) the relationship between federal income tax laws and state income tax laws and the impact of federal tax laws on the state;

(c) the relative portion of the total amount of taxes that is collected from each segment of the business community and each category of individual taxpayer;

(d) the impact of state and local taxation on economic development;

(e) the relationship between taxes and the revenue needs of the state and local governments;

(f) the relationship between tax burden, ability to pay, and benefits received from government;

(g) alternative methods of taxation from existing sources as well as new sources of revenue and an evaluation of the alternative methods and new sources; and

(h) funding for local governments, other than public schools, because local governments have come under increasing financial pressures over the last several years and it is clear that viable solutions to funding issues must be found in order for Montana citizens to continue to receive those services traditionally provided by local governments.

(2) Based on the findings pursuant to the study required under subsection (1), the task force shall develop recommendations, alternatives, or both, for 2-year, 10-year, and 25-year tax policy strategies for Montana.

(3) The task force, in its deliberations, shall solicit the knowledge and advice of economists, tax policy experts, representatives of tax reform coalitions, local governments, small business organizations, large industries, agriculture, the Montana chamber of commerce, appropriate state agencies, and the general public.

(4) In reviewing local government funding, the task force shall study:

(a) the current sources of funding for local government services, other than public schools;

(b) the continued viability of current funding sources;

(c) the need for additional or alternative funding sources;

(d) the financial and funding restraints currently imposed on local governments;

(e) the challenges facing local governments in providing traditional services in the future;

(f) the need for more flexibility in meeting future financial challenges;
(g) the ability of local governments to meet their budget requirements in the future; and
(h) other issues related to local government finances.

(5) The task force is allocated to the department of revenue for administrative purposes only as provided in 2-15-121.

Section 4. Membership — appointment — vacancies. (1) The task force created by [section 3] [not codified] is composed of the following members:

(a) eight members appointed by the governor, who are broadly representative of taxpayer groups, business and industry, labor organizations, local government, and consumers of governmental services;

(b) four members of the house of representatives, of which no more than two may be of the same political party, appointed by the speaker of the house; and

(c) four members of the senate, of which no more than two may be of the same political party, appointed by the committee on committees.

(2) Task force members must be appointed and designated no later than July 15, 1995.

(3) The task force shall elect its presiding officer.

(4) A vacancy occurring on the task force must be filled in the same manner as the original appointment.

Section 5. Remuneration. (1) Each member of the task force provided for in [section 3] [not codified], except the legislative members, is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) Each legislative member of the task force is entitled to compensation as provided in 5-2-301 and 5-2-302, as applicable.

(3) In addition to expenditures referred to in subsections (1) and (2), task force funds may be spent for staff support, contracted services, and other expenses required to fulfill the purpose and needs of the task force.

Section 6. Meetings — report to governor and legislature. (1) The task force provided for in [section 3] [not codified] shall meet by September 15, 1995, and at the request of the presiding officer thereafter.

(2) The task force shall submit its findings and recommendations to the governor and the legislature on or before October 1, 1996.

Section 7. Gifts and grants. The task force provided for in [section 3] [not codified] may accept payments, contributions, gifts, and grants, in money or otherwise, for the purposes set forth in [section 3] [not codified]. All payments, monetary contributions, gifts, and grants received by the task force must be deposited in an account in the state special revenue fund provided for in [section 8] [not codified].

Section 8. Special revenue account. There is an account in the state special revenue fund. The account consists of all payments, monetary contributions, gifts, and grants received pursuant to [section 7] [not codified]." Terminates June 30, 1997.

Appropriation: Section 16, Ch. 570, L. 1995, provided: "There is appropriated from the general fund to the department of revenue $15,000 for the use of the task force provided for in [section 3] [not codified]".

15-1-101. Definitions.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in definition of manufactured home in (ii) in two places substituted "61-1-101" for "61-1-501"; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 596 rendered the amendment by Ch. 542 void.

Chapter 596 in definition of manufactured home in (ii) near middle after "defined in" substituted "in subsection (1)(m)" for "61-1-501 and in subsection (1)(m) of this section, a housetrailer, as defined in 61-1-501"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 577 in definition of agricultural in (a)(i) inserted "biological control insects". Amendment effective October 1, 2003.

1999 Amendments — Composite Section: Chapter 285 in definition of commercial deleted former (ii)(F) that read: "(F) all property described in 15-6-136"; and made minor changes in style. Amendment effective January 1, 2003.

Chapter 583 at end of definition of personal property inserted "and "intangible personal property" as that term is defined in 15-6-218". Amendment effective May 10, 1999.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Section 13, Ch. 583, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1997 Amendments: Chapter 49 inserted definition of recreational; and made minor changes in style. Amendment effective March 13, 1997.

Chapter 200 in definition of commercial, in (d)(ii)(D) after "mobile homes", inserted "and manufactured homes" and after "dealer" deleted "of trailers or mobile homes"; in definition of improvements, in (i) in three places after "mobile home", inserted "manufactured home"; inserted definition of the term manufactured home; inserted definition of the term stock in trade; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Retroactive Applicability: Section 3, Ch. 49, L. 1997, provided: "[This act] is effective on passage and approval [approved March 13, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendments: Chapter 206 in definition of livestock inserted "ostriches, rheas, emus"; and made minor changes in style.

Chapter 561 in definition of Department, in (i), inserted exception clause and inserted (ii) regarding definition of Department; and made minor changes in style. Amendment effective July 1, 1995.

Applicability: Section 14, Ch. 206, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 inserted definition of Department; in definition of improvements, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendments: Chapter 379 inserted definitions of gas and natural gas; and made minor changes in style.

Chapter 417 in definition of livestock inserted "llamas, alpacas, bison, and domestic ungulates"; and made minor changes in style.

Saving Clause: Section 6, Ch. 379, L. 1993, was a saving clause.

1991 Amendments: Chapter 411 in (1)(d)(i), near middle before "corporation", deleted "nonprofit" and substituted "35-2-114" for "35-2-102". Amendment effective January 1, 1992.

Chapter 680 deleted (1)(q) that read: "(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum". Amendment effective July 1, 1993.

Chapter 705 inserted (1)(a)(i) defining as agricultural certain production for commercial purposes; and in (1)(a)(ii), after "raising of", deleted "livestock, poultry, bees, and other species of" and after "environment" deleted "and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber". Amendment effective April 29, 1991.

Chapter 783 in (1)(d)(ii)(B), after "timberlands", inserted language concerning inclusion of forest lands as property designated as not commercial beginning January 1, 1994. Amendment effective July 1, 1991.

Applicability: Section 13(2), Ch. 680, L. 1991, provided that this section applies to all taxable years beginning after December 31, 1993.

Section 17(1), Ch. 783, L. 1991, provided that the amendment to this section applies to taxable years beginning after December 31, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 705, L. 1991, provided: "[This act] is effective on passage and approval [approved April 29, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee].

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

1989 Special Session Amendment: Deleted former (1)(d)(ii)(G) referring to property described in 15-6-146; and in (1)(p) substituted reference to Title 15, ch. 6, part 1, for reference to 15-6-131 through 15-6-149. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1987 Amendments: Chapter 370 at end of definition of taxable value changed "15-6-140" to "15-6-149".

Chapter 613 inserted definition of weighted mean assessment ratio. Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 659 inserted definition of research and development firm.

1985 Amendments: Chapter 20 in (1)(n)(ii) substituted "Title 15, chapter 23, part 8" for "15-23-801".

Chapter 570 in (1) at beginning inserted "Except as otherwise specifically provided"; in (1)(a) after "livestock", deleted "swine", and after "poultry", inserted "bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of"; and inserted definition of livestock.

Chapter 743 inserted definitions of commercial and comparable property; and in definition of improvements, after "structures", deleted "fixtures". Amendment effective January 1, 1986.

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1983 Amendments: Chapter 488, in definition of mobile home, increased length limit from 32 feet to 45 feet and inserted "or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence".

Chapter 632 made the following changes: in definition of improvements substituted "A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed" for "If the mobile home or housetrailer is an improvement located on land not owned by the owner of such improvement, the improvement is assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement"; and inserted definition of leasehold improvements.

1981 Amendment: Inserted the definition of "average wholesale value" in (1).

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Administrative Rules

ARM 42.20.156 Agricultural and forest land use change criteria.

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

ARM 42.20.701 Forestland — definitions.

ARM 42.21.112 Mobile home — improvement to real property.

Case Notes

Restrictive Covenant Prohibiting Mobile Homes — Application to Manufactured Home — "Mobile Home" Used in Ordinary and Popular Sense: Wittmers purchased a 26- by 60-foot manufactured home that was capable of being put on wheels and moved it to a subdivision in Gallatin County. The plaintiffs brought an action to restrain Wittmers from maintaining the home within the subdivision because it was in violation of a restrictive covenant that prohibited the use of "mobile homes". The Supreme Court held that the covenant was not ambiguous and that the term "mobile home", which was undefined in the covenants, should be understood in its ordinary and popular sense. The Supreme Court noted that other statutory definitions of the term "mobile home" could be looked to for guidance in determining the meaning of the term for the purposes of the covenants and that those other definitions include structures such as Wittmers'. The Supreme Court held that the District Court correctly construed the term "mobile home" to include the Wittmers' manufactured home because their home fell within other definitions of the term "mobile home", because the Supreme Court had previously construed the term to include homes such as the Wittmers' in two other cases before the court, and because the Wittmers' home had the characteristics of a mobile home. (Case decided prior to 1997 amendment of this section defining "manufactured home". See also 2005 amendment.) Newman v. Wittmer, 277 M 1, 917 P2d 926, 53 St. Rep. 516 (1996), followed in Toavs v. Sayre, 281 M 243, 934 P2d 165, 54 St. Rep. 155 (1997), and Fox Farm Estates Landowners Ass'n v. Kreisch, 285 M 264, 947 P2d 79, 54 St. Rep. 1142 (1997).

Coal Seam Methane Gas Not Part of Coal Estate — Ownership of and Right to Develop: In 1984, Carbon County gave a deed to Reserve's predecessor in interest conveying all "coal and coal rights with the right of ingress and egress to mine and remove the same" on certain lands within the county. In 1990, the county gave an oil and gas lease to Florentine, giving Florentine the right to operate for and produce from the disputed property "oil and all gas including coal seam methane of whatsoever nature or kind". Carbon County filed a quiet title action against Reserve,

asserting the county's claims to all of the mineral and mineral rights, excluding the coal and coal rights, on the disputed property. The District Court held that the coal seam methane gas was part of the coal estate and was included in the conveyance of coal and coal rights by the county to Reserve's predecessor in interest. The Supreme Court held that coal seam methane gas is not a constituent part of coal. Thus, it may be severed from the coal estate. As the lessee of Carbon County, the owner of the gas estate, Florentine has the right to drill for and to produce coal seam methane gas either in advance of or during coal mining operations. Reserve has a mutual, simultaneous right to extract and to capture the gas for safety purposes, incident to its coal operations. Carbon County v. Union Reserve Coal Co., Inc., 271 M 459, 898 P2d 680, 52 St. Rep. 529 (1995).

New Legislative Definitions — Not Unlawful Taking of Coal Seam Methane Gas From Owners of Coal or Coal Lands: In a dispute between the county, the gas lessee of the county, and the owner of coal rights, the latter claimed that 1993 legislative changes in the definitions of gas, oil, and coal either were regulatory in nature only and did not affect rights or, in the alternative, that if the amendments did remove coal seam methane gas ownership from coal owners, then the removal was without compensation and so constituted an unconstitutional taking. The Supreme Court held that the question of taking without compensation was moot because the legislation was prospective in nature and there was a severance of the gas estate from the coal estate under the plain language of the grant. Carbon County v. Union Reserve Coal Co., Inc., 271 M 459, 898 P2d 680, 52 St. Rep. 529 (1995).

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Improvements: The term improvement is used in the sense of an addition to the property, rather than in the restrictive sense of repairs made on a building. Interstate Lumber Co. v. Rider, 93 M 489, 19 P2d 644 (1933).

Real Estate:

So long as petroleum and gas remain in the ground they are part of the realty and as such subject to the owner's control. Williard v. Fed. Sur. Co., 91 M 465, 8 P2d 633 (1932).

The right reserved in a deed of a railway company to such use of the surface of the land as may be found necessary for the exploration, mining, and carrying away of the coal that may be found below is a valuable interest in the land itself and as such properly subject to taxation under this section and 15-6-101. The taxable value of the right to the use of the surface of the land for such purposes, omitting the deposit from the estimate, is to be ascertained as if the entire estate or land was vested in the grantee, the Assessor to make an equitable apportionment of this value between the grantee and the railway company. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

The provision of this section, that "the term 'real estate' includes the possession of, claim to, ownership of, or right to the possession of land", declares a rule independent of statute. N. Pac. Ry. v. Mjelde, 48 M 287, 137 P 386 (1913).

Coal deposits underlying land form a part of the real estate within the definition of that term given in this section, and the reservation of those deposits in a deed, with the right to mine, constitutes an interest in real estate. N. Pac. Ry. v. Mjelde, 48 M 287, 137 P 386 (1913), explained and overruled in part in N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Credits:

Individually owned shares of state bank stock are not credits as defined by this section. State ex rel. Conrad Banking Corp. v. Mady, 83 M 418, 272 P 691 (1928).

An option to purchase real and personal property created no indebtedness that could be enforced, and therefore the amount due and unpaid under the contract was not a "credit" within the meaning of this section, namely a solvent debt which could properly be taxed. Read v. Lewis & Clark County, 55 M 412, 178 P 177 (1919).

Money due a bank from other banks is credit within the definition of the term given in this section. Clark v. Maher, 34 M 391, 87 P 272 (1906).

Personal Property:

Annual crops growing upon land are not part of the land under the statutes of this state, but where the owner of the land sells it with the right of immediate possession in the purchaser and

without reserving the crop thereon and the purchaser takes possession before severance, title passes to the crop as well, and this principle is applicable where the land is sold at decretal or execution sale. Kester v. Amon, 81 M 1, 261 P 288 (1927), distinguished in Hamilton v. Rock, 121 M 245, 191 P2d 663 (1948).

Where an occupant of land, be he a purchaser, tenant, or mere trespasser holding it adversely to the owner, plants and cultivates crops, they are his personal property provided he remains in possession until after they are harvested. Kester v. Amon, 81 M 1, 261 P 288 (1927), distinguished in Hamilton v. Rock, 121 M 245, 191 P2d 663 (1948).

For purposes of taxation, a water right is personal property. Helena Water Works Co. v. Settles, 37 M 237, 95 P 838 (1908).

Personal property owned by a national bank is not subject to taxation under state laws. First Nat'l Bank v. Province, 20 M 374, 51 P 821 (1898).

Property:

If unpatented mining claims are not taxable, it is not because they are not property within the definition of this section but because they have been exempted from the general provisions of the revenue laws. Cobban v. Meagher, 42 M 399, 113 P 290 (1911).

Stocks of a state bank or trust company fall within the definition of the term "property" as given in this section. Daly Bank & Trust Co. v. Bd. of County Comm'rs, 33 M 101, 81 P 950 (1905).

For the purposes of taxation, the word "property" includes "real estate", and within the definition of "real estate" is the possession of, claim to, ownership of, or right to the possession of land. State lands after sale, but before the price is fully paid, are subject to taxation as the property of the purchaser. Courtney v. Missoula County, 21 M 591, 55 P 359 (1898).

Classification of Property: A predecessor to this section determined the classification of property for purposes of taxation, and courts were limited by that classification in determining how property should be assessed. Helena Water Works Co. v. Settles, 37 M 237, 95 P 838 (1908).

Attorney General's Opinions

County Rural Property Not Taxing Unit: County rural property is not a taxing unit as defined in this section. 43 A.G. Op. 74 (1990).

"Property" to Include Real and Personal Property: The term "property" as used in 7-33-2109 applies to all forms of real and personal property ordinarily subject to ad valorem taxation by counties. 42 A.G. Op. 109 (1988).

Mobile Home as Improvement — Lienholder to Pay Delinquent Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Mobile Home Not Improvement — Lienholder to Pay Personal Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home not classified as an improvement to real property must pay the personal property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Sugar Refinery's Piled Sugar Beets Exempt From Tax — Business Inventory: If the products of a sugar refinery qualify as business inventory under 15-6-202, then the raw materials (sugar beets) used to produce such products also qualify for the exemption, since the definition of business inventory also includes "raw materials and work in progress with respect to such goods". While not defined by the Legislature, the term "raw materials" is generally defined as the material or substance out of which other products or the final product is made. 40 A.G. Op. 82 (1984).

Definition of "Real Property": "Real property" for purposes of taxation means both real estate and improvements. 37 A.G. Op. 76 (1977).

Collateral References

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation. 7 ALR 4th 1016.

Agricultural Land Taxation in Montana, 1984 Interim Report, Montana Legislative Council.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-1-102. Person defined.

Compiler's Comments

Part of Section Not Codified: A part of section 84-1401, R.C.M. 1947, which defines "person" and is redundant with 15-1-102, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 3, L. 1921.

15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation.

Compiler's Comments

2002 Amendment: Chapter 13 in (5)(a) at end deleted "and the state of Montana"; inserted (5)(b) relating to county or state school equalization levies; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Losses in Revenue: Section 12, Ch. 11, Sp. L. May 2000, amended sec. 167, Ch. 584, L. 1999, as follows: "Section 167. Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to ~~[section 1 of Senate Bill No. 79]~~ 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to ~~current~~ the prior ~~year~~ year's mill levies. Except as provided in ~~subsections~~ subsection (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, ~~shall~~ must be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in ~~[section 1]~~ 15-10-420, is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the

payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Revenue Losses: Section 167, Ch. 584, L. 1999, provided: "Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to [section 1 of Senate Bill No. 79] [15-10-107], 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to current year mill levies. Except as provided in subsections (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, shall be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in [section 1] [15-10-420], is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)." Effective May 10, 1999, and terminates December 31, 2001.

Local Government and Court Funding and Structure Committee: Section 168, Ch. 584, L. 1999, provided: "Local government and court funding and structure committees — membership — purpose. (1) There is an interim local government funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees; and

(c) the following members appointed by the governor:

(i) two representatives of counties;

(ii) two representatives of cities and towns;

(iii) one county treasurer; and

(iv) one member from the state executive branch of government.

(2) The names of the committee members must be certified to the department of administration by July 1, 1999.

(3) There is an interim court funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees;

(c) one member appointed by the chief justice of the Montana supreme court; and

(d) the following members appointed by the governor:

(i) one member representing cities and towns;

(ii) one member representing counties;

(iii) one member representing the Montana judges association;

(iv) one member representing the Montana magistrates association; and

(v) one clerk of court.

(4) The names of the committee members must be certified to the department of administration by July 1, 1999.

(5) (a) The members of each committee shall select a presiding officer and may appoint other officers as considered necessary.

(b) The committees may adopt rules of procedure for conducting meetings.

(c) The presiding officer of each committee shall schedule meetings and shall direct the staff of the department of administration to give notice of the time and place of meetings to the committee members and to the public.

(6) (a) The purpose of the committees is to conduct a study of funding local government, including the courts, to ascertain the best method of allocating current and future resources, while providing a complementary funding relationship between local government and state government. This complementary funding relationship must provide stable and reliable revenue streams to local governments, including the courts. The study must explore regional concepts, as well as further lifting of local government revenue restrictions and de-earmarking of revenue to local governments. The complementary funding relationship must meet the criteria set forth in the following vision statement, adopted by the local government funding and school finance visioning group:

"We are dedicated to partnerships among the state, counties, cities, and school districts that are based on mutual trust and respect for local authority. This partnership will enable all governments to respond to the demands of their citizens in the 21st century through a mix of taxes and fees that is understandable, equitable, stable, and adequate. The collection and distribution system for these taxes and fees will be simple, efficient, accurate, and timely."

(b) The committees shall coordinate their work and shall report to each other after each meeting. The two committees shall meet together at least once every 6 months.

(c) (i) The committees shall make interim reports to the governor, the chief justice, and the leadership of each house of the legislature every 6 months.

(ii) The committees shall submit a written report to the legislature not later than December 1, 2000, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals to streamline the functions of local government, including courts and a complementary funding structure between state and local governments.

(7) (a) Each committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.

(b) The committees are attached to the department of administration for administrative and staff purposes. Further, the committees may request assistance from or the use of the resources of the legislative, judicial, and executive branch agencies to accomplish their studies.

(8) (a) Except as provided in subsection (8)(b), members of the committees must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committees must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business."

Funding — Appropriations: Section 169, Ch. 584, L. 1999, provided: "Funding — appropriations. (1) The committees established in [section 168] [not codified] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of administration.

(2) In addition to any funds received pursuant to subsection (1), there is appropriated $55,000 from the general fund to the committees created pursuant to the provisions of [section 168] [not codified] for the biennium for the operating expenses and personnel expenses of the committees.

(3) There is appropriated to the office of public instruction from the general fund $1,980,000 for BASE aid for the biennium ending June 30, 2001.

(4) There is appropriated to the office of public instruction from the general fund $2,229,934 for state reimbursements for motor vehicle fee reductions under 61-3-509.

(5) There is transferred from the general fund $691,246 for the fiscal year ending June 30, 2000, and $1,774,042 for the fiscal year ending June 30, 2001, to the state special revenue fund referenced in [section 1 of Senate Bill No. 79] [15-10-107].

(6) There is appropriated from the general fund $12,900,000 for the fiscal year ending June 30, 2000, and $54,934,392 for the fiscal year ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(1) through (5)] [not codified].

(7) There is appropriated from the general fund $1.5 million for the biennium ending June 30, 2001, to the department of revenue for the costs of administration.

(8) There is appropriated from the general fund $2.15 million for the biennium ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(6)] [not codified].

(9) There is appropriated from the general fund $600,000 to the department of revenue for the biennium ending June 30, 2001, for reimbursement to tax increment financing districts created pursuant to 7-15-4299.

(10) The governor shall include the sum of the reimbursements in this section in the present law base budget prepared for the 57th legislative session."

1995 Amendment: Chapter 570 in two places in (2) inserted "prior to 1994"; in (3)(b), after "1993", substituted "through tax year 1998" for "and for each tax year thereafter"; inserted (3)(c) establishing percentage of 1991 remitted tax amount (see 1995 Session Law for text); and in (7)(b), after "jurisdictions", inserted "or that is annexed to or is consolidated with another taxing jurisdiction".

1993 Special Session Amendment: Chapter 27 in (1)(a), (1)(b), (1)(c), and (1)(d) substituted reference to tax years for reference to taxable years; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 499 deleted former (1) that read: "(1) (a) On or before May 1, 1990, the department of revenue shall remit to the county treasurer of each county 30% of the reimbursement amount specified in subsection (1)(b), as computed by the department. The department shall base the reimbursement on the reduction in personal property tax revenues due to the reduction in personal property tax rates for class eight property, as provided for in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145. The reimbursement basis must also include loss of personal property tax revenue due to the reclassification of new industrial property from class five to class eight with the reduced tax rate. The determination of the reimbursement basis must be made in the year in which the reclassification is made.

(b) The reimbursement revenue must be based on the county's taxable value and mill levies for tax year 1989"; substituted (3)(a) requiring Department to remit to the County Treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31 for former language that read: "For taxable year 1990 and for each year thereafter, the department shall remit to the county

treasurer the base amount of revenue reimbursable, determined pursuant to subsection (3), as follows:

(a) on or before November 30, 1990, and on or before each November 30 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county; and

(b) on or before May 31, 1991, and on or before each May 31 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county"; inserted (3)(b) concerning remittance for tax year 1993 and succeeding years; at end of (4), after "jurisdiction", substituted "as calculated by the department" for "in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as current year mill levies on personal property taxes are distributed"; substituted (5) defining taxing jurisdiction as including a county, city, school district, tax increment financing district, and miscellaneous taxing district and the State of Montana for former definition that read: "For the purposes of this section, "taxing jurisdiction" means local governments and includes school districts, each municipality with tax increment financing, and the state of Montana"; near end of (6) substituted "eligible taxing jurisdictions" for "school districts and local governments"; inserted (7) providing that a taxing jurisdiction existing in tax year 1989 but no longer in existence is not entitled to reimbursement, that a taxing jurisdiction that existed in tax year 1989 that is split into two or more taxing jurisdictions is entitled to reimbursement based on the portion of 1989 taxable value within each new jurisdiction, and that a taxing jurisdiction not in existence in tax year 1989 is not entitled to reimbursement unless created as the result of the splitting of a taxing jurisdiction that was in existence in tax year 1989; and made minor changes in style.

Applicability: Section 2, Ch. 499, L. 1993, provided: "[This act] applies to all reimbursements beginning with tax year 1993. [This act] does not affect the reimbursement payment due May 31, 1993, or any previous reimbursement. The first reimbursement payment under [this act] is payable on or before November 30, 1993."

1991 Amendment: In (1)(a), at end of second sentence, and in (3), at end of first sentence, deleted reference to 15-6-147. Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

Effective Date: Section 12, Ch. 10, Sp. L. June 1989, provided that this section is effective July 25, 1989.

Applicability: Section 13, Ch. 10, Sp. L. June 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

Attorney General's Opinions

Taxing Jurisdictions Included in Definition of Local Governments for Revenue Reimbursement Purposes: As used in subsection (6) of the enacted version of this section, the term "local governments" includes all local government entities, including those generally considered as taxing jurisdictions, that lost revenue as a result of personal property tax reductions. (See 1993 amendment.) 43 A.G. Op. 57 (1990).

15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions.

Compiler's Comments

2002 Amendment: Chapter 13 in (3)(b) at end inserted reference to 20-25-439; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2001 Amendment: Chapter 571 in (3)(b) deleted former second sentence that read: "It also does not include any state levy for welfare programs provided for in 53-2-813 [now repealed]." Amendment effective July 1, 2001.

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Losses in Revenue: Section 12, Ch. 11, Sp. L. May 2000, amended sec. 167, Ch. 584, L. 1999, as follows: "Section 167. Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to ~~[section 1 of Senate Bill No. 79]~~ 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to ~~current~~ the prior ~~year~~ year's mill levies. Except as provided in ~~subsections~~ subsection (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, ~~shall~~ must be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in ~~[section 1]~~ 15-10-420, is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)."

1999 Amendments — Composite Section: Chapter 51 in (3)(b) at end of first sentence after "20-9-360" deleted "or the university levy provided for in 15-10-106". Amendment effective March 15, 1999.

Chapter 245 at end of introduction in (13)(a) and in schedule heading substituted "1998" for "1999". Amendment effective April 5, 1999.

Retroactive Applicability: Section 3, Ch. 245, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Revenue Losses: Section 167, Ch. 584, L. 1999, provided: "Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to [section 1 of Senate Bill No. 79] [15-10-107], 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to current year mill levies. Except as provided in subsections (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, shall be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in [section 1] [15-10-420], is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)." Effective May 10, 1999, and terminates December 31, 2001.

Local Government and Court Funding and Structure Committee: Section 168, Ch. 584, L. 1999, provided: "Local government and court funding and structure committees — membership — purpose. (1) There is an interim local government funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees; and

(c) the following members appointed by the governor:

(i) two representatives of counties;

(ii) two representatives of cities and towns;

(iii) one county treasurer; and

(iv) one member from the state executive branch of government.

(2) The names of the committee members must be certified to the department of administration by July 1, 1999.

(3) There is an interim court funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees;

(c) one member appointed by the chief justice of the Montana supreme court; and

(d) the following members appointed by the governor:

(i) one member representing cities and towns;

(ii) one member representing counties;

(iii) one member representing the Montana judges association;

(iv) one member representing the Montana magistrates association; and

(v) one clerk of court.

(4) The names of the committee members must be certified to the department of administration by July 1, 1999.

(5) (a) The members of each committee shall select a presiding officer and may appoint other officers as considered necessary.

(b) The committees may adopt rules of procedure for conducting meetings.

(c) The presiding officer of each committee shall schedule meetings and shall direct the staff of the department of administration to give notice of the time and place of meetings to the committee members and to the public.

(6) (a) The purpose of the committees is to conduct a study of funding local government, including the courts, to ascertain the best method of allocating current and future resources, while providing a complementary funding relationship between local government and state government. This complementary funding relationship must provide stable and reliable revenue streams to local governments, including the courts. The study must explore regional concepts, as well as further lifting of local government revenue restrictions and de-earmarking of revenue to local governments. The complementary funding relationship must meet the criteria set forth in the following vision statement, adopted by the local government funding and school finance visioning group:

"We are dedicated to partnerships among the state, counties, cities, and school districts that are based on mutual trust and respect for local authority. This partnership will enable all governments to respond to the demands of their citizens in the 21st century through a mix of taxes and fees that is understandable, equitable, stable, and adequate. The collection and distribution system for these taxes and fees will be simple, efficient, accurate, and timely."

(b) The committees shall coordinate their work and shall report to each other after each meeting. The two committees shall meet together at least once every 6 months.

(c) (i) The committees shall make interim reports to the governor, the chief justice, and the leadership of each house of the legislature every 6 months.

(ii) The committees shall submit a written report to the legislature not later than December 1, 2000, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals to streamline the functions of local government, including courts and a complementary funding structure between state and local governments.

(7) (a) Each committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.

(b) The committees are attached to the department of administration for administrative and staff purposes. Further, the committees may request assistance from or the use of the resources of the legislative, judicial, and executive branch agencies to accomplish their studies.

(8) (a) Except as provided in subsection (8)(b), members of the committees must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committees must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business."

Funding — Appropriations: Section 169, Ch. 584, L. 1999, provided: "Funding — appropriations. (1) The committees established in [section 168] [not codified] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of administration.

(2) In addition to any funds received pursuant to subsection (1), there is appropriated $55,000 from the general fund to the committees created pursuant to the provisions of [section 168] [not codified] for the biennium for the operating expenses and personnel expenses of the committees.

(3) There is appropriated to the office of public instruction from the general fund $1,980,000 for BASE aid for the biennium ending June 30, 2001.

(4) There is appropriated to the office of public instruction from the general fund $2,229,934 for state reimbursements for motor vehicle fee reductions under 61-3-509.

(5) There is transferred from the general fund $691,246 for the fiscal year ending June 30, 2000, and $1,774,042 for the fiscal year ending June 30, 2001, to the state special revenue fund referenced in [section 1 of Senate Bill No. 79] [15-10-107].

(6) There is appropriated from the general fund $12,900,000 for the fiscal year ending June 30, 2000, and $54,934,392 for the fiscal year ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(1) through (5)] [not codified].

(7) There is appropriated from the general fund $1.5 million for the biennium ending June 30, 2001, to the department of revenue for the costs of administration.

(8) There is appropriated from the general fund $2.15 million for the biennium ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(6)] [not codified].

(9) There is appropriated from the general fund $600,000 to the department of revenue for the biennium ending June 30, 2001, for reimbursement to tax increment financing districts created pursuant to 7-15-4299.

(10) The governor shall include the sum of the reimbursements in this section in the present law base budget prepared for the 57th legislative session."

Code Commissioner Change: In (3)(a), the Code Commissioner deleted a reference to vocational-technical center districts to reflect the changes in Ch. 308, L. 1995. See 20-25-439 for mill levy requirement.

15-1-113. Reimbursement payment.

Compiler's Comments

Effective Date: Section 8(1), Ch. 500, L. 2001, provided that this section is effective January 1, 2002.

15-1-116. Manufactured home considered as improvement to real property — requirements.

Compiler's Comments

2005 Amendment: Chapter 450 in (1)(b) near middle after "foundation" inserted "so that it is no longer capable of being drawn over public highways and it is placed" and near end after "person" inserted "it is placed on the land"; inserted (1)(c) regarding recording of statement of intent; in (2)(a) near middle after "owner" substituted "shall record the statement" for "may file a statement" and at end substituted "as provided in subsection (3)" for "on a form furnished by the department of justice"; in (2)(b)(iv) near end after "certificate" inserted "of origin or certificate"; inserted (2)(b)(v) regarding acknowledgment of signature; in (3)(a) in first sentence near beginning substituted "owner shall record" for "owner shall present", substituted "in the office of" for "to", substituted "clerk and recorder" for "treasurer", substituted "real property" for "manufactured home", after "located and" inserted "the owner", inserted "of origin or certificate", and at end inserted "and a certified copy of the recorded statement of intent to the county treasurer" and in second sentence at beginning substituted "Within 10 days of receipt" for "Upon payment"; in (3)(a)(iii) near beginning before "the statement" inserted "a certified copy of", inserted "a copy of the receipt for the fee required in 61-3-203", and near end inserted "of origin or certificate"; inserted (3)(b) regarding surrender of certificate of origin; in (3)(c) in first sentence near middle after "receipt" inserted "for the fee referred to in subsection (3)(a)"; in (4) near middle substituted "and the statement of title acceptance provided for in subsection (3)(b)" for "and the receipt of surrender" and at end substituted "complying with the provisions of 15-1-118" for "the consent of all persons who have an interest in the manufactured home"; in (5) at end inserted "to real property"; and made minor changes in style. Amendment effective October 1, 2005.

The amendment to this section by sec. 10, Ch. 596, L. 2005, was rendered void by sec. 130, Ch. 596, L. 2005, a coordination section.

2003 Amendment: Chapter 477 in (2) near beginning after "eliminate" substituted "a manufacturer's certificate of origin properly assigned to an owner or a certificate of title" for "the

certificate of ownership"; in (3)(d) near end before "title" inserted "certificate of"; in (4)(a) in first sentence at end substituted "title" for "ownership" and in second sentence at beginning of introductory clause substituted "Upon payment of the fee required in 61-3-203" for "Upon receipt of a titling fee of $5"; inserted (4)(a)(i) requiring entry of transfer of interest on the electronic record; in (4)(a)(ii) after "owner" substituted "a transaction summary receipt" for "a duplicate receipt for the surrendered certificate"; in (4)(a)(iii) near beginning after "forward" deleted "a copy of", after "intent" deleted "the original receipt", and after "certificate" inserted "of title"; in (4)(b) near middle of second sentence before "fee" deleted "titling"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2002 Amendment: Chapter 13 in (4) in last sentence after "shall" deleted former (4)(a) that read: "(a) deposit $1.50 of the titling fee in the county general fund" and after "remit" deleted "$3.50 of"; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

2001 Amendment: Chapter 257 in (4)(b) substituted reference to department (of revenue) for reference to state treasurer. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

Effective Date: Section 26, Ch. 200, L. 1997, provided: "[This act] is effective January 1, 1998."

15-1-118. Reversal of declaration that manufactured home is real property.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

15-1-120. Policy and purpose.

Compiler's Comments

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

15-1-121. Entitlement share payment — appropriation.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Chapter 114 in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and in each succeeding fiscal year", deleted former third and fourth sentences that read: "For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments", and at beginning of third sentence deleted "Beginning with calendar year 2002"; deleted former (3)(a)(i) that read: "(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)"; in (3)(b)(i) at beginning deleted "For fiscal year 2004 and subsequent fiscal years"; in (5)(a) in third sentence at end deleted "beginning September 15, 2001"; in (5)(b)(i) deleted former first and second sentences that read: "For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component" and in first sentence at beginning deleted "For fiscal year 2003 and each succeeding fiscal year"; deleted former (5)(b)(vi) and (5)(b)(vii) that read: "(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool"; deleted former (6)(c) through (6)(e) that read: "(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula County Airport Industrial $2,406
Silver Bow Ramsay Industrial 298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year"; deleted former (8) that read: "(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001"; and made minor changes in style. Amendment effective July 1, 2005.

Pursuant to sec. 77(4), Ch. 449, L. 2005, a coordination section, the amendment deleting subsection (3)(a)(i) was rendered void.

Chapter 130 in (1)(b) after "boat" inserted "and aircraft"; in (1)(f) after "taxes" inserted "collected" and after "pursuant to" inserted "the former provisions of"; deleted former (1)(g) that read: "(g) coal severance taxes allocated for county land planning pursuant to 15-35-108"; in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and in each succeeding fiscal year", deleted former third and fourth sentences that read: "For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments", and at beginning of third sentence deleted "Beginning with calendar year 2002"; at end of (3)(a)(i) substituted "supervisory fee" for "probation and parole fee"; in (5)(a) at end of third sentence after "basis" deleted "beginning September 15, 2001"; in (5)(b)(i) at beginning deleted former first two sentences that read: "For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component"; deleted former (5)(b)(vi) and (5)(b)(vii) that read: "(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool"; deleted former (6)(c)(i) that read: "(i) for fiscal years 2002 and 2003:

Missoula County Airport Industrial $4,812
Silver Bow Ramsay Industrial 597,594";

in (6)(c)(i) at beginning after "fiscal" substituted "year" for "years 2004 and"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 163 deleted former (1)(d)(v) that read: "(v) 25-9-804"; in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and in each succeeding fiscal year", deleted former third and fourth sentences that read: "For the fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated governments", and in third sentence at beginning deleted "Beginning with calendar year 2002"; deleted former (3)(a)(i) that read: "(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)"; in (3)(b)(i) in introductory clause at beginning deleted "For fiscal year 2004 and subsequent fiscal years"; in (5)(a) in third sentence at end after "basis" deleted "beginning September 15, 2001"; in (5)(b)(i) deleted former first and second sentences that read: "For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component" and in first sentence at beginning deleted "For fiscal year 2003 and each succeeding fiscal year"; deleted former (5)(b)(vi) and (5)(b)(vii) that read: "(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool"; deleted (6)(c), (6)(d), and (6)(e) that read: "(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County Airport Industrial $4,812

Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula County	Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year"; deleted former (8) that read: "(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001"; and made minor changes in style. Amendment effective October 1, 2005.

Pursuant to sec. 77(1), Ch. 449, L. 2005, a coordination section, the amendment deleting subsection (3)(a)(i) was rendered void.

Chapter 449 in (1) in first sentence inserted "as adjusted pursuant to subsection (3)(a)(i)"; in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and in each succeeding fiscal year", deleted former third and fourth sentences that read: "For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments", and at beginning of third sentence deleted "Beginning with calendar year 2002"; in (3)(a)(i) in introductory clause near beginning in two places after "fiscal year" deleted "2004" and inserted "2007", in two places after "entitlement share" deleted "pool" and inserted "payments", after "department shall" deleted "add to" and inserted "subtract from", after "fiscal year" deleted "2003" and inserted "2006", and at end substituted "the following amounts" for "the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)" and inserted table containing entitlement share amounts for individual counties, consolidated governments, and cities; in (3)(b)(i) at beginning deleted "For fiscal year 2004 and subsequent fiscal years"; in (5)(a) at end after "basis" deleted "beginning September 15, 2001"; in (5)(b)(i) deleted former first two sentences that read: "For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component" and at beginning of first sentence deleted "For fiscal year 2003 and each succeeding fiscal year"; deleted former (5)(b)(vi) and (5)(b)(vii) that read: "(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool"; deleted former (6)(c) through (6)(e) that read: "(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula County	Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year"; deleted former (8) that read: "(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001"; and made minor changes in style. Amendment effective April 28, 2005.

Chapter 596 in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and", deleted former third and fourth sentences that read: "For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments", and at beginning of third sentence

deleted "Beginning with calendar year 2002"; deleted former (3)(a)(i) that read: "(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)"; in (5)(a) at end deleted "beginning September 15, 2001"; in (5)(b)(i) deleted former first and second sentences that read: "For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component" and at beginning of first sentence after "For" deleted "fiscal year 2003 and"; deleted former (5)(b)(vi) and (5)(b)(vii) that read: "(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool"; deleted former (6)(c)(i) that read: "(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594";

in (6)(c)(i) at beginning substituted "fiscal year" for "fiscal years 2004 and"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 77(3), Ch. 449, L. 2005, a coordination section, the deletion of subsection (3)(a)(i) by Ch. 596 was rendered void.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

2003 Amendments — Composite Section: Chapter 236 inserted (13) providing that a payment may not be offset by a debt owed to a state agency by a local government. Amendment effective April 7, 2003.

Chapter 252 in (3)(a) in introductory clause near beginning of fifth sentence substituted "2002" for "2004". Amendment effective April 8, 2003.

Chapter 399 in (1)(k) at beginning substituted "veterans' cemetery license plate fees" for "disabled veterans' flat license plate fees and purple heart license plate fees" and at end substituted "61-3-459" for "61-3-332". Amendment effective January 1, 2004.

Chapter 477 in (1)(e) at beginning substituted "certificate of title" for "certificate of ownership"; and in (1)(i) substituted "61-3-220" for "61-3-201". Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

Retroactive Applicability: Section 3, Ch. 252, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to December 31, 2001."

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2002 Amendment: Chapter 13 inserted (1)(b)(iv) relating to 61-3-317; at end of (1)(b)(vi) deleted "61-3-537"; inserted (1)(b)(viii) relating to 5% of fees under 61-10-122; inserted (1)(b)(ix) relating to 61-10-130; inserted (1)(b)(x) relating to 61-10-148; inserted (1)(b)(xi) relating to 67-3-205; in (2)(b) inserted last sentence relating to a zero base year component; in (3)(a) in third sentence deleted 2003 from the 3% growth rate and inserted fourth sentence providing specific growth rates for 2003; inserted (3)(a)(i) relating to computation for the marriage license and probation and parole fees; in (5)(b)(i) inserted second and fourth sentences relating to a negative base year component; inserted (5)(b)(vii) relating to subtracting district court fees in fiscal year 2002; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

Attorney General's Opinions

Authority of Local Government to Levy Additional Mills to Make Up Difference Between Light Vehicle Tax Reimbursement and Amount Assessed for Fiscal Year 2001: In enacting this section, the Legislature provided for a reimbursement of an average of 88% of the amount lost by counties in light vehicle fee collections compared to the amount that the counties actually received in combined fees and property taxes in fiscal year 2001. The legislative intent was to simplify the collection and disbursement of county revenue while maintaining rough revenue neutrality for the counties. Under 15-10-420, the Legislature also provided an inflation adjustment to the mill levy cap and allowed for an increase in mill levy capacity for a decrease in reimbursements, in effect enabling local governments to maintain for fiscal year 2002 the amount of revenue collected in fiscal year 2001. Thus, a local government was authorized to levy additional mills sufficient to make up the difference between the amount reimbursed by the state for light vehicle fees and taxes under this section and the amount of fees and taxes assessed by the local government for fiscal year 2001. 49 A.G. Op. 4 (2001).

15-1-122. Fund transfers.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Chapter 130 deleted former (2)(a) that read: "(a) $75,000 in fiscal year 2003"; in (2)(a) after "fiscal" substituted "year" for "years 2004 and"; in (3)(g)(i) after "vessel" substituted "subject to the fee" for "[subject to the search and rescue surcharge]"; in (3)(g)(ii) after "snowmobile" substituted "subject to the fee" for "[subject to the search and rescue surcharge]"; in (3)(g)(iii) after "vehicle" substituted "subject to the fee" for "[subject to the search and rescue surcharge]"; and made minor changes in style. Amendment effective October 1, 2005. Amendments in (3) rendered void by Ch. 542 amendments.

Chapter 325 deleted former (2)(a) and (2)(b) that read: "(a) $75,000 in fiscal year 2003;

(b) $0 in fiscal years 2004 and 2005"; in (3)(b)(i), (3)(b)(ii)(B), (3)(c)(i), (3)(c)(ii), (3)(c)(iv), and (3)(c)(v) near beginning substituted "through" for "in"; in (3)(g)(i), (3)(g)(ii), and (3)(g)(iii) substituted "subject to the fee" for "[subject to the search and rescue surcharge]"; and made minor changes in style. Amendment effective April 21, 2005. Amendments in (3) rendered void by Ch. 542 amendments.

Chapter 464 deleted former (2)(a) that read: "(a) $75,000 in fiscal year 2003"; deleted former (3)(e) that read: "(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562"; and made minor changes in style. Amendment effective July 1, 2005.

Section 4, Ch. 542, deleted former (2)(a) that read: "(a) $75,000 in fiscal year 2003"; substituted (3)(a) concerning percentage allocation to motor vehicle recycling and disposal program for former text that read: "(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and $5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532"; substituted (3)(b) concerning percentage allocation to noxious weed state special revenue account for former text that read: "(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 in fiscal year 2006 and, in each subsequent year, $2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) $1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) $1.50 in fiscal year 2006 and, in each subsequent year, $3.65 for each motorcycle and quadricycle; and

(C) $7.50 for each permanently registered light vehicle"; substituted (3)(c) concerning percentage allocation to department of fish, wildlife, and parks for former text that read: "(c) to the department of fish, wildlife, and parks:

(i) $2.50 in fiscal year 2006 and, in each subsequent year, $14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 in fiscal year 2006 and, in each subsequent year, $19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) $5 in fiscal year 2006 and, in each subsequent year, $13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 in fiscal year 2006 and, in each subsequent year, $8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, $4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with $3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City"; substituted (3)(d) concerning percentage allocation to veterans' cemetery account for former text that read: "(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate subject to the fee in 61-3-459"; deleted former (3)(e) that read: "(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562"; in (3)(e) substituted percentage allocation to state special revenue fund to the credit of senior citizens and persons with disabilities transportation services account for former text that read: "25 cents a year for each registered vehicle and $1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112"; in (3)(f) substituted percentage allocation to the search and rescue account for former text that read: "to the search and rescue account provided for in 10-3-801:

(i) $2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;

(ii) $2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and

(iii) $2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803"; deleted former (3)(h) that read: "(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1)"; substituted (4) defining motor vehicle revenue deposited in the state general fund for former text that read: "For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be

included in vehicle counts only in the year in which the vehicles are registered by new owners"; and made minor changes in style. Amendment effective July 1, 2005.

Pursuant to sec. 131, Ch. 596, L. 2005, a coordination section, in (3)(a) in first sentence the percentages were reduced from 1.63% to 1.62% and from 1.5% to 1.48%; in (3)(b) the percentages were reduced from 1.54% to 1.53% and from 1.52% to 1.50%; in (3)(c)(i) substituted "0.47% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and in succeeding fiscal years, 0.46% of the motor vehicle revenue deposited in the state general fund" for "0.47% of the motor vehicle revenue deposited in the state general fund in each fiscal year"; in (3)(d) reduced percentage from 0.65% to 0.64%; in (3)(e) reduced second percentage from 0.31% to 0.30%; and in (3)(f) reduced second percentage from 0.05% to 0.04%. Amendment effective January 1, 2006.

2005 Amendments Void: The amendment to this section made by sec. 1, Ch. 500, L. 2005, was rendered void by sec. 8, Ch. 500, L. 2005, a coordination section.

Section 131, Ch. 596, L. 2005, a coordination section, rendered the amendment made by sec. 13, Ch. 596, L. 2005, void.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section — Coordination: Chapter 48 in (2)(b) substituted "$0 in fiscal years 2004 and 2005" for "$2,960,715 in fiscal year 2004"; inserted (2)(c) transferring $3,050,205 in fiscal year 2006; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 399 in (3)(d) after "10-2-603" substituted "$10 for each veteran's license plate subject to the fee in 61-3-459" for "$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h)". Amendment effective January 1, 2004.

Chapter 477 in (3)(c)(ii) after "23-2-601" inserted "23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 491 inserted (3)(h) transferring 50 cents a year for each vehicle subject to the 61-3-321(7) fee to the veterans' services account. Amendment effective January 1, 2004.

Chapter 534 inserted (3)(g) transferring various amounts to the search and rescue account; deleted former (4) that read: "(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001"; in (4) near beginning of first sentence after "year" deleted "beginning with fiscal year 2002" and deleted former second sentence that read: "Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000"; and made minor changes in style. Amendment effective January 1, 2004.

Pursuant to sec. 47(3)(a), Ch. 592, L. 2003, a coordination section, in (3)(g)(i), (3)(g)(ii), and (3)(g)(iii) substituted "$2" for "50 cents".

Chapter 592 in (3) at beginning after "For" deleted "fiscal year 2002 and for" and after "each" deleted "succeeding"; in (3)(a)(ii) at end of first sentence inserted "and $5 for each permanently registered light vehicle"; in (3)(b)(i) at beginning after "$1" inserted "in fiscal year 2006 and, in each subsequent year, $2.75"; in (3)(b)(ii) inserted introductory clause concerning vehicles registered pursuant to 61-3-321; in (3)(b)(ii)(A) near beginning after "each" inserted "registered" and at end after "1 ton" inserted "and motor home"; in (3)(b)(ii)(B) at beginning inserted "$1.50 in fiscal year 2006 and, in each subsequent year, $3.65 for each" and at end after "quadricycle" deleted "and motor home subject to registration or reregistration pursuant to 61-3-321"; inserted (3)(b)(ii)(C) transferring $7.50 for each permanently registered light vehicle; in (3)(c)(i) at beginning after "$2.50" inserted "in fiscal year 2006 and, in each subsequent year, $14.50"; in (3)(c)(ii) at beginning after "$5" inserted "in fiscal year 2006 and, in each subsequent year, $19", near middle after "with" substituted "50% of the amount" for "$2.50", and after "23-2-644 and"

substituted "50% of the amount" for "$2.50"; in (3)(c)(iii) after "snowmobile" inserted "registration"; in (3)(c)(iv) at beginning after "$5" inserted "in fiscal year 2006 and, in each subsequent year, $13.25"; in (3)(c)(v) near middle after "$3.50" inserted "in fiscal year 2006 and, in each subsequent year, $8", after "vehicle" deleted "camper", and at end after "61-3-321" deleted "or 61-3-524"; inserted (3)(e)(ii) concerning vehicles registered under 61-3-527, 61-3-530, and 61-3-562; in (3)(f) near beginning after "each" inserted "registered" and after "vehicle" inserted "and $1.25 for each permanently registered vehicle"; deleted former (4) that read: "(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001"; in (4) near beginning of first sentence after "year" deleted "beginning with fiscal year 2002", deleted former second sentence that read: "Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000", inserted second and third sentences concerning counts of permanently registered vehicles, in fourth sentence near beginning after "each" deleted "succeeding", and inserted fifth sentence allowing vehicles that are permanently registered to be included in vehicle counts only in the year in which the vehicles are registered by new owners; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 601 inserted (3)(c)(vii) relating to transfers for state parks, fishing access sites, and state facilities at Virginia City and Nevada City; deleted former (4) that read: "(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001"; in (4) near beginning of first sentence after "year" deleted "beginning with fiscal year 2002", deleted former second sentence that read: "Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000", and near beginning of second sentence after "each" deleted "succeeding"; and made minor changes in style. Amendment effective January 1, 2004.

Code Commissioner Correction: In (3)(g) the bracketed language was rendered erroneous when the coordination instruction in sec. 47(3)(b), Ch. 592, L. 2003, rendered the amendments to 23-2-517 (now repealed), 23-2-616, and 23-2-803 (now repealed) in Ch. 534, L. 2003, void.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

Preamble: The preamble attached to Ch. 491, L. 2003, provided: "WHEREAS, the 57th Legislature requested a study of veterans' issues, and the State Administration and Veterans' Affairs Interim Committee conducted numerous hearings, received expert testimony, and examined research during a 14-month period; and

WHEREAS, the Interim Committee found that, using 2000 data, Montana's population of nearly 107,000 veterans and an estimated 170,000 family members of veterans not only ranks Montana second in the nation in the number of veterans per capita (11.9%) but also means that veterans and their family members constitute more than 25% of Montana's total population; and

WHEREAS, the Interim Committee found that more than 80,000 Montana veterans are combat-era veterans (more than 36,000 are Vietnam-era, more than 16,000 are Persian Gulf-era, more than 16,000 are World War II-era, and about 14,000 are Korean-era veterans) and that the largest group of veterans is now between 50 and 65 years of age; and

WHEREAS, the U.S. Department of Veterans Affairs estimates that more than 50% of combat theater veterans suffer from clinically serious and disabling posttraumatic stress disorder, that twice as many veterans as nonveterans experience homelessness, that many

veterans have overlapping and complex needs encompassing medical and nursing home care, mental health and chemical dependency counseling, housing, transportation, education and training, job services, and family support services, and that the children and families of veterans who do not get the help that they need are themselves at risk; and

WHEREAS, these complex needs and a maze of federal, state, local, public, and private services demand a high level of interagency coordination and cooperation for effective service delivery to ensure that veterans and their families do not fall through the cracks and to avoid unnecessary cost-shifting from federal to state and local public assistance programs; and

WHEREAS, the Interim Committee found that current statutory language establishing the Board of Veterans' Affairs as the lead agency for veterans' affairs dates back to 1919 and that although the Board's duties and responsibilities have consistently evolved, statutory language has not kept pace; and

WHEREAS, the Board hires and supervises its own classified employees, who make up the Montana Veterans' Affairs Division, but the Board does not have rulemaking authority to implement programs; and

WHEREAS, the Board is administratively attached to the Department of Military Affairs, which has greatly assisted veterans and supported the Board but has no statutory authority over veterans' affairs; and

WHEREAS, a legislative performance audit requested by the Interim Committee revealed that although the Montana Veterans' Affairs Division is to be commended for doing a great job with limited resources and limited statutory guidance, it also revealed that new management tools and updated information management systems are needed to provide more consistency and to track and manage staff workload; and

WHEREAS, the U.S. Department of Veterans Affairs spent about $175 million in Montana during fiscal year 2000, which ranked Montana 37th nationwide in per capita expenditures by the U.S. Department of Veterans Affairs on veterans; and

WHEREAS, the Interim Committee found that a statutory restructuring of powers, duties, and responsibilities for state veterans' affairs programs is essential, not only to address inadvertent statutory shortfalls and elevate the profile of state veterans' affairs, but also to better integrate benefit claims with human services programs so that eligible veterans and family members receive the federal compensation, benefits, and care that they have earned in self-sacrificing service in the armed forces of the United States of America."

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

Saving Clause: Section 4, Ch. 601, L. 2003, was a saving clause.

Severability: Section 5, Ch. 601, L. 2003, was a severability clause.

2002 Amendment: Chapter 9 deleted former (2)(a) that read: "(a) $2,873,853 in fiscal year 2002"; in (2)(a) decreased fiscal year 2003 transfer amount from $2,916,961 to $75,000; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 4, Ch. 9, Sp. L. August 2002, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to transfers in fiscal years beginning July 1, 2001."

Coordination Instruction Not Implemented: Section 5(1), Ch. 95, L. 2001, a coordination section, provided that if House Bill No. 124 was passed and approved and if it included a revision of county funding of the motorboat account, then the allocation to the department of fish, wildlife, and parks in [section 3(4)] [15-1-122] of House Bill No. 124 was to be increased by $337,500. House Bill No. 124 was passed and approved as Chapter 574, L. 2001. The coordination instruction in Ch. 95, L. 2001, was written to reflect a prior version of House Bill No. 124 in which agencies received lump-sum allocations to replace lost funding. The version of House Bill No. 124 that was passed and approved allocates a specific dollar amount to the motorboat account for each boat registered or receiving a decal. Therefore, the coordination provision in Ch. 95, L. 2001, has not been implemented because it no longer reflects the content of Ch. 574, L. 2001.

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

15-1-140. Department of revenue POINTS computer system replacement.

Compiler's Comments

Severability: Section 14, Ch. 597, L. 2003, was a severability clause.

Saving Clause: Section 15, Ch. 597, L. 2003, was a saving clause.

Effective Date: Section 16(1), Ch. 597, L. 2003, provided that this section is effective on passage and approval. Approved May 9, 2003.

Termination: Section 18, Ch. 597, L. 2003, provided: "[Sections 1, 4, and 5] [15-1-140, amendments to 17-5-2001, and 15-1-141, now repealed] terminate June 30, 2011."

Part 2
Department of Revenue

Part Administrative Rules

ARM 42.1.101 Organizational rule for Department of Revenue.

Part Case Notes

Powers Transferred to Department: The Department of Revenue was granted the administrative powers previously held by the State Board of Equalization, but the appellate power of the former Board was transferred to the State Tax Appeal Board under the provisions of 15-2-201. Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976).

Part Collateral References

84 C.J.S. Taxation §973, et seq.

72 Am. Jur. 2d State and Local Taxation §§788 through 799.

State Tax Practice and Procedure, Shanahan. Tax for the General Practitioner, State Bar Legal Education Institute (December 1985).

15-1-201. Administration of revenue laws.

Compiler's Comments

1999 Amendment: Chapter 314 inserted (1)(b) authorizing department to contract with United States department of the interior or other federal agency to perform royalty audits, collection services, and other mining-related operations on federal lands in Montana; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 561 in (1)(a), near beginning, inserted "and 71"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 27 in (1)(a), after "and over", deleted "its agents and"; in (1)(c), after "adopt rules", deleted "specifying the methodology to be used in conducting sales assessment ratio studies and in"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 10 in (1)(a) removed brackets around reference to Title 15, chapter 70; and made minor changes in style.

Preamble: For preamble to Ch. 743, L. 1985, see Compiler's Comments to Title 15, chapter 1, part 1.

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

Administrative Rules

Title 42, ARM Department of Revenue rules.
Title 42, chapter 2, subchapter 3, ARM Public participation.
ARM 42.2.511 Review of centrally assessed property appraisals.
Title 42, chapter 2, subchapter 6, ARM Dispute resolution.
Title 42, chapter 2, subchapter 8, ARM Ethics rules.
Title 42, chapter 4, ARM Tax credits.
ARM 42.15.316 Extensions.
ARM 42.15.326 Request for adjustment of joint return.
ARM 42.15.327 Statement required for adjustment of joint return.
ARM 42.15.415 Deductions for sale of land to beginning farmer.
Title 42, chapter 15, subchapter 9, ARM First-time home buyer credits.
Title 42, chapter 18, ARM Montana appraisal plan.
Title 42, chapter 19, ARM General property tax provisions.
Title 42, chapter 19, subchapter 4, ARM Low-income property.
Title 42, chapter 19, subchapter 5, ARM Disabled veterans tax exemption .
Title 42, chapter 19, subchapter 6, ARM Multiple undivided ownerships.
Title 42, chapter 19, subchapter 11, ARM Energy-related tax incentives.
Title 42, chapter 19, subchapter 12, ARM New industrial property.
Title 42, chapter 19, subchapter 13, ARM Tax sale certificates.
ARM 42.20.156 Agricultural and forest land use change criteria.

Title 42, chapter 20, subchapter 5, ARM Phase-in valuation.
Title 42, chapter 20, subchapter 6, ARM Agricultural land.
ARM 42.23.424 Sale of land to beginning farmer — corporation license tax deduction.
Title 42, chapter 23, subchapter 7, ARM Limited liability companies.
Title 42, chapter 31, subchapter 4, ARM Emergency telephone service.
ARM 42.31.902 Reporting requirements for Public Service Commission and Consumer Council.
Title 42, chapter 32, subchapter 1, ARM Resource indemnity trust tax.

Case Notes

Supervisory Role of Department of Revenue Over County Assessor's Employees — No Duty Owed to Assessor: Geiger sued the Department of Revenue, alleging that the Department was negligent in its management of the Dawson County Assessor's Office. The District Court granted the Department's motion for a directed verdict. The Supreme Court affirmed the District Court decision, holding that the Department had no duty to Geiger from which negligence could arise. The actions taken by the Department in reducing the number of employees in the Assessor's Office, supervising employees in the Office, withdrawing the delegation to the Assessor to hire and fire state employees, and issuing an audit report examining deficiencies in the Assessor's Office were all done pursuant to the statutory authority of the Department, which it carried out in a nonnegligent fashion. Geiger v. Dept. of Revenue, 260 M 294, 858 P2d 1250, 50 St. Rep. 1050 (1993).

Attorney General's Opinions

Revenue Department Not Zoning Authority — Designation of Property for Assessment Purposes Only: The Department of Revenue is not a bona fide zoning authority that may designate an area as commercial for outdoor advertising purposes. A property designation made by the Department applies to tax assessment classifications only and may not be extended to zoning restrictions. 42 A.G. Op. 43 (1987).

15-1-202. Enforcement of revenue laws.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), after "complaints to be made against", deleted "assessors and other"; at end of (1) and (2) deleted "or failure of an assessor to comply with the certification or continuing education requirements of 15-8-106"; deleted (3) that read: "(3) Nothing in this section affects the authority of any other person, public officer, or public body to pursue any other legal process for the removal from office of an assessor who forfeits office for failure to comply with certification and continuing education requirements"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 10 in (1) removed brackets around reference to Title 15, chapter 70.

1989 Amendment: At end of (1) and (2) inserted reference to failure to comply with 15-8-106; and inserted (3) relating to removal from office. Amendment effective January 1, 1991.

Administrative Rules

Title 42, chapter 2, subchapter 8, ARM Ethics rules.

15-1-203. Study of other tax systems.

Case Notes

Department of Revenue's Activity in Proposing Tax Legislation Not Violation of Separation of Powers: In 1994 and 1995, the Department of Revenue engaged in a project to build a consensus between various parties on how best to achieve a simplification of oil and natural gas taxes. The Department proposed legislation to the 1995 Legislature, and it was passed as the Montana Oil and Natural Gas Production Tax Act. Certain counties and taxpayers challenged the law on the basis that neither the Legislature nor the Governor had granted the Department any power to conduct the project and that the Department's actions violated the doctrine of separation of powers. The Supreme Court upheld the tax law on the basis that the constitution requires the Governor to provide the Legislature with information and to recommend measures that the Governor considers necessary and further that this section is an enabling statute allowing the Department to formulate and recommend legislation. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

15-1-205. Biennial report — contents.

Compiler's Comments

2001 Amendment: Chapter 199 inserted (2) concerning statewide effective tax rate for each class of property; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 61 deleted (8) that read: "(8) The department shall include the inheritance tax information required by 72-16-202 in a separate section of the report." Amendment effective March 17, 1997.

1995 Amendment: Chapter 9 in (1), at end of first sentence, deleted "in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature".

1993 Special Session Amendment: Chapter 27 in (2)(a)(ii), after "department", deleted "or its agent". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendments: Chapter 10 in (7), after "report", inserted "prepared by the department of transportation"; and made minor changes in style.

Chapter 349 near beginning of first sentence of (1) substituted "make available" for "as provided in 5-11-210, submit" and inserted second sentence that read: "The department shall follow the provisions of 5-11-210 in preparing the report"; inserted (8) requiring inclusion of inheritance tax information; and made minor changes in style.

1991 Amendment: Near beginning of (1), after "governor", inserted "20 days before the meeting of the legislature", substituted "as provided in 5-11-210, submit to" for "upon request to each member of", and after "legislature" deleted "20 days before the meeting of the legislature". Amendment effective March 20, 1991.

1987 Amendment: In (1), requiring report, near end inserted "alternative" before "measures"; and inserted (2) through (6) listing items that may be included in report and requiring certain information (see Ch. 500, L. 1987, for full text).

Composite Section — Conflicting Amendments: Section 84-708.1, R.C.M. 1947, was amended twice in 1977, once by Ch. 98 and once by Ch. 566. The amendments conflict in that Ch. 98 made inclusion of the selling price of gasoline in the report mandatory and Ch. 566 made inclusion of the selling price discretionary. The Code Commissioner, 1977, prepared a composite section using the discretionary language found in Ch. 566, L. 1977.

15-1-206. Waiver of penalties — interest.

Compiler's Comments

2005 Amendment: Chapter 594 deleted former (3) that read: "(3) Whenever the department is notified of a change in federal taxable income upon filing an amended Montana return, as provided for in 15-30-304, the department shall waive the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendments — Composite Section: Chapter 68 in (3) after "federal taxable income" substituted "upon filing an amended Montana return" for "as the result of a federal adjustment

or upon filing an amended federal return"; and made minor changes in style. Amendment effective March 15, 1999.

Chapter 427 in (1) substituted "waive, for reasonable cause, any penalty assessed by the department" for "waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax"; in (2) in two places after references to waive deleted references to abate; in (3) substituted "waive" for "abate"; and made minor changes in style. Amendment effective January 1, 2000.

Retroactive Applicability: Section 6, Ch. 68, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1981 Amendment: Inserted (2) relating to abatement of interest; and inserted (3) relating to federal adjustments.

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

15-1-207. Writeoff of collection of tax, penalty, or interest — rules.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 84, L. 1991, provided: "A statement of intent is required for this bill because [section 1] [this section] grants the department of revenue authority to adopt rules for establishing procedures to determine whether it is cost-effective to collect any tax, penalty, or interest from a delinquent taxpayer. The legislature intends that the rules adopted by the department address the circumstances under which it is no longer cost-effective to pursue the collection of a tax. These circumstances include but are not limited to the difficulty of finding the delinquent taxpayer, the difficulty of locating the assets of the taxpayer, or the financial condition of the taxpayer. In addition, the rules adopted by the department may include procedures to remove, for accounting purposes, a delinquency from the department's accounts receivable.

The legislature also intends that rules provide that if a tax delinquency is written off, it is not forgiven, but the department will incur no further expense in collecting the tax."

Administrative Rules

ARM 42.3.120 Delinquent tax accounts and noncollection actions.

15-1-208. Signature alternatives for electronically filed returns.

Compiler's Comments

1997 Amendment: Chapter 6 near beginning of first sentence substituted "Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11" for "this part", near middle, after "director of revenue", inserted "and for the purposes of Title 15, chapter 70, the director of the department of transportation", and at end deleted "required to be filed by this part"; and made minor changes in style. Amendment effective February 5, 1997.

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

15-1-211. Uniform dispute review procedure — notice — appeal.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 in (1)(a) near middle of first sentence before "estate taxes" deleted "inheritance taxes"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

1999 Amendments — Composite Section: Chapter 36 substituted present language regarding dispute review procedure for persons, other entities, and the department for former section that read: "(1) The department of revenue shall provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

(a) The tax review procedure described in this section applies to all taxes administered by the department and to all issues arising from the administration of taxes, except inheritance

taxes, estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor. The procedure applies to any revised assessment of centrally assessed property taxed pursuant to chapter 23.

(b) The term "taxpayers", as used in this section, includes all persons determined by the department to have a potential tax liability.

(2) (a) If the department determines that a request for a refund should be denied in whole or part, it shall notify the taxpayer of the determination. If the department determines that a person has failed to pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the running of any applicable statute of limitations regarding the assessment of the tax.

(b) A notice under this section must clearly state:

(i) the reasons for the department's determination that a refund is not due or that tax plus interest and penalty, if any, are due;

(ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final department decision, and the taxpayer's right to a review of determinations by the department of labor and industry and board of labor appeals of whether an employer-employee relationship existed between the taxpayer and certain individuals or whether the employment relationship was that of an independent contractor;

(iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right to contest the department's determination under this section or to file an appeal with the state tax appeal board;

(iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does not agree with an assessment or pay the amount assessed;

(v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days; and

(vi) that the notice stops the running of the statute of limitations regarding the assessment of the tax.

(3) (a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the determination within 30 days from the date that the notice is mailed. The notification by the taxpayer is not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is objecting to a determination that an employer-employee relationship existed between the taxpayer and individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify the department within 30 days:

(i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

(ii) the taxpayer waives any further right to review under this section or to appeal to the state tax appeal board; and

(iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other information to the administrator of the division that administers the tax or to the administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

(ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer disagrees with the department's determination that an employer-employee relationship existed between the taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2402 and 39-51-2410.

(c) Within 60 days after the taxpayer has presented the taxpayer's objections, as provided in subsection (3)(b), the administrator or a designee shall issue a written decision addressing the taxpayer's objections and describing the reasons for the determination. The administrator's decision must also clearly set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director of revenue.

(4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer

may appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer waives any further right to review or appeal and a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and any other information to the director of revenue or the director's designee within 60 days after the notice referred to in subsection (4)(a) is mailed. The director or the designee may consider written information, hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented the objections, the director or the designee shall issue a written decision addressing the objections and describing the reasons for the decision. The director's decision is the final decision and assessment of the department.

(5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by the board or, if further appeals are filed, by the appropriate court. However, any interest required by law must continue to accrue.

(6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the department.

(b) If the director notifies the board within 30 days after an appeal is filed that the director has not had an opportunity to review the administrator's decision and the director believes that a review may be helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide the taxpayer's objections and reasons for the objections to the director so that the director or the director's designee may review the controversy and issue a decision within the period of the stay granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal resumed.

(7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by mutual consent of the department and the taxpayer. The department shall consent to all reasonable requests for extension of deadlines.

(8) (a) The director of revenue or the director's designee is authorized to enter into an agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department for any taxable period.

(b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded." Amendment effective February 24, 1999.

Chapter 451 in (4)(c) near middle of second sentence after "director's" inserted "or the designee's" (amendment rendered void by amendment by Ch. 36); in (6)(b) near middle of third sentence after "director's" inserted "or the designee's" (amendment rendered void by amendment by Ch. 36); inserted (6)(a)(ii) providing that the director or the director's designee has no authority to bind a future legislature through the terms of an agreement; in (6)(b) at beginning inserted "Subject to subsection (6)(a)(ii)"; and made minor changes in style. Amendment effective April 22, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

Section 5, Ch. 451, L. 1999, provided: "[This act] applies to any arbitration, compromise, or settlement of actions entered into on or after [the effective date of this act]." Effective April 22, 1999.

1997 Amendment: Chapter 123 in (3)(b)(ii), near end, substituted "39-51-2402" for "39-51-2403"; and made minor changes in style. Amendment effective March 20, 1997.

Retroactive Applicability: Section 8, Ch. 123, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendment: Chapter 529 in first sentence of (1)(a), after "department", inserted "and to all issues arising from the administration of taxes" and after "taxes" inserted "the issue of whether an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor"; in (2)(b)(ii), at end, inserted reference to taxpayer's right to a review of employer-employee relationship determinations; in second sentence of (3)(a), at end, inserted "unless the taxpayer is objecting to a determination that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2"; inserted (3)(b)(ii) relating to referring taxpayer objections to the Department of Labor and Industry; and made minor changes in style. Amendment effective July 1, 1996.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Effective Dates: Section 32, Ch. 811, L. 1991, provided: "(1) For the purposes of promulgating administrative rules to administer [this act], [section 1] [15-1-211] is effective on passage and approval [approved May 17, 1991].

(2) The remainder of [this act] is effective October 1, 1991."

Administrative Rules

ARM 42.2.510 Review of statement of account notices.
ARM 42.2.511 Review of centrally assessed property appraisals.
ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.
Title 42, chapter 2, subchapter 6, ARM Dispute resolution.
ARM 42.4.4106 Appeal rights.
ARM 42.15.326 Request for adjustment of joint return.
ARM 42.15.327 Statement required for adjustment of joint return.
ARM 42.31.504 Collection of tax and hearing rights.
ARM 42.31.810 Nursing facilities — hearing rights.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 288 at end of (3)(a) of temporary version and (5)(a) of version effective January 1, 2007, inserted "and 85-2-276". Amendment effective July 1, 2005, and terminates June 30, 2020.

(Temporary version) Chapter 594 in (1)(c) inserted last sentence related to accrual of penalty; in (2) in first sentence after "year" deleted "accrued at 1% a month or fraction of a month, on the unpaid tax" and inserted last sentence related to accrual of interest; and made minor changes in style. Amendment effective July 1, 2005.

(Version effective January 1, 2007) Deleted former (1)(b) that read: "(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of $200 or the amount of the tax due, whichever is less."; inserted (2)(a) related to late payment penalty; in (2)(b) in first sentence inserted reference to chapter 30, part 2, chapter 53, chapter 65, and chapter 68 and in second sentence reduced maximum penalty from 18% to 15%; inserted (2)(c) related to accrual of penalty; deleted former (1)(d) that read: "(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal

to 25% of the tax due or $200, whichever is less, plus interest as provided in subsection (2)"; inserted (3) related to additional penalty for failure to file return; in (4)(a) in first sentence at end after "assessed" substituted "by the department" for "at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax" and inserted second and third sentences related to determination of interest rates and (4)(a)(i) and (4)(a)(ii) related to interest rates; in (4)(b) inserted second sentence related to accrual of interest; deleted former (3)(b)(iii) that read: "(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law"; inserted (6) related to interest rate changes; inserted (7) related to calculation and assessment of penalties and interest; inserted (8) related to due date of deficiency assessments; inserted (9) related to interest allowed for overpayment; and made minor changes in style. Amendment effective January 1, 2007.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Contingent Voidness: Section 15, Ch. 288, L. 2005, provided: "If at least $2 million is not appropriated in a line item for each fiscal year from state sources other than the water adjudication account provided for in [section 7] [85-2-280], for the purposes of funding Montana's water adjudication program, then [this act] is void."

Effective Date —Applicability: Section 57, Ch. 427, L. 1999, provided that this section is effective January 1, 2000, and applies to all tax periods beginning after December 31, 1999.

Administrative Rules

ARM 42.2.504 Penalties.

ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.

ARM 42.15.314 Changes in federal taxable income.

ARM 42.15.315 Original and amended returns.

ARM 42.15.316 Extensions.

ARM 42.15.325 Failure to furnish requested information or file delinquent return.

ARM 42.17.221 Due date and application of taxes.

ARM 42.17.222 Demand of payment or reports if employer transfers or discontinues business.

ARM 42.23.605 Penalty and interest.

ARM 42.23.607 Computation of quarterly estimated tax underpayment interest.

ARM 42.31.510 Penalty and interest.

ARM 42.31.705 Tobacco tax — late filing penalties.

ARM 42.31.803 Nursing facilities — estimation and collection of delinquent or unpaid fees.

15-1-217. Rulemaking authority.

Compiler's Comments

Effective Dates — Applicability: Section 57, Ch. 427, L. 1999, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2000, and applies to all tax periods beginning after December 31, 1999.

(2) For the purposes of promulgating administrative rules, [section 2 [15-1-217] and this section] are effective July 1, 1999."

Administrative Rules

ARM 42.4.4105 Alternate renewable energy generation facilities exemption — less than one megawatt.

15-1-221. Short title.

Compiler's Comments

Preamble: The preamble attached to Ch. 619, L. 1991, provided: "WHEREAS, the Legislature finds and declares that the administration and collection of taxes is the most sensitive point of contact between citizens and their government;

WHEREAS, the Legislature further declares that it is the intent of the Legislature to ensure that the rights, privacy, and property of Montana taxpayers are adequately protected during the process of assessment and collection of taxes administered or collected by the department of revenue.

THEREFORE, it is the purpose of this bill to enact a Montana taxpayer bill of rights."

15-1-222. Taxpayer bill of rights.

Administrative Rules

ARM 42.23.605 Penalty and interest.

15-1-230. Report on income tax credit to committee.

Compiler's Comments

2005 Amendment: Chapter 4 near end after "credit claimed" inserted "the total amount of the credit recaptured"; and made minor changes in style. Amendment effective February 23, 2005, and terminates December 31, 2007.

Retroactive Applicability: Section 6, Ch. 4, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Code Commissioner Correction: Pursuant to 1-11-101(2), the code commissioner changed "revenue and taxation interim committee" to "revenue and transportation interim committee" to reflect amendments to Senate Bill No. 10 (Ch. 210, L. 2001).

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

1999 Amendment: Chapter 19 substituted "revenue and taxation interim committee" (now revenue and transportation interim committee) for "revenue oversight committee". Amendment effective February 17, 1999.

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

15-1-231. Payment of taxes by credit card and other commercially acceptable means.

Compiler's Comments

2005 Amendment: Chapter 47 in (1) near beginning after "payment" inserted "of any tax that it administers, including penalties, interest, and fees" and at end after "means" deleted "from a person making a payment to the department of individual income taxes, including penalties, interest, and fees"; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: This section is effective October 1, 2001.

Administrative Rules

ARM 42.5.201 Electronic payment.

ARM 42.5.202 Electronic returns, reports, and signatures.

15-1-232. Deposit of money.

Compiler's Comments

Effective Date: Section 3, Ch. 51, L. 2003, provided: "[This act] is effective on passage and approval." Approved February 27, 2003.

Part 3
Investigation and Hearings

Part Collateral References

The subpoena power and discovery. State Practice and Procedure, Shanahan. Tax for the General Practitioner, State Bar Legal Education Institute (December 1985).

15-1-301. Investigations by department.

Attorney General's Opinions

Right to Know Not Applicable to Possible Criminal Investigation: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments that were issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301, as public disclosure at this time would serve only to scandalize the investigation and to stigmatize by innuendo those banks which may be innocent of any criminal wrongdoing. 35 A.G. Op. 59 (1974).

15-1-302. Witnesses — oaths, contempt, and fees.

Compiler's Comments

1997 Amendment: Chapter 491 in (2)(a) substituted "the department shall institute proceedings" for "such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings"; inserted (2)(b) requiring department to request court to issue order requiring payment of penalties; and made minor changes in style. Amendment effective January 1, 1999.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

15-1-303. Penalty for refusal to furnish information.

Compiler's Comments

1997 Amendments: Chapter 35 in (1), near end of second sentence before "mail", deleted "certified"; and in (2)(a), in third sentence before "mail", deleted "certified". Amendment effective February 24, 1997.

Chapter 36 in (2)(a), at beginning of first sentence after "Within", substituted "30 days" for "15 days"; in (2)(b), near middle of first sentence after "within", substituted "30 days" for "20 days"; and made minor changes in style. Amendment effective February 24, 1997.

Retroactive Applicability: Section 3, Ch. 36, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1997."

1993 Special Session Amendment: Chapter 27 in (1), near beginning after "requested by the department", deleted "or its authorized agent"; in (2)(a), after "conference with" and after "the conference", deleted "the agent of"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 227 in (1), near end, deleted provision for registered mail; in (2)(a), near beginning after "assessment", deleted "or by April 1, whichever is later"; in (3) substituted "30 calendar days" for "20 days"; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

1985 Amendment: Substituted "(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, or by April 1, whichever is later, he may request an informal conference with the agent of the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of his failure to supply the information requested by the department. Within 10 days after the conference, the agent of the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of his failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, he may appeal to the county tax appeal board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of his failure to supply the information which the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment, or if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 20 days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board must follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303" for former (2) and (3) that read: "(2) Such action of the department and the assessment so made shall be final and conclusive unless the party so assessed shall:

(a) within 20 days after receiving such notice, file an appeal with the state tax appeal board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then, from all information presented to it or from its own investigation, make such assessment as to it seems just and equitable; or

(b) within 60 days after receiving such notice, appeal to the district court of Lewis and Clark County from the action of the department in making such assessment and imposing such penalty by serving on the department and filing in the office of the clerk of said district court notice of appeal therefrom, together with a bond conditioned for the payment of such amount as the judgment of said court may require within 30 days after the entry of such judgment.

(3) Upon the hearing of such appeal, the court or the state tax appeal board shall determine whether the department was entitled to inspect such books or records or was entitled to the information requested by the department. If the court or board shall find that the department was entitled to inspect such books or records or was entitled to the information requested by the department, the court or board shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the department, but if the court or board shall find that the department was not entitled to inspect such books or records or was not entitled to the information requested by the department, then the court or board shall enter a judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department."

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Administrative Rules

ARM 42.21.158 Property reporting requirements.

Collateral References

Taxation *key* 837, 838.

85 C.J.S. Taxation §1588, et seq.

Part 4
Protest Payments, Actions to Recover, and Alternative Remedies

Part Case Notes

No Authority of Court to Order Refund of Taxes Paid Without Protest Absent Legislative Authorization: The District Court ordered that numerous parties who properly petitioned to be excluded from an irrigation district should be reimbursed for back taxes paid by the parties as of the date of their petitions. The irrigation district appealed, and the Supreme Court reversed. Tax refunds are a matter of legislative discretion, and absent specific legislative authorization, a court has no power to refund taxes paid without protest. RSG Holdings v. Missoula Irrigation District, 2004 MT 214, 322 M 369, 96 P3d 1131 (2004), followed in Petitioners I-549 v. Missoula Irrigation District, 2005 MT 100, 326 M 527, 111 P3d 664 (2005). See also Geil v. Missoula Irrigation District, 2004 MT 217, 322 M 388, 96 P3d 1127 (2004).

Tribal Court — No Jurisdiction to Enjoin County Property Taxation: In an action by a Crow tribal member challenging a county's right to impose property taxes on reservation land held in fee by the member, the Ninth Circuit Court held that the Crow Tribal Court exceeded its jurisdiction by ruling that the tribal member was not required to pay the property taxes imposed by the county. Yellowstone County v. Pease, 96 F3d 1169 (9th Cir. 1996).

Applicability of State Coal Taxes to Crow Coal — Crow Cases: In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV).

Writ of Prohibition Improper Remedy: District Court should have denied application for Writ of Prohibition to restrain Board of Equalization (duties now performed by Department of Revenue) from enforcing amendments to regulations relating to corporation license tax when tax could be paid under protest and action brought to recover under 15-1-401 (now repealed). State ex rel. Fulton v. District Court, 139 M 573, 366 P2d 435 (1961).

Application to Liquor License Fees: It would seem that 15-1-401 (now repealed) afforded the remedy for an applicant for a liquor license that was denied by the State Liquor Board (duty now performed by Department of Revenue) on the ground that the tendered fee was insufficient. The applicant could pay the required fee under protest and then bring an action to recover it back, rather than bring an action in mandamus to compel the Board to issue the license for the fee tendered, the procedure followed in the instant case, wherein the time involved threatened to extend beyond the period for which the license was desired. State ex rel. Putnam v. District Court, 109 M 223, 95 P2d 441 (1939).

Part Collateral References

Taxation *key* 542.

84 C.J.S. Taxation §1081, et seq.

72 Am. Jur. 2d State and Local Taxation §§974, 975.

Estoppel of state or local government in tax matters. 21 ALR 4th 573.

Right of property taxpayer to recover back taxes voluntarily but mistakenly paid a second or successive time. 84 ALR 2d 1133.

Payment of taxes to prevent closing of or interference with business as involuntary so as to permit recovery. 80 ALR 2d 1040.

What constitutes laches barring relief in taxpayers' action. 71 ALR 2d 529.

Assignability of claim for tax refund, and rights of assignee in respect thereof. 134 ALR 1202.

Right to amend claim for refund of taxes after time for filing has expired. 113 ALR 1291.

Permissive or mandatory character of legislation providing for refund of taxes illegally assessed or collected. 103 ALR 817.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted. 98 ALR 284.

Remedies and enforcement—powers and limitations. State Tax Practice and Procedure, Shanahan. Tax for the General Practitioner, State Bar Legal Education Institute (December 1985).

15-1-402. Payment of property taxes or fees under protest.

Compiler's Comments

2005 Amendment: Chapter 536 inserted (1)(c) providing that if the protested property tax or fee is on property that is subject to central assessment, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made and requiring that by November 1 of each year, the department shall mail a notice stating the requirements of subsection (1)(c) to owners of property subject to central assessment; in (2) near beginning of first sentence after "15" inserted "including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2)"; in (4)(b)(i) at end substituted "department" for "state treasurer"; in (4)(b)(ii) at beginning substituted "department" for "state treasurer", after "deposit" inserted "50% of", after "levied" inserted "for the university system", and at end after "fund" inserted "to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue fund"; in (4)(b)(iii) at beginning substituted "Fifty percent" for "The remainder", after "funds" inserted "remaining after the deposit of university system funds", and at end after "general fund" inserted "and the other 50% must be deposited in a centrally assessed property tax state special revenue fund"; in (6)(a) near middle after "protest fund" inserted "or the centrally assessed property tax state special revenue fund"; in (6)(d)(ii) near beginning of first sentence after "property, the" substituted "department" for "state treasurer", after "refund" inserted "from the centrally assessed property tax state special revenue fund", and after "taxes and" inserted "from the state general fund the amount of" and inserted second and third sentences restricting the amount that may be refunded for an adverse protested action from the centrally assessed property tax state special revenue fund; and made minor changes in style. Amendment effective April 28, 2005.

2003 Amendment: Chapter 511 in (4) and (5)(a) at beginning of first sentence inserted exception clause; inserted (4)(b) requiring property taxes levied by state against centrally assessed property to be remitted by county treasurer to state treasurer and requiring deposit of portion of funds in state special revenue fund and remainder in state general fund; in (5)(a) near beginning of first sentence substituted "governing body" for "governing board"; inserted (5)(b) allowing governing body of taxing jurisdiction affected by protested taxes on centrally assessed property to demand that county treasurer or municipality pay jurisdiction all or portion of protested payment and providing that taxing jurisdiction is not precluded from demanding payment by decision in previous year to leave protested taxes of centrally assessed property in protest fund; in (6)(b) substituted language requiring municipality, county, or state treasurer, upon final action determined against governmental entity levying tax, to pay person holding judgment the protested portion of property tax or fee plus interest and requiring taxing jurisdiction to pay interest at rate earned by pooled investment fund for former (6)(b) that read: "(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or

(ii) 6% a year"; in (6)(d)(i) inserted second sentence providing that treasurer is not responsible for amount required to be refunded by state treasurer; inserted (6)(d)(ii) requiring state treasurer to refund amount of protested taxes and interest for adverse protest action against state for centrally assessed property; in (6)(e) near beginning of first sentence after "jurisdiction" inserted "including the state" and in second sentence after "balance" substituted "at the rate referred to in subsection (6)(b)" for "at the greater of the rates referred to in subsections (6)(b)(i) and (6)(b)(ii)"; in (7) after "jurisdiction" inserted "except the state"; and made minor changes in style. Amendment effective April 25, 2003.

Retroactive Applicability: Section 3, Ch. 511, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after October 31, 2000, except for refunds of property taxes made after October 31, 2000, and before [the effective date of this act]." Effective April 25, 2003.

2001 Amendment: Chapter 574 at beginning of (7)(a) deleted "subject to 15-10-420"; in (7)(b) after "general fund" deleted "except that amount generated by the all purpose mill levy"; at

beginning of third full sentence of (7)(c) deleted "Subject to 15-10-420"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 448 inserted (8) providing that a refund is not owed if the department revises an assessment that results in a refund of taxes of $5 or less. Amendment effective April 22, 1999.

Chapter 584 in (7)(a) and (7)(c) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Effective Date — Applicability — Retroactive Applicability: Section 5, Ch. 448, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax bill or refund has not yet been issued."

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Amendment: Chapter 594 throughout section substituted reference to property tax or fee for reference to tax or license fee; in (1), after "may", deleted "proceed under 15-1-406 or may"; substituted (2) requiring payment of tax or fee under protest before a refund may be made for former (2) that read: "After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue"; deleted former (3) that read: "(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed"; deleted former (4) that read: "(4) An action instituted to recover any such portions of tax or license fee paid under protest must be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board"; in (4), at end of first sentence, and in (6)(b) substituted "subsection (5)" for "subsection (7)"; near beginning of (6)(a), after "action", inserted "before the county tax appeal board, state tax appeal board, or district court" and after "in favor of the" inserted "department of revenue"; near beginning of (6)(b), after "adversely to", inserted "the department of revenue"; in (6)(e) substituted "subsection (6)(d)" for "subsection (8)(d)" and substituted "subsections (6)(b)(i) and (6)(b)(ii)" for "subsections (8)(b)(i) and (8)(b)(ii)"; and made minor changes in style.

1989 Amendment: In (5), at end of first sentence, inserted "subsequent installment. The"; near end of (8)(b) deleted "at the rate of 6% a year" and after "protest" inserted "at the greater of"; inserted (8)(b)(i) and (8)(b)(ii) allowing payment of interest at rate generated from pooled investment fund or 6% a year; in two places in (8)(d), after "payments", deleted "interest"; in second sentence in (8)(e) substituted "greater of the rates referred to in subsections (8)(b)(i) and (8)(b)(ii)" for "rate of 6% a year"; in (9)(c) inserted third sentence allowing bonds to be issued without election and in fourth sentence, after "bonds", deleted proviso prohibiting levy from exceeding 10 mills annually; reoutlines section; corrected internal references; made minor changes in style and grammar. Amendment effective March 21, 1989.

Revenue Oversight Committee [now Revenue and Transportation Interim Committee] Bill — 1989: Chapter 213, L. 1989 (SB 118), was introduced by request of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee]. See committee report entitled "Property Taxation and Other Issues Before the Revenue Oversight Committee", Mont. Leg. Council (1988).

Effective Date — Retroactive Applicability: Section 14, Ch. 213, L. 1989, provided: "[This act] is effective on passage and approval [approved March 21, 1989] and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983."

1986 Amendment: Inserted (1)(c) relating to cap on tax paid under protest based on comparison of tax years; in (6) after "designated as a protest fund and shall be" deleted "invested in interest-bearing deposits in local banks or savings and loan associations and", at end of first sentence inserted "unless released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (7)", and at end of second sentence inserted "or in any manner provided in Title 7, chapter 6"; inserted (7) allowing governing board of a taxing jurisdiction to demand Treasurer to pay it a portion of the protest payments; at end of (8)(a) inserted "less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units"; in (8)(b) after "protested portions of the tax or

license fee" substituted "deposited in the protest fund, and not released pursuant to subsection (7)" for "with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such tax or license fee and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment, also refund such portion of any subsequent installment", and inserted last sentence relating to insufficient funds to repay taxpayer; inserted (8)(c) relating to the Treasurer billing tax jurisdictions proratably; inserted (8)(d) relating to 1-year repayment period; and inserted (9) enumerating three sources for refund to taxpayers.

Revenue Oversight Committee [now Revenue and Transportation Interim Committee] Bill — 1986: Chapter 26, Sp. L. July 1986, was introduced by request of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee]. See committee report entitled "Property Tax Delinquencies, Tax Sales, and Tax Deeds", Montana Legislative Council, December 1986.

1981 Amendments: Chapter 463 inserted "may proceed under 15-1-406 or" after "The person upon whom a tax or license fee is being imposed" at the beginning of (1).

Chapter 501 rewrote the entire section. For former text see sec. 1, Ch. 680, L. 1979, and sec. 1, Ch. 281, L. 1979.

Composite Section: Chapter 463, L. 1981, allows a taxpayer to pursue a declaratory judgment proceeding to test the validity of a tax levy in lieu of proceeding under 15-1-402.

Chapter 501, L. 1981, rewrote 15-1-402, making it necessary for the Code Commissioner to insert the amendatory language of Ch. 463 in the most appropriate place within the rewritten language of Ch. 501.

Revenue Oversight Committee [now Revenue and Transportation Interim Committee] Bill — 1981: Chapter 501, L. 1981 (SB 17), was introduced at the request of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee]. See committee report, "Payment of Taxes Under Protest", Legislative Council, 1980.

Purpose: Section 1, Ch. 501, L. 1981, provided: "It is the purpose of this act to insure an orderly procedure for the payment of taxes and license fees under protest that may be appealed to a county or state tax appeal board and to insure that a taxpayer has exhausted all available remedies prior to filing an appeal in district court."

Case Notes

Right to Refund Not Affected by Failure to File Notice of Second Petition: DeVoe paid taxes under protest for several years but filed a notice of a petition for relief for only the first year and did not file notices for petitions filed for subsequent years. The Department of Revenue argued that he was not entitled to a refund for the years in which he had not filed a notice of the petitions with the County Treasurer. The Supreme Court held that the statutes were clear in indicating that the failure to file subsequent notices did not prohibit DeVoe from receiving refunds for the subsequent years since he did pay the taxes for those years under protest. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Choice of Available Remedies — Concurrent Remedies Statute Inapplicable to Consecutive Remedies: A bank that was denied a claim for a refund under this section then sought to proceed on a claim for a tax refund pursuant to 15-16-601 (now repealed). The District Court held that because the bank's original claim was dismissed, it could not file for another refund under a different statute. The bank asserted that the plain language of 15-16-602 allowed it to proceed under 15-16-601 (now repealed) after it lost on procedural grounds under this section. However, the bank did not pursue its remedies at the same time, but rather received an unfavorable judgment on one theory and then tried another for a more favorable result. Section 15-16-602 permits a taxpayer to whom various options are available to choose among statutory remedies; it does not provide for a taxpayer to consecutively try different methods of relief. To hold otherwise would destroy the rule of res judicata in tax matters. Mont. Bank of Roundup v. County Bd. of Comm'rs, 248 M 199, 810 P2d 1192, 48 St. Rep. 392 (1991).

Use of Administrative Remedies Not Precluded by Alleged Breach of Settlement Agreement: Plaintiff and Department of Revenue entered into a settlement agreement for tax assessments applicable to years 1978 through 1985. When the Department adjusted the assessment by adding land value to improvement value and increased the valuation for years after 1985, resulting in figures higher than stated in the agreement, plaintiff obtained a restraining order to preclude collection of taxes and attempted to proceed directly to District Court based on breach of the settlement agreement. The District Court properly dismissed the complaint for lack of

subject matter jurisdiction and quashed the restraining order. The Supreme Court affirmed, finding plaintiff had failed to exhaust administrative remedies and had no recourse to statutory remedies provided in 15-1-406, 15-2-307 (now repealed), or 15-16-601 (now repealed). Hedden-Empire Ltd. Partnership v. Dept. of Revenue, 243 M 206, 793 P2d 828, 47 St. Rep. 1139 (1990).

Failure to Pay Penalties and Interest — No Effect on Standing to Proceed With Contested Case: The County Treasurer properly refused to accept payment of delinquent taxes without an accompanying payment of penalties and interest as required under this section. However, both the State Tax Appeal Board and the District Court stayed the payment of penalties and interest, so the Supreme Court held that payment of penalties and interest was required only to the date that payment of taxes was tendered to the County Treasurer and that nonpayment of penalties and interest did not affect petitioner's standing to proceed with his contested case. O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456, 44 St. Rep. 1037 (1987).

Exhaustion of Administrative Remedies:

Taxpayer protested the appraisal of two pieces of real property. He contended that by exhausting his administrative remedies in previous years, he had exhausted them for the year in contest because his basis for appeal was the same for all years. Because the complaint was aimed at the amount of valuation and not the method of valuation, it did not come within the exception to the exhaustion of remedies general rule. Therefore, taxpayer must exhaust his administrative remedies before initiating suit in District Court. Devoe v. Missoula County, 226 M 372, 735 P2d 1115, 44 St. Rep. 731 (1987), followed in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Taxpayer's complaint to recover excessive taxes paid under protest failed to state a cause of action where it failed to allege application to the County Board of Equalization (duty now performed by State Tax Appeal Board) for reduction in assessment before resorting to court, or appearance before County Board, State Board of Equalization (duty now performed by State Tax Appeal Board), or anyone charged with the equalization of taxes, and defendant's demurrer should have been sustained. Blair v. Potter, 132 M 176, 315 P2d 177 (1957).

Prior Law — Suit Required for Each Year Taxes Protested: Prior to the 1981 amendments to this section, any taxes paid under protest must have been followed by a suit filed within 90 days in order for the County Treasurer to retain the protested funds for future refund. When the defendant paid under protest and filed suit within the required time in 1979 but in 1980 paid under protest but did not file suit, relying on the 1979 suit, the 1980 payment was properly disbursed by the County Treasurer and thus unavailable for refund when the taxpayer later prevailed. Eagle Communications, Inc. v. County Treasurer, 211 M 195, 685 P2d 912, 41 St. Rep. 1303 (1984).

Property Tax Refund — County Treasurer Not Agent of Department of Revenue: The District Court properly refused a taxpayer's motion to compel a County Treasurer to sign and comply with the terms of a settlement agreement between the Department of Revenue and the taxpayer in a suit over property taxes. A tax refund was at stake, but the taxpayer had failed to comply with the provisions of 15-1-401 (now repealed). The Supreme Court held that rather than being a mere agent of the Department of Revenue, the Treasurer represents a significant part of the tax refund process and cannot be compelled to sign an agreement entitling a taxpayer to a refund without his compliance with 15-1-401 (now repealed). Eagle Communications, Inc. v. County Treasurer, 211 M 195, 685 P2d 912, 41 St. Rep. 1303 (1984).

"Subsequent Installment" Clarified: In interpreting this section prior to the 1981 amendments, the Supreme Court held that for purposes of the former requirement of filing suit after a payment under protest, a "subsequent installment" of property taxes does not include protested payments in years subsequent to the tax year in which the suit was filed, but rather, because a separate tax is imposed each year, it refers to the two installments that may be made in paying each year's taxes. Eagle Communications, Inc. v. County Treasurer, 211 M 195, 685 P2d 912, 41 St. Rep. 1303 (1984).

Assessment to Be Equitable: The city of Billings began an undertaking to improve the city's sewer system. A new method of assessment, classifying land by the zone in which it was situated and by the square footage of the property, was used. Plaintiffs were assessed a tax for a portion of the costs of the storm sewers and paid this tax under protest. At trial, the plaintiffs showed that it was highly unlikely that water running off their property would end up in the sewer system. Therefore, the assessments were not as nearly as possible equitable in proportion to the services rendered and were erroneous. Berger v. Billings, 186 M 326, 607 P2d 558 (1980).

Venue of Action to Recover Taxes: In an action to recover taxes paid under protest, venue existed in the county where the taxpayer was located, audit conducted, additional tax

assessment paid, and protest fund maintained. Roundup Nat'l Bank v. Dept. of Revenue, 175 M 133, 572 P2d 910 (1977).

Constitutionality of Amendment: The 1955 amendment to this section properly included additional requirements for bringing actions based on the payment of taxes under protest and the amending act was not unconstitutional as being in contravention of Art. V, sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.). Van Tighem v. Linnane, 136 M 547, 349 P2d 569 (1960).

Consent Judgment Void: The Boards of County Commissioners have no power, authority, or jurisdiction under the Constitution or statutes to reduce, compromise, remit, release, cancel, diminish, or extinguish any state tax, obligation, or liability, or any assessed tax valuation or percentage assignments of property after the same has been found, determined, and fixed by the State Board of Equalization (duties now performed by Department of Revenue). The County Attorney does not have the power, where an action for refund of tax has been instituted under this section, to consent to a judgment, based upon a resolution and stipulation which extinguished the assessed tax for the taxpayer for the year in question, hence any judgment based on such stipulation is void and erroneous. Carlson v. Flathead County, 130 M 36, 293 P2d 279 (1956).

Intervention by State and Former State Board of Equalization: In an action by a taxpayer under this section against the county for a refund of taxes, the State and the State Board of Equalization (duty now performed by Department of Revenue) had an interest in the subject matter of the litigation so as to enable them to intervene in the action, not only because part of the tax collected was a state levy but also because the determinative questions raised were of vital interest and concern as they pertained to the tax laws, the procedure thereto, and the public fiscal policy of the sovereign state. Carlson v. Flathead County, 130 M 24, 293 P2d 273 (1956).

Standard of Review: In an action to recover taxes paid under protest, under complaint alleging overvaluation, and that acts of defendants Assessor and County and State Boards of Equalization (duties now performed by Department of Revenue) were fraudulent in law and showed mistake so gross as to be inconsistent with reasonable judgment and were tyrannical and capricious, the Supreme Court will not substitute its judgment for that of taxing officials and will not notice an alleged overvaluation honestly made, but will grant relief on overvaluation only where it is so gross as to be inconsistent with the exercise of honest judgment. Investors Sec. Co. v. Moore, 113 M 400, 127 P2d 225 (1942).

Taxes Paid Without Protest by Indians — Recovery by Federal Government: When patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians, in paying tax, had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. Glacier County v. U.S., 99 F2d 733 (9th Cir. 1938).

Judgment for Amount Unlawfully Collected Only: When plaintiff, in an action to recover taxes unlawfully paid, asks judgment for the full amount of the tax paid under protest, the just tax on the property should be upheld, if possible, he being entitled to recover only that which was unlawfully collected. Johnson v. Johnson, 92 M 512, 15 P2d 842 (1932).

Sufficiency of Evidence: An action brought under this section to recover taxes considered to have been unlawfully collected is in effect a proceeding to review the decisions of the County and State Boards of Equalization (duties now performed by Department of Revenue), and in such action, the taxpayer is entitled to show what was before the Boards. The action in effect challenges the sufficiency of the evidence to warrant the orders of the Boards denying him relief, and the court must determine, as a matter of law, whether or not the evidence presented to the Boards was sufficient to sustain their orders. Johnson v. Johnson, 92 M 512, 15 P2d 842 (1932).

Remedy Exclusive — Not Limited to Illegal Taxes: An earlier version of this section, under which a taxpayer could, if he considered a tax "unlawful", pay it under protest and bring a direct action for its recovery, while exclusive except in those cases provided for in 15-1-405, where injunction lies for illegality of the tax or the property is exempt, permitted an action for the recovery of any tax, or any part thereof, which could not lawfully be exacted, and was not open to the construction that the action provided for was confined to one attacking a tax on the ground that it was illegally laid. Johnson v. Johnson, 92 M 512, 15 P2d 842 (1932).

Exclusive Remedy: The legal remedy by action to recover back a tax paid under protest on a levy considered unlawful, provided by this section, when read in connection with 15-1-404, which provides that such action shall supersede all other remedies which might be invoked to prevent

the collection of taxes alleged to be irregularly levied or demanded, and the equitable one, by injunction in the instances enumerated in 15-1-405, are exclusive. When a tax is wholly illegal or the legal and illegal portions thereof appear to be inseparable, either remedy is available. To the extent the above holding with reference to the legal remedy conflicts with 15-16-601 (now repealed), the latter section must be considered repealed. First Nat'l Bank of Plains v. Sanders County, 85 M 450, 279 P 247 (1929), explained in Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937). See also First Nat'l Bank of Lima v. Beaverhead County, 88 M 577, 294 P 956 (1930) and Williams v. Harvey, 91 M 168, 6 P2d 418 (1931).

Filing of Claim With County Commissioners Unnecessary: Under this section, one who pays taxes under protest is not required to file a claim with a Board of County Commissioners for the amount paid, before commencing an action to recover them. Story v. Dixson, 64 M 206, 208 P 592 (1922).

Injunction: An injunction lies to restrain the collection of a tax wholly void. Barnard Realty Co. v. Butte, 50 M 159, 145 P 946 (1915).

Unlawful License Fee: An action to recover an unlawful license fee, exacted by a city ordinance, and paid under protest, was held to be properly brought under this section before its amendment in 1905, and the plaintiff was not required to resort to the remedy given under 15-1-405. Reilly v. Hatheway, 46 M 1, 125 P 417 (1912).

Objection to Assessment: If the owner of the surface of an unpatented mining claim objects to its assessment for townsite purposes, he has a remedy by paying the taxes under protest, and then suing for their recovery, under 15-1-404, in action at law, and the remedy thus provided is made, by 15-1-404, to supersede all others. Cobban v. Meagher, 42 M 399, 113 P 290 (1911).

Void Assessment: This section, being construed with 15-1-404, is not restricted to cases brought when an assessment was void, notwithstanding the provisions of 15-1-404. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903).

Attorney General's Opinions

No Authority of County Commissioners to Compromise Unpaid Property Taxes: Following the opinions in Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 268 P 555 (1928), and 25 A.G. Op. 29 (1953), the Attorney General held that 15-16-601 (now repealed) does not confer upon a Board of County Commissioners the authority to compromise unpaid delinquent property taxes and that County Commissioners do not possess inherent authority to compromise unpaid delinquent property taxes. 43 A.G. Op. 28 (1989).

Permissible Alternatives for Deposit — Protest Fund: The permissible alternatives for deposit or investment of protest fund money are governed by this section. 42 A.G. Op. 25 (1987).

Special Tax Protest Refund Levy Not Subject to Voter Approval — Sale of Bonds Subject to Approval: A special tax protest refund levy authorized by this section is not subject to the limitation on property taxes established in 7-6-2501; therefore, the voter approval requirements of 7-6-2531 (now repealed) do not apply to such levy. However, voter approval is required before bonds may be issued and sold for the purpose of making tax protest refunds. 42 A.G. Op. 18 (1987). (See 1989 amendment.)

Distribution of Interest on Protested Tax Payments: Interest accrued on amounts held in a protest fund established under this section must be distributed to the affected taxing units in the same proportion as the tax amounts in the fund are paid to those units. 41 A.G. Op. 60 (1986).

Money Freed by Termination of Tax Protest Litigation — Use and Effect: Once tax money tied up in tax protest litigation is received by a municipality upon completion of litigation, it must be deposited to the credit of the fund or funds to which it would have been credited had it been timely received without protest, and it is then available for use. If money remains in a fund at the end of a fiscal year in which it was received, it is a part of the cash balance and is to be included in the calculations to determine the tax levy for the next year. 39 A.G. Op. 55 (1982).

Payment of Personal Property Taxes Under Protest: The provisions of this section, relating to the payment of taxes under protest before they become delinquent, apply to personal property taxes that are not a lien on real estate. 38 A.G. Op. 6 (1979).

Collateral References

Taxation *key* 542, 543.

84 C.J.S. Taxation §933, et seq.

72 Am. Jur. 2d State and Local Taxation §§976, 981.

15-1-404. Other remedies superseded.

Compiler's Comments

1981 Amendment: Changed "remedy" to "remedies" and "is" to "are".

Case Notes

Mandamus Unavailable: When the County Assessor refused to enter the valuation filed by a person and increased the valuation, the Writ of Mandamus is not available to the person since the statutory remedy in 15-1-403 (now repealed) was exclusive in the absence of a showing that the remedy provided is inadequate. State ex rel. Niewoehner v. Lutey, 126 M 152, 245 P2d 1042 (1952).

Implied Repeal: Section 15-16-601 (now repealed), as far as it related to illegally collected taxes, was impliedly repealed by 15-1-402 through 15-1-405. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937); First Nat'l Bank of Lima v. Beaverhead County, 88 M 577, 294 P 956 (1930); First Nat'l Bank of Plains v. Sanders County, 85 M 450, 279 P 247 (1929).

Irregularly Levied or Demanded: The phrase "irregularly levied or demanded" was used by the Legislature advisedly, and as prescribing the limits wherein the statutory remedy is exclusive, as distinguished from those cases of illegal taxes the collection of which may be restrained by injunction. Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905).

Irregularities in Tax Sale: The publication of the notice of a tax sale 3 weeks prior to the sale, when the statute required 4 weeks, does not render the taxes illegal and authorize the enjoining of the collection of such tax. Nor does the fact that the Treasurer intends to violate certain sections of the law, by exposing for sale, for the delinquent taxes of 1 year a part of the lands purchased by the county at the tax sales of the preceding year, and yet unredeemed, entitle the owner of the equity of redemption to an injunction, since this section provides that the remedy before the Board of Equalization (duty now performed by State Tax Appeal Board) shall supersede the remedy of injunction, except in those unusual cases where the remedy thereby provided is considered by the court inadequate. Cobban v. Hinds, 23 M 338, 59 P 1 (1899).

Collateral References

Financial hardship or inability to pay as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax. 65 ALR 2d 550.

15-1-405. Injunction not to be used to restrain enforcement of tax.

Case Notes

Use of Administrative Remedies Not Precluded by Alleged Breach of Settlement Agreement: Plaintiff and Department of Revenue entered into a settlement agreement for tax assessments applicable to years 1978 through 1985. When the Department adjusted the assessment by adding land value to improvement value and increased the valuation for years after 1985, resulting in figures higher than stated in the agreement, plaintiff obtained a restraining order to preclude collection of taxes and attempted to proceed directly to District Court based on breach of the settlement agreement. The District Court properly dismissed the complaint for lack of subject matter jurisdiction and quashed the restraining order. The Supreme Court affirmed, finding plaintiff had failed to exhaust administrative remedies and had no recourse to statutory remedies provided in 15-1-406, 15-2-307 (now repealed), or 15-16-601 (now repealed). Hedden-Empire Ltd. Partnership v. Dept. of Revenue, 243 M 206, 793 P2d 828, 47 St. Rep. 1139 (1990).

On-Reservation Taxation: Plaintiffs' request for a prohibitive injunction to preclude on-reservation employers from withholding state taxes was denied because of due process and sovereign immunity considerations. Dillon v. St., 451 F. Supp. 168 (D.C. Mont. 1978), reversed at 634 F2d 463 (9th Cir. 1980).

Application of Injunctions Against Tax Appraisals: This section permits injunctions against the use of an unconstitutional and illegal tax appraisal method. Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975).

Injunction Not Appropriate to Prohibit Valuation: Taxpayers were not entitled to an injunction under this section against County Assessor and County Commissioners to prohibit use of valuations furnished by reclassification office under sections 84-429.7 through 84-429.13, R.C.M. 1947 (see 15-7-101 through 15-7-104 (15-7-104 now repealed), 15-7-216 (now repealed), and 15-8-112) in making up 1965 tax assessment roll, when there was no showing of irreparable injury and the law could furnish all relief to which complainants were entitled. State ex rel. Keast v. Krieg, 145 M 521, 402 P2d 405 (1965).

Injunction Remedy Not Exclusive:

An action to enjoin collection of illegal tax could be maintained even though taxpayer might have paid tax under protest and sued for its recovery. First Nat'l Bank v. Bergan, 119 M 1, 169 P2d 233, 165 ALR 1244 (1946).

In action to enjoin collection of a tax levy claimed to be illegal, defendants' contention that plaintiffs' remedy was to pay the tax under protest and sue for its recovery was incorrect, since

such is not the exclusive remedy where the levy is illegal. Rogge v. Petroleum County, 107 M 36, 80 P2d 380 (1938).

Implied Repeal: Section 15-16-601 (now repealed), as far as it related to illegally collected taxes, was impliedly repealed by 15-1-402 through 15-1-405. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937); First Nat'l Bank of Lima v. Beaverhead County, 88 M 577, 294 P 956 (1930); First Nat'l Bank of Plains v. Sanders County, 85 M 450, 279 P 247 (1929).

Injunction Allowed When Illegal Portion of Tax Unascertainable: When a portion of an assessment made in a lump sum to plaintiff railway company was legal and a portion illegal, and the company was unable to ascertain and pay that which was legal, the remedy by injunction to restrain the threatened issuance of a tax deed was available to it. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Injunction Allowed for Void Tax: Injunction will lie if the action of the Assessor or Board of Equalization (duties now performed by Department of Revenue) was such that the tax complained of is manifestly void under any circumstances. If the error complained of is only an irregularity on the part of the Assessor, Board of Equalization (duties now performed by Department of Revenue), or Treasurer, or where the tax is not necessarily void under all circumstances, the remedy of payment under protest and an action to recover back is exclusive, except in the unusual cases mentioned in 15-1-404. Barnard Realty Co. v. Butte, 50 M 159, 145 P 946 (1915); Cobban v. Meagher, 42 M 399, 113 P 290 (1906); Hensley v. Butte, 33 M 206, 83 P 481 (1905); Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905), distinguished in Morse v. Jacky, 34 M 165, 85 P 882 (1906).

Remedy Provided by Statute: This section by necessary implication provides a remedy by injunction where the tax demanded is illegal or not authorized by law. Cunningham v. NW. Improvement Co., 44 M 180, 119 P 554 (1911).

No Injunction for Improper Assessment: The court may not restrain the collection of a tax levied on the surface of an unpatented mining claim having a separate and independent value because of its use for other than mining purposes, on the ground that the Assessor failed to set forth in the assessment the fact that the surface ground was assessed for other than mining purposes, but the remedy is by an action at law under 15-1-402 to recover the taxes paid under protest. Cobban v. Meagher, 42 M 399, 113 P 290 (1911).

Purpose: This section prohibits courts and judges from enjoining the sale of the property for nonpayment of any tax, except in those instances where the tax is illegal, or not authorized by law, or where the property is exempt from taxation, and provides the means and remedies whereby the rights of persons who deem the taxes irregularly or improperly demanded of the owners, or sought to be enforced, against the property, may be guarded and protected. Cobban v. Hinds, 23 M 338, 59 P 1 (1899), explained in Danforth v. Livingston, 23 M 558, 59 P 916 (1900). See Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905); Hensley v. Butte, 33 M 206, 83 P 481 (1905); Cobban v. Meagher, 42 M 399, 113 P 290 (1911); and Barnard Realty Co. v. Butte, 50 M 159, 145 P 946 (1915).

Collateral References

Taxation *key* 608, 652.

84 C.J.S. Taxation §1085, et seq.

72 Am. Jur. 2d State and Local Taxation §§985 through 994.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax. 65 ALR 2d 550.

15-1-406. Declaratory judgment.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 in (3) in third and fourth sentences before reference to estate taxes deleted reference to inheritance taxes; in (4)(b) after "property tax" deleted "inheritance tax"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

1999 Amendment: Chapter 36 in (2) near middle of first sentence and in (3) near middle of third sentence after "uniform" substituted "dispute" for "tax". Amendment effective February 24, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

1995 Amendment: Chapter 348 in (3), in first sentence after "paid", inserted "under protest" and inserted third and fourth sentences regarding payment of taxes under protest; and made minor changes in style. Amendment effective April 10, 1995.

1993 Amendments: Chapter 21 at end of first sentence of (2) substituted "date the notice of the tax due was sent to the taxpayer" for "imposition of the tax"; and made minor changes in style.

Chapter 594 near beginning of (1), after "taxpayer may", deleted "in lieu of proceeding under 15-1-402 or 15-1-211"; inserted (1)(a) regarding action pertaining to alleged illegal or improper tax; at beginning of (1)(b) substituted "authorized" for "levied"; at end of first sentence of (2) substituted "date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision" for "imposition of the tax"; inserted second sentence of (3) that read: "Property taxes may be paid under protest as provided in 15-1-402"; inserted (4) establishing exceptions to challenges for market value and the legality of certain taxes; inserted (5) clarifying that the remedy in this section is exclusive; and made minor changes in style.

1991 Amendment: Near beginning of (1) inserted reference to 15-1-211.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Administrative Rules

ARM 42.2.510 Review of statement of account notices.

ARM 42.2.511 Review of centrally assessed property appraisals.

ARM 42.2.613 Definitions.

Case Notes

No Authority of Court to Order Refund of Taxes Paid Without Protest Absent Legislative Authorization: The District Court ordered that numerous parties who properly petitioned to be excluded from an irrigation district should be reimbursed for back taxes paid by the parties as of the date of their petitions. The irrigation district appealed, and the Supreme Court reversed. Tax refunds are a matter of legislative discretion, and absent specific legislative authorization, a court has no power to refund taxes paid without protest. RSG Holdings v. Missoula Irrigation District, 2004 MT 214, 322 M 369, 96 P3d 1131 (2004), followed in Petitioners I-549 v. Missoula Irrigation District, 2005 MT 100, 326 M 527, 111 P3d 664 (2005). See also Geil v. Missoula Irrigation District, 2004 MT 217, 322 M 388, 96 P3d 1127 (2004).

Taxation of Tribal Lands Allowed by Change in Federal Law — Inherent Court Power to Dissolve Injunction When Law Upon Which Injunction Based Changed by Subsequent Judicial Interpretation: In 1989, Jefferson, a member of the Crow Tribe, challenged Big Horn County's authority to impose and collect real property taxes on reservation land owned in fee simple by enrolled tribal members and requested that the District Court permanently enjoin Big Horn County from assessing and collecting taxes on Crow Reservation lands in the county. In 1990, while Jefferson's complaint was pending, the Ninth Circuit Court decided Confederated Tribes & Bands of the Yakima Nation v. County of Yakima, 903 F2d 1207 (9th Cir. 1990) (Yakima), which concluded that the Indian General Allotment Act of 1887 (GAA), 25 U.S.C. 349, manifested Congress's unmistakably clear intent to permit states to tax land allotted under the GAA. The District Court then applied Yakima later in 1990 and ruled in favor of Jefferson, holding that because Jefferson's land was never subject to the GAA, it was not taxable by the county. The court required Big Horn County to refund taxes paid under protest and remove Crow Tribe members from the tax rolls, stating that the declaratory ruling established a future tax-exempt status for land located within the Crow Reservation that was owned by Crow tribal members and not subject to the GAA. About 7 years later, the county moved to dissolve the 1990 decision on grounds that subsequent federal cases had established that alienable land owned by enrolled tribal members was subject to state ad valorem taxes even if it had not been patented in fee subject to the GAA. The county cited Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 US 103, 141 L Ed 2d 90, 118 S Ct 1904 (1998) (Leech Lake), in which the U.S. Supreme Court rejected the Yakima rationale and held that when Congress made reservation lands freely alienable, it was unmistakably clear that Congress intended that land to be taxable by state and local governments unless a contrary intent was clearly manifested. The District Court then dissolved that portion of its 1990 decision that had granted a future tax-exempt status to tribal members, who appealed to the Montana Supreme Court on grounds that the doctrine of res judicata barred the District Court from vacating its decision. The state responded

that the 1990 decision was a form of injunctive relief that the District Court could modify or dissolve pursuant to Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 224, 114 P2d 521 (1941) (Santa Rita). The Supreme Court found that the 1990 order was not strictly a declaratory judgment, but rather an injunction containing both retrospective and prospective relief, that 15-1-404 did not preclude the District Court from ordering injunctive relief, and that the court's declaratory judgment could not exempt Jefferson's property from future taxation without a further order of injunctive relief. Under Santa Rita, a court has inherent power to modify or dissolve perpetual injunctive relief based on a subsequent change in the judicial interpretation of a law. The judicial interpretation of the law upon which the 1990 relief was based was changed by Leech Lake; thus, the District Court did not err when it vacated the injunctive portion of its 1990 judgment. Jefferson v. Big Horn County, 2000 MT 163, 300 M 284, 4 P3d 26, 57 St. Rep. 682 (2000).

Taxpayer Action Precluded by Statute of Limitations — Running of Statute Not Tolled by Fiduciary Relationship With Department of Revenue — Knowledge of Accrual of Cause of Action Immaterial: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and refund of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. As a consequence of payment of the taxes and the Supreme Court's opinion in Sheehy, the taxpayers alleged that they were entitled to a court-ordered reduction in certain real property appraisals as well as a partial refund of their 1989 through 1992 real property taxes. The Department moved to dismiss the suit on the grounds that each claim was barred by the statute of limitations and that the taxpayers failed to state a claim for which relief could be granted. The District Court dismissed the suit. The Supreme Court noted that the applicable statute of limitations in this section requires that suit be commenced within 90 days of imposition of the tax and that it did not matter whether the 1991 version of the statute or the 1995 version of the statute applied to the taxpayers' case because they both contained a similar statute of limitations. The Supreme Court responded to the taxpayers' argument, that the running of the statute of limitations was tolled because the Department acted as a fiduciary in holding the taxpayers' claimed reimbursement, by distinguishing the cases from other jurisdictions cited by the taxpayers upon which the taxpayers based their argument. The Supreme Court also noted that under some statutes, such as 15-8-115, the Department is actually a taxpayer's adversary. The Supreme Court also pointed out that contrary to the taxpayers' assertions, whether the taxpayers had knowledge of the accrual of their cause of action is immaterial because under 27-2-102, the statute of limitations begins to run when a cause of action accrues and lack of knowledge of the time of accrual of the cause of action does not postpone the running of the period of limitation. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Taxpayer Action to Be Brought in Accordance With Statutory Requirements — Woith Distinguished: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and repayment of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. The taxpayers brought their action under both the Uniform Declaratory Judgments Act, Title 27, ch. 8, and this section. The District Court dismissed the cause of action under Title 27, ch. 8, reasoning that it was precluded by this section. The Supreme Court agreed with the District Court, holding that bringing an action pursuant to this section precludes an action under Title 27, ch. 8. In response to the taxpayers' argument that the Supreme Court's decision in Woith v. Cascade County Treasurer, 262 M 170, 864 P2d 752 (1993), recognizes that other causes of action may be brought under other statutes, the Supreme Court held that its decision in Woith does not exempt the taxpayers from having to comply with the provisions of those other statutes. Although an action under 15-1-405 is subject to Title 27, ch. 8, by virtue of 15-1-407, the Supreme Court said, there is still a limited amount of time in which the action may be brought, and that period of time is specified in this section. For these reasons, the Supreme Court concluded that the District Court did not err in dismissing the taxpayers' claim brought pursuant to the Uniform Declaratory Judgments Act. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Failure to File Administrative Appeal — Use of Declaratory Judgment Not Prevented: Woiths attempted to challenge the property tax assessment method provided in House Bill No. 703 (Ch. 636, L. 1989). Woiths intentionally failed to utilize the administrative appeal process provided for in 15-15-102 and instead proceeded with an alternate remedy of a declaratory judgment

action allowed under this section. The District Court held that Woiths had failed to preserve their appeal and, under the holding in Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533 (1990), were barred from any further remedy. The Supreme Court held that there was no attempt in Barron to limit the remedies of taxpayers using alternate remedies, such as declaratory judgments, in lieu of the administrative appeal process at issue in Barron. Woith v. Cascade County Treasurer, 262 M 170, 864 P2d 752, 50 St. Rep. 1498 (1993), distinguished as to the requirement that taxpayers using alternative statutory remedies comply with requirements of those statutes in Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Statute of Limitations to Run From Date Tax Notice Sent: In defining when actual "imposition" of taxes occurs for purposes of establishing the 90-day period within which a declaratory judgment action must be brought under this section, the Supreme Court held that imposition of taxes occurs on the date actual notice of taxes due is sent pursuant to 15-16-101 rather than the date the taxes are entered on the assessment book pursuant to 15-10-305. Holly Sugar Corp. v. Dept. of Revenue, 252 M 407, 830 P2d 76, 49 St. Rep. 299 (1992).

Use of Administrative Remedies Not Precluded by Alleged Breach of Settlement Agreement: Plaintiff and Department of Revenue entered into a settlement agreement for tax assessments applicable to years 1978 through 1985. When the Department adjusted the assessment by adding land value to improvement value and increased the valuation for years after 1985, resulting in figures higher than stated in the agreement, plaintiff obtained a restraining order to preclude collection of taxes and attempted to proceed directly to District Court based on breach of the settlement agreement. The District Court properly dismissed the complaint for lack of subject matter jurisdiction and quashed the restraining order. The Supreme Court affirmed, finding plaintiff had failed to exhaust administrative remedies and had no recourse to statutory remedies provided in 15-2-307 (now repealed), 15-16-601 (now repealed), or this section. Hedden-Empire Ltd. Partnership v. Dept. of Revenue, 243 M 206, 793 P2d 828, 47 St. Rep. 1139 (1990).

Payment of Tax Condition Precedent to Action — Indians Subject to Procedural Requirements: When a right of action and the conditions for bringing the action are contained within the same statute, compliance with those conditions is a condition precedent that must be fulfilled to preserve the right. Payment of tax due is a condition precedent in a declaratory judgment action under this section. Appellant's status as a tribal member does not excuse compliance with the procedural requirements associated with declaratory judgment relief. Jefferson v. Big Horn County, 235 M 148, 766 P2d 244, 45 St. Rep. 2263 (1988).

Collateral References

Propriety of class action in state courts to recover taxes. 10 ALR 4th 655.

15-1-407. Alternative remedy — procedure.

Compiler's Comments

1995 Amendment: Chapter 348 in (2)(a) inserted second sentence requiring that taxes must have been paid under protest; inserted (3)(d) requiring that to be a member of class, taxes must have been paid under protest consistent with the Rules of Civil Procedure; and made minor changes in style. Amendment effective April 10, 1995.

Case Notes

Taxation of Tribal Lands Allowed by Change in Federal Law — Inherent Court Power to Dissolve Injunction When Law Upon Which Injunction Based Changed by Subsequent Judicial Interpretation: In 1989, Jefferson, a member of the Crow Tribe, challenged Big Horn County's authority to impose and collect real property taxes on reservation land owned in fee simple by enrolled tribal members and requested that the District Court permanently enjoin Big Horn County from assessing and collecting taxes on Crow Reservation lands in the county. In 1990, while Jefferson's complaint was pending, the Ninth Circuit Court decided Confederated Tribes & Bands of the Yakima Nation v. County of Yakima, 903 F2d 1207 (9th Cir. 1990) (Yakima), which concluded that the Indian General Allotment Act of 1887 (GAA), 25 U.S.C. 349, manifested Congress's unmistakably clear intent to permit states to tax land allotted under the GAA. The District Court then applied Yakima later in 1990 and ruled in favor of Jefferson, holding that because Jefferson's land was never subject to the GAA, it was not taxable by the county. The court required Big Horn County to refund taxes paid under protest and remove Crow Tribe members from the tax rolls, stating that the declaratory ruling established a future tax-exempt status for land located within the Crow Reservation that was owned by Crow tribal members and not subject to the GAA. About 7 years later, the county moved to dissolve the 1990 decision on grounds that subsequent federal cases had established that alienable land owned by enrolled

tribal members was subject to state ad valorem taxes even if it had not been patented in fee subject to the GAA. The county cited Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 US 103, 141 L Ed 2d 90, 118 S Ct 1904 (1998) (Leech Lake), in which the U.S. Supreme Court rejected the Yakima rationale and held that when Congress made reservation lands freely alienable, it was unmistakably clear that Congress intended that land to be taxable by state and local governments unless a contrary intent was clearly manifested. The District Court then dissolved that portion of its 1990 decision that had granted a future tax-exempt status to tribal members, who appealed to the Montana Supreme Court on grounds that the doctrine of res judicata barred the District Court from vacating its decision. The state responded that the 1990 decision was a form of injunctive relief that the District Court could modify or dissolve pursuant to Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 224, 114 P2d 521 (1941) (Santa Rita). The Supreme Court found that the 1990 order was not strictly a declaratory judgment, but rather an injunction containing both retrospective and prospective relief, that 15-1-404 did not preclude the District Court from ordering injunctive relief, and that the court's declaratory judgment could not exempt Jefferson's property from future taxation without a further order of injunctive relief. Under Santa Rita, a court has inherent power to modify or dissolve perpetual injunctive relief based on a subsequent change in the judicial interpretation of a law. The judicial interpretation of the law upon which the 1990 relief was based was changed by Leech Lake; thus, the District Court did not err when it vacated the injunctive portion of its 1990 judgment. Jefferson v. Big Horn County, 2000 MT 163, 300 M 284, 4 P3d 26, 57 St. Rep. 682 (2000).

Taxpayer Action to Be Brought in Accordance With Statutory Requirements — Woith Distinguished: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and repayment of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. The taxpayers brought their action under both 15-1-406 and the Uniform Declaratory Judgments Act, Title 27, ch. 8. The District Court dismissed the cause of action under Title 27, ch. 8, reasoning that it was precluded by 15-1-406. The Supreme Court agreed with the District Court, holding that bringing an action pursuant to 15-1-406 precludes an action under Title 27, ch. 8. In response to the taxpayers' argument that the Supreme Court's decision in Woith v. Cascade County Treasurer, 262 M 170, 864 P2d 752 (1993), recognizes that other causes of action may be brought under other statutes, the Supreme Court held that its decision in Woith does not exempt the taxpayers from having to comply with the provisions of those other statutes. Although an action under 15-1-405 is subject to Title 27, ch. 8, by virtue of this section, the Supreme Court said, there is still a limited amount of time in which the action may be brought, and that period of time is specified in 15-1-406. For these reasons, the Supreme Court concluded that the District Court did not err in dismissing the taxpayers' claim brought pursuant to the Uniform Declaratory Judgments Act. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Collateral References

Property of class action in state courts to recover taxes. 10 ALR 4th 655.

15-1-408. Alternative remedy — judgment.

Compiler's Comments

1993 Amendment: Chapter 594 inserted (3) providing that a judgment may direct an assessment to be changed for the taxpayer who brought the action and for all similarly situated taxpayers as well; and made minor changes in style.

Case Notes

Taxation of Tribal Lands Allowed by Change in Federal Law — Inherent Court Power to Dissolve Injunction When Law Upon Which Injunction Based Changed by Subsequent Judicial Interpretation: In 1989, Jefferson, a member of the Crow Tribe, challenged Big Horn County's authority to impose and collect real property taxes on reservation land owned in fee simple by enrolled tribal members and requested that the District Court permanently enjoin Big Horn County from assessing and collecting taxes on Crow Reservation lands in the county. In 1990, while Jefferson's complaint was pending, the Ninth Circuit Court decided Confederated Tribes & Bands of the Yakima Nation v. County of Yakima, 903 F2d 1207 (9th Cir. 1990) (Yakima), which concluded that the Indian General Allotment Act of 1887 (GAA), 25 U.S.C. 349, manifested Congress's unmistakably clear intent to permit states to tax land allotted under the GAA. The District Court then applied Yakima later in 1990 and ruled in favor of Jefferson, holding that

because Jefferson's land was never subject to the GAA, it was not taxable by the county. The court required Big Horn County to refund taxes paid under protest and remove Crow Tribe members from the tax rolls, stating that the declaratory ruling established a future tax-exempt status for land located within the Crow Reservation that was owned by Crow tribal members and not subject to the GAA. About 7 years later, the county moved to dissolve the 1990 decision on grounds that subsequent federal cases had established that alienable land owned by enrolled tribal members was subject to state ad valorem taxes even if it had not been patented in fee subject to the GAA. The county cited Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 US 103, 141 L Ed 2d 90, 118 S Ct 1904 (1998) (Leech Lake), in which the U.S. Supreme Court rejected the Yakima rationale and held that when Congress made reservation lands freely alienable, it was unmistakably clear that Congress intended that land to be taxable by state and local governments unless a contrary intent was clearly manifested. The District Court then dissolved that portion of its 1990 decision that had granted a future tax-exempt status to tribal members, who appealed to the Montana Supreme Court on grounds that the doctrine of res judicata barred the District Court from vacating its decision. The state responded that the 1990 decision was a form of injunctive relief that the District Court could modify or dissolve pursuant to Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 224, 114 P2d 521 (1941) (Santa Rita). The Supreme Court found that the 1990 order was not strictly a declaratory judgment, but rather an injunction containing both retrospective and prospective relief, that 15-1-404 did not preclude the District Court from ordering injunctive relief, and that the court's declaratory judgment could not exempt Jefferson's property from future taxation without a further order of injunctive relief. Under Santa Rita, a court has inherent power to modify or dissolve perpetual injunctive relief based on a subsequent change in the judicial interpretation of a law. The judicial interpretation of the law upon which the 1990 relief was based was changed by Leech Lake; thus, the District Court did not err when it vacated the injunctive portion of its 1990 judgment. Jefferson v. Big Horn County, 2000 MT 163, 300 M 284, 4 P3d 26, 57 St. Rep. 682 (2000).

15-1-421. Payment of taxes by negotiable instrument.

Compiler's Comments

Effective Date: Section 5, Ch. 17, L. 1989, provided that this section is effective February 15, 1989.

Applicability: Section 3, Ch. 17, L. 1989, provided: "[This act] applies to all payments received by the department on or after [the effective date of this act]." Effective February 15, 1989.

Collateral References

84 C.J.S. Taxation §§892 through 894.

72 Am. Jur. 2d State and Local Taxation §746.

Part 5
Disposition of Tax Proceeds

Part Attorney General's Opinions

Delinquency Interest, Penalties, and Costs to Follow Tax: The Montana Supreme Court held in School District v. Pondera County, 89 M 342, 297 P 498 (1931), that unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax; therefore, school districts, cities, and other government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the County Treasurer. 41 A.G. Op. 25 (1985).

Part Collateral References

Taxation *key* 906.75 through 917.

85 C.J.S. Taxation §1654, et seq.

15-1-501. Disposition of money from certain designated license and other taxes.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 163 deleted (1)(i) that read: "(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 428 in (1)(g) near middle after "endorsements, and" substituted "replacement" for "duplicate". Amendment effective October 1, 2005.

Chapter 550 in (1) at beginning deleted exception clause that read: "Except as provided in subsection (5)"; deleted former (5) that read: "(5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state special revenue fund to the credit of the department"; and made minor changes in style. Amendment effective July 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendments — Composite Section: Chapter 521 at beginning of (1)(b) inserted exception clause. Amendment effective October 1, 2003.

Chapter 522 at end of (1)(c) substituted "15-36-331" for "15-36-324"; and made minor changes in style. Amendment effective April 26, 2003.

Chapter 597 in (1) at beginning inserted exception clause; inserted (5) concerning deposit of administrative assessment; and made minor changes in style. Amendment effective July 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Section 15, Ch. 597, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Severability: Section 14, Ch. 597, L. 2003, was a severability clause.

2001 Amendments — Composite Section: Chapter 7 in (1)(e) at beginning deleted "[an amount equal to 25% of]". Amendment effective October 1, 2001.

Chapter 306 in (1)(c) near middle after "taxes" substituted "distributed to the general fund under 15-36-324" for "allocated under 15-36-324(8)(a) and (10)(a)". Amendment effective April 21, 2001.

Chapter 448 at beginning of (1)(e) deleted "[an amount equal to 25% of]"; in (2) near middle after "taxes" deleted "and fees" and after "sources" inserted "other than certain fees"; and made minor changes in style. Amendment effective April 30, 2001.

Chapter 574 at beginning of (1)(b) deleted "except as provided in 15-31-702"; at end of (1)(c) substituted "15-36-324(9)(a) and (11)(a)" for "15-36-324(8)(a) and (10)(a)" (amendment changed by Ch. 306); and at beginning of (1)(e) deleted "[an amount equal to 25% of]". Amendment effective July 1, 2001.

Retroactive Applicability: Section 6, Ch. 306, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to distributions made after June 30, 2000."

Applicability: Section 6, Ch. 448, L. 2001, provided: "[Sections 1 and 2] [15-1-501 and 16-2-108] apply to fees collected after June 30, 2001."

2000 Amendment by Referendum: Chapter 9 at beginning of (1)(h) deleted reference to inheritance taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

1999 Amendment: Chapter 426 in (1)(e) substituted reference to the retail telecommunications excise tax for reference to the telephone company license tax. Amendment effective January 1, 2000.

Code Commissioner Correction: In (1)(e) the bracketed language was rendered ineffective by the changes to 15-53-156 under the coordination instruction in sec. 170(1)(a)(ii), Ch. 584, L. 1999. All tax collections, less a reserve for refunds, must be deposited in the state general fund.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

1997 Amendments: Chapter 48 in (3), in second sentence, substituted reference to subsection (4) for reference to subsection (5). Amendment effective July 1, 1997.

Chapter 382 inserted (1)(i) regarding fees held on behalf of a foreign capital depository; and made minor changes in style.

Chapter 422 inserted (1)(a) relating to income taxes, (1)(b) relating to taxes collected under chapter 31, and (1)(c) relating to oil and natural gas taxes; deleted former (2) and (3) that read: "(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 91.3% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 89.5% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund"; deleted (5) that read: "(5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the general fund"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 466 in (1)(c) substituted "15-36-324(8)(a) and (10)(a)" for "15-36-324(7)(a)". Amendment effective April 30, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 18 deleted former (5) that read: "(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund"; adjusted subsection references; and made minor changes in style.

Chapter 451 deleted former (1)(c) that read: "(c) severance taxes allocated to the general fund under chapter 36"; and in (5) substituted reference to oil and natural gas production taxes for "After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections". Amendment effective January 1, 1996.

The amendment made by Ch. 451 entirely changed the type of taxes referred to, so the amendment relating to (5) in Ch. 18 was rendered ineffective.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendments: Chapter 455 in (1), (2), and (3) inserted "in accordance with the provisions of subsection (6)"; at beginning of (4) substituted "department of revenue" for "state treasurer"; inserted (6) requiring that tax distributions be made according to the law in effect when the tax revenue was recorded for accounting purposes; and in (7), in two places, substituted "currently being recorded" for "deposited". Amendment effective April 21, 1993.

Chapter 593 at beginning of (2)(a) substituted "91.3%" for "59.5%"; deleted former (2)(c) that read: "31.8% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343"; at beginning of (3)(a) substituted "89.5%" for "61%"; deleted former (3)(c) that read: "28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343"; and made minor changes in style. Amendment effective July 1, 1994.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1991 Amendments: Chapter 626 throughout section inserted "of the taxes"; inserted (2)(d) and (3)(d) providing for deposit of interest and penalties to credit of general fund; inserted (6) providing that refunds must be attributed to funds in which taxes, interest, and penalties were deposited; and made minor changes in style. Amendment effective July 1, 1991.

(Temporary version) Chapter 767 in (2)(a) substituted "62.8%" for "57% in fiscal year 1990 and 50% in fiscal year 1991"; in (2)(b), before "8.7%", deleted "9.8% in fiscal year 1990 and" and after "8.7%" deleted "in fiscal year 1991"; in (2)(c) substituted "28.5%" for "33.2% in fiscal year 1990 and 41.3% in fiscal year 1991"; in (3)(a), before "61%", deleted "64% in fiscal year 1990 and" and after "61%" deleted "in fiscal year 1991"; in (3)(b), before "10.5%", deleted "11% in fiscal year 1990 and" and after "10.5%" deleted "in fiscal year 1991"; and in (3)(c), before "28.5%", deleted "25% in fiscal year 1990 and" and after "28.5%" deleted "in fiscal year 1991". Amendment effective July 1, 1991.

(Version effective July 1, 1993) Chapter 767 in (2)(a) substituted "59.5%" for "57% in fiscal year 1990 and 50% in fiscal year 1991"; in (2)(b), before "8.7%", deleted "9.8% in fiscal year 1990 and" and after "8.7%" deleted "in fiscal year 1991"; in (2)(c) substituted "31.8%" for "33.2% in fiscal year 1990 and 41.3% in fiscal year 1991"; in (3)(a), before "61%", deleted "64% in fiscal year 1990 and" and after "61%" deleted "in fiscal year 1991"; in (3)(b), before "10.5%", deleted "11% in fiscal year 1990 and" and after "10.5%" deleted "in fiscal year 1991"; and in (3)(c), before "28.5%", deleted "25% in fiscal year 1990 and" and after "28.5%" deleted "in fiscal year 1991".

Applicability: Section 3(2), Ch. 626, L. 1991, provided: "[Sections 1 and 2] [15-1-501 and 15-31-702, now repealed] apply to all tax interest and penalties collected after June 30, 1992, regardless of when the tax, interest, or penalty was originally due."

1989 Special Session Amendment: At beginning of (2)(a) substituted "57% in fiscal year 1990 and 50% in fiscal year 1991" for "58.2%"; at beginning of (2)(b) substituted "9.8% in fiscal year 1990 and 8.7% in fiscal year 1991" for "10%"; at beginning of (2)(c) substituted "33.2% in fiscal year 1990 and 41.3% in fiscal year 1991" for "31.8%"; in (3)(a), after "64%", inserted "in fiscal year 1990 and 61% in fiscal year 1991"; in (3)(b), after "11%", inserted "in fiscal year 1990 and 10.5% in fiscal year 1991"; in (3)(c), after "25%", inserted "in fiscal year 1990 and 28.5% in fiscal year 1991"; and made minor changes in phraseology. Amendment effective July 1, 1990, and applies to all tax revenue recorded on or after July 1, 1989, without regard to the time the tax accrued.

1987 Amendments: Chapter 611 in (5), relating to deposit of oil severance tax, deleted former first sentence that read: "Thirty-three and one-third percent of the total collections of the oil severance tax under chapter 36 shall be deposited into the local government block grant account within the state special revenue fund."

Chapter 666 deleted former (2) that read: "Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31, except as provided in 15-31-702, shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, excluding that allocated to the counties under 15-31-702, corporation income tax, and income tax shall be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana"; and inserted (2) and (3) requiring income tax deposits to general fund, debt service account, and state equalization in a ratio of

58.2%, 10%, and 31.8% for individual returns and 64%, 11%, and 25% for corporate returns, respectively.

Appropriation: Section 8, Ch. 666, L. 1987, provided: "There is appropriated $34 million from the education and local impact trust and $62 million from the general fund to the school foundation program [now BASE funding program] for the biennium ending June 30, 1989, for state equalization aid. The governor is authorized to reduce the general fund appropriation to the amount necessary to fund the school foundation schedules in 20-9-318 and 20-9-319 [both now repealed]."

Effective Date — Applicability: Section 11, Ch. 666, L. 1987, provided: "(1) This act, except section 8, is effective on passage and approval [approved May 22, 1987].

(2) Section 8 is effective July 1, 1987.

(3) Unless otherwise specified or required by a particular section of this act, sections 1 through 7 [15-1-501, 17-5-408, now repealed, 20-9-318, now repealed, 20-9-319, now repealed, 20-9-343, 15-30-108, now terminated, and 15-30-110] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986."

1985 Amendment: In (1)(a) substituted "fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121" for "automobile driver's license fees under subsections (1) through (6) of 61-5-111".

1983 Amendments: Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 619 deleted former (1)(c) that referred to metalliferous mines license taxes under chapter 37.

Chapter 707 at beginning of (1)(c), before "severance taxes", deleted "oil and gas"; and inserted (4) relating to oil severance tax.

Part of Section Not Codified: Subsections (1)(d) and (1)(f) of section 84-1901, R.C.M. 1947, which related to the disposition of taxes that are no longer collected, was not codified in the MCA. These clauses have not been repealed and are still valid law. Citation may be made to sec. 1, Ch. 14, L. 1941, as amended by sec. 51, Ch. 147, L. 1963; sec. 6, Ch. 276, L. 1965; sec. 51, Ch. 100, L. 1973; and sec. 1, Ch. 300, L. 1975.

Collateral References

Taxation *key* 906.75.

85 C.J.S. Taxation §1654, et seq.

15-1-503. Refund of overpayment — procedure.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near beginning of (1) substituted "estate tax" for "inheritance tax"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Administrative Rules

ARM 42.31.131 Cigarette tax refund.

Collateral References

Taxation *key* 535.

15-1-504. Settlement of county treasurer with department.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) at beginning in exception clause inserted reference to subsection (3); in (2) at beginning of second sentence substituted "By July 15" for "In July"; inserted (3) concerning remittance of motor vehicle, vessel, and snowmobile funds; and made minor changes in style. Amendment effective January 1, 2006.

2001 Amendment: Chapter 257 throughout section substituted references to department (of revenue) for references to state treasurer. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1993 Amendment: Chapter 102 in (2), near beginning after "state treasurer", inserted "an estimate of"; deleted former (3) that read: "(3) By December 20 of each year, the county treasurer shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer by December 15, in addition to the amount collected during the preceding month. In January, the county treasurer shall remit all money belonging to the state that was

collected by the county treasurer during the remainder of December"; and made minor changes in style. Amendment effective March 17, 1993.

1992 Special Session Amendment: Chapter 4, Sp. L. July 1992, in (1), at beginning, inserted exception clause; inserted (2) concerning June and July remittance; and inserted (3) concerning December and January remittance. Amendment effective July 21, 1992.

Coordination Instruction: Section 1, Ch. 6, Sp. L. July 1992, amended this section to require interest charges and to provide for deposit of the interest in the state general fund. Section 14, Ch. 6, Sp. L. 1992, provided that if House Bill No. 12 was passed and approved and if it amended this section, then section 1 was void. House Bill No. 12 was passed and approved as Ch. 4, Sp. L. July 1992, and amended 15-1-504, so section 1, Ch. 6, Sp. L. July 1992, was void.

1991 Amendment: Revised second sentence and inserted third sentence to allow State Treasurer to assess interest charge for late remittance of money collected by County Treasurers for the state, rather than to require the assessment; and made minor changes in style. Amendment effective July 1, 1991.

Severability: Section 2, Ch. 72, L. 1991, was a severability clause.

Collateral References

Taxation *key* 912.

15-1-521. Property valuation improvement fund.

Compiler's Comments

1997 Amendment: Chapter 42 near end of second sentence substituted "2-6-110(3)" for "2-6-110(4)". Amendment effective March 12, 1997.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that this section applies to tax years after December 31, 1993.

Effective Date: Section 173(1), Ch. 27, Sp. L. November 1993, provided that this section is effective January 1, 1994.

Part 6
Multistate Tax Compact

Part Compiler's Comments

Adopting States and District: The following states and district have adopted the Multistate Tax Compact: Alabama, Alaska, Arkansas, California, Colorado, District of Columbia, Hawaii, Idaho, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, and Washington.

Part Administrative Rules

Title 42, chapter 26, ARM Multistate Tax Commission allocation and apportionment regulations.

15-1-601. Compact adopted — text.

Commission Notes for Article IV.

The Uniform Division of Income for Tax Purposes Act is designed for enactment in those states which levy taxes on or measured by net income.

The need for a uniform method of division of income for tax purposes among the several taxing jurisdictions has been recognized for many years and has long been recommended by the Council of State Governments. There is no other practical means of assuring that a taxpayer is not taxed on more than its net income. At present, the several states have various formulae for determining the amount of income to be taxed, and the differences in the formulae produce inequitable results. The problem has been well analyzed and its historical background outlined in an article appearing in 18 Ohio State Law Journal, page 84.

The Uniform Division of Income for Tax Purposes Act is the result of conferences with the representatives of the Controller's Institute of America, the Council of State Governments and various interested individuals.

[Subsection 1]

This definition is derived from the Model Unemployment Compensation Act which has been adopted in all states.

It is expected that "public utility" will be defined to include all taxpayers subject to the control of the state's regulatory bodies on the theory that separate legislation will provide for the apportionment and allocation of the income of such taxpayers.

Each state may wish to enact separate legislation to apportion and allocate the income of taxpayers subject to the control of its regulatory bodies.

[Subsection 11]

This section is admittedly arbitrary in using original cost rather than depreciated cost, and in valuing rented property as eight times the annual rental. This approach is justified because the act does not impose a tax, nor prescribe the depreciation allowable in computing the tax, but merely provides a basis for division of the taxable income among the several states. The use of original cost obviates any differences due to varying methods of depreciation, and has the advantage that the basic figure is readily ascertainable from the taxpayer's books. No method of valuing the property would probably be universally acceptable.

[Subsection 14]

This section is derived from the Model Unemployment Compensation Act. This is the same figure which will be used by taxpayers for unemployment compensation purposes.

[Subsection 16]

Sales to the United States Government are treated separately because they are not necessarily attributable to a market existing in the state to which the goods are originally shipped.

[Subsection 18]

It is anticipated that this act will be made a part of the income tax acts of the several states. For that reason, this section does not spell out the procedure to be followed in the event of a disagreement between the taxpayer and the tax administrator. The income tax acts of each state presumably outline the procedure to be followed.

Compiler's Comments

Uniform Act: Article IV of this Compact consists of the Uniform Division of Income for Tax Purposes Act.

Administrative Rules

ARM 42.15.120 Income tax — intent.

Title 42, chapter 26, subchapter 2, ARM Corporate multistate activities — income allocation and apportionment.

Case Notes

Audit Information Subject to Discovery by Taxpayer: Pacificorp appealed taxes imposed by the Department of Revenue that were in part based on audits by other states belonging to the Multistate Tax Commission. The lower court affirmed the State Tax Appeal Board's refusal to turn over copies of the audits pursuant to discovery requests by Pacificorp. The Supreme Court held that the audits were subject to discovery under this section because the action was brought in Montana and its confidentiality rules were controlling and not those of the state performing the audit. Pacificorp v. Dept. of Revenue, 254 M 387, 838 P2d 914, 49 St. Rep. 774 (1992).

Part 7
Collection of Delinquent Taxes — Warrant for Distraint

Part Attorney General's Opinions

Delinquency Interest, Penalties, and Costs to Follow Tax: The Montana Supreme Court held in School District v. Pondera County, 89 M 342, 297 P 498 (1931), that unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax; therefore, school districts, cities, and other government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the County Treasurer. 41 A.G. Op. 25 (1985).

Collection of Delinquent Income Taxes of Nonresidents Employed by Foreign Corporation Doing Business in Montana: The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may be considered to be property within the state for the purpose of levying a warrant for distraint for unpaid state income taxes. Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. 41 A.G. Op. 9 (1985).

15-1-701. Warrant for distraint.

Compiler's Comments

2001 Amendment: Chapter 108 in (3) in first sentence substituted "accumulated penalty" for "penalty" and in second sentence after "accrued" inserted "penalty and"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendments: Chapter 365 in (2), near middle of second sentence, inserted "the department is a judgment lien creditor"; in (3) inserted third sentence regarding the priority date

of the tax lien; and inserted (4) providing that the accelerated priority date is not valid against certain entities whose interest is recorded prior to the filing of the warrant for distraint. Amendment effective April 12, 1995.

Chapter 529 in (2), at end of second sentence, inserted exception relating to Department enforcement of a judgment lien. Amendment effective April 25, 1995.

Effective Date — Applicability: Section 2, Ch. 365, L. 1995, provided: "[This act] is effective on passage and approval [approved April 12, 1995] and applies to warrants for distraint filed after December 31, 1995."

Section 17(1), Ch. 529, L. 1995, provided that this section applies to warrants for distraint filed by the Department of Revenue and certificates of lien filed by the Department of Labor and Industry on or after July 1, 1996.

1991 Amendment: In (1), near beginning after "department of revenue", inserted "or of the department of transportation"; and made minor changes in style. Amendment effective July 1, 1991.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

Attorney General's Opinions

Collection of Delinquent Income Taxes of Nonresidents Employed by Foreign Corporation Doing Business in Montana: The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may be considered to be property within the state for the purpose of levying a warrant for distraint for unpaid state income taxes. Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. 41 A.G. Op. 9 (1985).

15-1-702. Issuance of warrant.

Compiler's Comments

1989 Amendment: Near beginning of (1), after "If a tax", deleted "other than inheritance or estate tax". Amendment effective March 18, 1989.

Retroactive Applicability: Section 6, Ch. 131, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988."

15-1-704. Filing with district court.

Compiler's Comments

2001 Amendment: Chapter 515 at end of (3) substituted "upon motion, or by judgment for that purpose founded upon supplemental pleadings" for "pursuant to the methods provided in 25-13-102". Amendment effective October 1, 2001.

1997 Amendment: Chapter 42 in (3) substituted "methods provided in 25-13-102" for "provisions of 25-13-102". Amendment effective March 12, 1997.

1995 Amendment: Chapter 529 inserted (3) allowing renewal of a judgment lien. Amendment effective April 25, 1995.

Applicability: Section 17(1), Ch. 529, L. 1995, provided that this section applies to warrants for distraint filed by the Department of Revenue and certificates of lien filed by the Department of Labor and Industry on or after July 1, 1996.

15-1-705. Review.

Compiler's Comments

1991 Amendment: In (1) substituted "right to a review of the tax liability pursuant to 15-1-211" for "right to request a hearing on the matter of tax liability"; in (2), in first sentence, substituted "review" for "hearing", deleted former second sentence that read: "A request for a hearing must be made in writing within 30 days of the date of the notice", and substituted last sentence relating to requirement that review process and appeals be completed before warrant may be executed for former last sentence that read: "If a written request for a hearing is received, the warrant may not be executed upon until after the date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled"; and deleted (3) that read: "(3) The hearing is subject to the contested case provisions of the Montana Administrative Procedure Act. Before a decision may be appealed to the district court, an appeal must first be taken to the state tax appeal board. A request for a hearing must be in writing in order to postpone execution on a warrant".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-1-706. Execution upon warrant.

Compiler's Comments

2001 Amendment: Chapter 397 inserted (3) concerning notice of levy having effect of writ of execution and concerning duration of levy upon earnings; and made minor changes in style. Amendment effective July 1, 2001.

Attorney General's Opinions

Collection of Delinquent Income Taxes of Nonresidents Employed by Foreign Corporation Doing Business in Montana: The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may be considered to be property within the state for the purpose of levying a warrant for distraint for unpaid state income taxes. Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. 41 A.G. Op. 9 (1985).

15-1-708. Release of lien.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in last sentence of (3)(a) after "may" substituted "proceed" for "transfer the debt to the department of administration for collection"; in (3)(b) in three places after "department" deleted "of administration", at beginning of first sentence deleted "Subject to approval by the department", and near middle of third sentence after "collected must be" deleted "returned to the department to be"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 108 in (1) substituted "accumulated penalty" for "penalty". Amendment effective July 1, 2001.

1995 Amendment: Chapter 529 inserted (3)(a) relating to the Department's transfer of an uncollectible debt to the Department of Administration for collection; and inserted (3)(b) relating to obtaining collection fees and costs from the debtor. Amendment effective April 25, 1995.

Code Commissioner Change: Pursuant to sec. 16, Ch. 529, L. 1995, a coordination section, in (3)(a) the Code Commissioner changed "state auditor" to "department of administration". The coordination instruction did not direct such a change in (3)(b). Because the change was necessary for conformity to the directed change, the Code Commissioner made the change under authority of sec. 73, Ch. 18, L. 1995, allowing correction of such erroneous references.

Administrative Rules

ARM 42.17.221 Due date and application of taxes.

Part 8
Payment of Taxes By Electronic Funds Transfer

15-1-801. Definitions.

Compiler's Comments

1995 Amendment: Chapter 561 in definition of taxes inserted exception clause; and made minor changes in style. Amendment effective July 1, 1995.

Statement of Intent: The statement of intent attached to Ch. 96, L. 1985, provided: "A statement of intent is required for this bill because it grants rulemaking authority to the department of revenue. This bill is intended to authorize the department of revenue to adopt rules necessary to implement the payment of taxes by electronic funds transfer. This would include rules coordinating the filing of tax returns with the payment of taxes by electronic funds transfer, rules specifying the form and content of the electronic funds transfer message in order to ensure the proper receipt and crediting of the tax payment, and other necessary rules. This is not intended to authorize the department to raise the $500,000 limitation, to select which taxes under Title 15 will be subject to the requirement, or to otherwise differentiate between taxpayers."

Administrative Rules

ARM 42.5.201 Electronic payment.
ARM 42.5.202 Electronic returns, reports, and signatures.
ARM 42.5.213 Backup situation.

15-1-802. Taxes to be paid by electronic funds transfer — limitation.

Administrative Rules

ARM 42.5.201 Electronic payment.

ARM 42.5.202 Electronic returns, reports, and signatures.

15-1-803. Rules.

Administrative Rules

Title 42, chapter 5, subchapter 2, ARM Electronic funds.

CHAPTER 2
STATE TAX APPEAL BOARD

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Case Notes

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648.

Chapter Law Review Articles

Montana's Tax Appeals Process: A Guide Through the Maze, Woodgerd, 51 Mont. L. Rev. 190 (1990).

Chapter Collateral References

Taxation *key* 451 through 500.

84 C.J.S. Taxation §678, et seq.

72 Am. Jur. 2d State and Local Taxation §§706 through 725.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 1
Composition and Organization

Part Compiler's Comments

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

15-2-101. State tax appeal board — appointment of members — term of office.

Compiler's Comments

Composite Section — Conflicting Amendments: This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. Chapter 405 was later in date of approval. Neither amendatory act mentioned or incorporated the changes made by the other. The acts appear not to conflict except possibly with respect to the method of appointment of Board members. In this respect, the compiler used the language of Ch. 405.

Attorney General's Opinions

Members as State Employees for Certain Purposes: State Board of Tax Appeal members generally are considered to be public officers, but for the specific purpose of determining the applicability of vacation, sick leave, and working hour statutes, they are considered as state employees. 36 A.G. Op. 100 (1976).

Collateral References

Taxation *key* 464.

84 C.J.S. Taxation §§639, 686 through 688.

15-2-102. Qualification and compensation.

Compiler's Comments

1995 Amendment: Chapter 455 in (2), at beginning, deleted "The member designated chairman as provided for in 15-2-103 shall receive a salary equivalent to that of an entry grade 17 salary, plus 5%. The remaining", in first sentence, after "equivalent to that of", substituted "a grade" for "an entry grade" and inserted reference to 2-18-312, and inserted second and third sentences relating to pay adjustment and salary of presiding officer; and made minor changes in style. Amendment effective April 14, 1995.

Retroactive Applicability: Section 23, Ch. 455, L. 1995, provided "[Section 17] [15-2-102] applies retroactively, within the meaning of 1-2-109, to a member of the state tax appeal board who was a member on December 31, 1994."

1991 Amendment: In (2), at end of first sentence, substituted "equivalent to that of an entry grade 17 salary, plus 5%" for "of $29,082 in fiscal year 1990 and $29,809 in fiscal year 1991 and thereafter" and at end of second sentence substituted "equivalent to that of an entry grade 17 salary" for "of $28,326 in fiscal year 1990 and $29,034 in fiscal year 1991 and thereafter". Amendment effective July 1, 1991.

1989 Amendment: In first sentence of (2) increased salary of chairman from $28,373 a year to $29,082 in fiscal year 1990 and to $29,809 in fiscal year 1991 and thereafter and in second sentence increased salary of remaining Board members from $27,635 a year to $28,326 in fiscal year 1990 and to $29,034 in fiscal year 1991 and thereafter. Amendment effective May 11, 1989.

1985 Amendments: Chapter 236, deleted former (3) that read: "(3) The salary commission must review the salary for members of the board and shall recommend an appropriate salary to the legislature." Amendment effective July 1, 1987, upon approval by the electorate of HB 463 that repealed Art. XIII, sec. 3, of the Constitution.

Chapter 693, in (2), increased salary for chairman to $28,373 from $26,003 in fiscal 1984 and $26,523 in fiscal 1985 and thereafter, and increased salary for remaining board members to $27,635 from $25,305 in fiscal 1984 and $25,811 in fiscal 1985 and thereafter.

1983 Amendment: In (2), increased the salary of the chairman from $23,554 in fiscal year 1982 and $25,493 in fiscal years after fiscal year 1982 to $26,003 in fiscal year 1984 and $26,523 in fiscal years after 1984; and increased the salaries of members of the board from $22,924 in fiscal year 1982 and $24,809 in fiscal years after 1982 to $25,305 in fiscal year 1984 and $25,811 in fiscal years after fiscal year 1984.

1981 Amendment: In (2), increased the salary of chairman from $20,276 in 1980 and $21,779 in 1981 to $23,554 in 1982 and $25,493 in 1983; increased the salary of members from $19,843 in 1980 and $21,200 in 1981 to $22,924 in 1982 and $24,809 in 1983.

Salary Commission Bill: Chapter 605, L. 1981 (HB 580) was introduced at the request of the Montana Salary Commission. See commission report, Legislative Council, 1980.

15-2-103. Organization, quorum, sessions.

Collateral References

Taxation *key* 476.

15-2-104. Employees — expenses — minutes — rules.

Administrative Rules

Title 2, chapter 51, ARM State Tax Appeal Board.

15-2-106. Seal.

Collateral References

84 C.J.S. Taxation §639.

Part 2
Powers and Duties

Part Collateral References

Taxation *key* 465 through 474.
84 C.J.S. Taxation §678, et seq.
72 Am. Jur. 2d State and Local Taxation §§706 through 711.

15-2-201. Powers and duties.

Compiler's Comments

1995 Amendment: Chapter 529 at end of (1)(d) inserted exception for determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2; and made minor changes in style. Amendment effective July 1, 1996.

1981 Amendment: Inserted (1)(b) relating to meeting of County Tax Appeal Board beyond normal time period.

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Administrative Rules

Title 2, chapter 51, subchapter 3, ARM County Tax Appeal Board rules.
ARM 42.19.102 Department to approve contracts with commercial appraisal firms.

Case Notes

Refusal to Consider Taxpayer's Appraisal — Abuse of Discretion: A taxpayer presented evidence of market value but the State Tax Appeal Board (STAB) refused to consider the evidence in a commercial property tax appeal. Citing Dept. of Revenue v. Paxson, 205 M 194, 666 P2d 768 (1983), the Supreme Court held that STAB was required to consider the theory and figures offered by a taxpayer, although not bound to adopt them, and that to refuse to accept a taxpayer's appraisal was an abuse of discretion. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

State Board to Take Evidence From Individual Protestors — Power to Affect County Board's Decision: Property taxpayers objected to the Department of Revenue (DOR) appraisal of their commercial property. They contend that commercial property is overvalued while residential property is undervalued. The State Tax Appeal Board (STAB) held a hearing applicable to all protesting taxpayers. STAB remanded all the cases to the DOR to reappraise the commercial property. On appeal, the Supreme Court said that STAB was required to take evidence from individual protestors to determine if their individual property was overvalued. Based on that evidence, STAB may affirm, modify, or reverse the decisions of the County Tax Appeal Boards in only those cases in which STAB has jurisdiction (i.e., those involving protestors properly before it). Dept. of Revenue v. Countryside Village, 205 M 51, 667 P2d 936, 40 St. Rep. 1090 (1983).

Factfinding Responsibility of Administrative Body: The Department of Revenue assessed Paxson's land for tax purposes. Paxson contended the valuation was too high because part of the land was in a flood plain. The County Tax Appeal Board entered an order granting a 20% reduction in the assessment. This was upheld by the State Tax Appeal Board. The District Court concluded that the 20% reduction was arbitrary and capricious since no evidence was contained in the record to support this figure. The court then adopted Paxson's theory of reduction and figures. On appeal, the Supreme Court upheld the overturning of the 20% reduction as not supported by the evidence but vacated the District Court's order and remanded the case to the State Tax Appeal Board. The Supreme Court held that the responsibility of factfinding and arriving at the proper taxable valuation is the function of the administrative bodies. Dept. of Revenue v. Paxson, 205 M 194, 666 P2d 768, 40 St. Rep. 1210 (1983), distinguished in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Appellate Review of Appraisal Methods: Section 15-7-102 gives the State Tax Appeal Board specific power to hear tax appraisal appeals, including the power to pass judgment on appraisal methods. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Board Not Quasi-Judicial Body: The State Tax Appeal Board is not a quasi-judicial body as defined in 2-15-124, but it may nonetheless perform some quasi-judicial functions and exercise its judgment and discretion pursuant to the provisions of this section. Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976).

Legislative Intent: The intent of the Legislature was to maintain continuity between the former State Board of Equalization and the new State Tax Appeal Board and to transfer the

appellate functions of the old Board to the new. Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976).

Mandamus to Enforce Increased Valuations: State Board of Equalization (duties now performed by State Tax Appeal Board), which issued a directive to Board of County Commissioners and County Assessor in November, 1963, requiring use of certain valuations on grades of farm land for 1964 and years thereafter, which the officials of the county refused to do, was entitled to mandamus to compel the county officials to comply with the directive. Alleged impossibility of compliance on July 22, 1964, was no defense. The officials had from November until the second Monday in August to accomplish the task but chose to do nothing except contest the matter. State ex rel. St. Bd. of Equalization v. Koch, 145 M 474, 401 P2d 765 (1965).

Mandamus: A county may be compelled by a Writ of Mandate to comply with the directives of the State Board of Equalization (duties now performed by State Tax Appeal Board). State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Tax Base of Railroads: The State Board of Equalization (duty now performed by Department of Revenue) had authority under Art. XII, sec. 15, 1889 Mont. Const. (see Art. VIII, sec. 7, 1972 Mont. Const.) to issue directive to county officers with respect to determination of property tax base of railroads. State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Writ of Prohibition Improper: District Court acted prematurely in issuing Writ prohibiting State Board of Equalization (duty now performed by Department of Revenue) from proceeding further under 15-9-101, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented Board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Duty of Board to Equalize: Prior to amendment of this section, the State Board of Equalization (duty now performed by Department of Revenue) was charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Limitation on Court Intervention: A court may not intervene when action of the Board is not arbitrary, fraudulent, or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Standard of Judicial Review:

The Supreme Court will not, in a tax recovery action where overvaluation is alleged, substitute its judgment for that of the taxing officials, and will not notice an alleged overvaluation honestly made, but will grant relief only where the overvaluation is so gross as to be inconsistent with the exercise of honest judgment. Investors Sec. Co. v. Moore, 113 M 400, 127 P2d 225 (1942).

The State Board of Equalization (duty now performed by Department of Revenue) as a taxing body, while properly exercising its authority, was supreme. In the exercise of its powers it had a wide discretion, and its decisions, when honestly arrived at, were not disturbed by the courts. When, however, it pursued a fundamentally wrong method of assessment or acted fraudulently or maliciously, or where error so gross as to be inconsistent with any exercise of honest judgment was shown, courts would grant relief. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

Part 3
Appeal Procedure

Part Case Notes

Challenge to Property Valuation Brought Pursuant to Repealed Statute Prohibited by Terms of Repealed Statute: Taxpayers brought a civil action in 1996 against the Department of Revenue and others, seeking declaratory judgment relief and the refund of property taxes paid in 1989 through 1992, based upon their rights as determined in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. The action was brought pursuant to 15-2-307 through 15-2-310, which were repealed in 1993. The Supreme Court held that even assuming the taxpayers properly asserted their action pursuant to repealed statutes, the District Court correctly dismissed the action because former 15-2-309 provided that the remedy ordered by a court could only apply prospectively, which precluded any remedy for taxes imposed in 1989 through 1992 as sought by the taxpayers. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Exhaustion of Administrative Remedies — Exception for Nonparty:

Taxpayer protested the appraisal of two pieces of real property. He contended that by exhausting his administrative remedies in previous years, he had exhausted them for the year in contest because his basis for appeal was the same for all years. Because the complaint was aimed at the amount of valuation and not the method of valuation, it did not come within the exception to the exhaustion of remedies general rule. Therefore, taxpayer must exhaust his administrative remedies before initiating suit in District Court. Devoe v. Missoula County, 226 M 372, 735 P2d 1115, 44 St. Rep. 731 (1987).

Plaintiffs are citizens of Great Falls who expended money for construction and improvement in reliance on the city's MELDA (Montana Economic Land Development Act) plan. The Department of Revenue ruled that the city's plan did not conform to MELDA's provisions, and thus persons acting in reliance upon the city's plan would not receive MELDA tax treatment. The court found that the plaintiffs were nonparties even though they appeared at the administrative hearing and therefore could not appeal the Department's decision to the State Tax Appeal Board. Their remedy is in the District Court. This is an exception to the general rule that administrative remedies must be exhausted before applying for judicial review. Keller v. Dept. of Revenue, 182 M 478, 597 P2d 736 (1979).

Judicial Function in Taxation Matters: Plaintiff appealed his property's appraisal to the County Tax Board, the State Tax Appeal Board, the District Court, and the Supreme Court, who all reached the same result. The Supreme Court said it is not a judicial function to act as an authority on taxation matters. The court will not evaluate the advantages and disadvantages of a particular assessment method as applied to a taxpayer. Tax appeal boards are particularly suited for settling disputes over the appropriate valuation of a given piece of property or a particular improvement, and the judiciary cannot properly interfere with that function. NW. Land & Dev. of Mont., Inc. v. St. Tax Appeal Bd., 203 M 313, 661 P2d 44, 40 St. Rep. 470 (1983), followed in United Grain Corp. v. Dept. of Revenue, 248 M 297, 811 P2d 555, 48 St. Rep. 440 (1991), and partially overruled in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Nonadministrative Question to Be Decided on Judicial Review: The Department of Revenue ruled that the Great Falls MELDA (Montana Economic Land Development Act) plan did not conform to MELDA provisions. Plaintiffs acted in reliance on the city's plan, but because of the Department's decision they did not receive MELDA tax treatment. In appealing the administrative decision, the plaintiffs are challenging the Department's decision not to utilize MELDA in assessing plaintiffs' property and seeking a determination of the effect of MELDA's repeal. Clearly these are not administrative questions, and plaintiffs should not be required to present their case to the State Tax Appeal Board. Keller v. Dept. of Revenue, 182 M 478, 597 P2d 736 (1979).

Part Collateral References

Taxation *key* 478 through 500.

84 C.J.S. Taxation §§701 through 749.

72 Am. Jur. 2d State and Local Taxation §§712 through 725.

15-2-301. Appeal of county tax appeal board decisions.

Compiler's Comments

1999 Amendment: Chapter 584 inserted (6) prohibiting construction of 15-6-134 and 15-7-111 to prevent department from implementing order changing property valuation. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 134 in (3), near end of first sentence, substituted "employ a competent person to electronically record the testimony" for "employ the local court reporter or other competent stenographer to take and transcribe the testimony" and in second sentence substituted "cost of electronically recording testimony" for "cost of taking and transcribing testimony"; and made minor changes in style. Amendment effective March 24, 1997.

1993 Special Session Amendment: Chapter 15 in (1), at beginning of second sentence before "person", substituted "If the appearance provisions of 15-15-103 have been complied with, a" for "Any". Amendment effective January 1, 1994.

Applicability: Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

1993 Amendment: Chapter 594 deleted former second sentence of (4) that read: "The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or

modified by judicial review"; and inserted (5) clarifying finality of State Tax Appeal Board decisions and proceedings for judicial review.

1991 Amendment: Twice in (2) and once in (3) inserted reference to hearing officer; and made minor changes in style. Amendment effective March 29, 1991.

1987 Amendment: In (1) at beginning inserted sentence requiring decision to be mailed to parties, in second sentence, relating to filing of notice of appeal, before "tax appeal board" substituted "state" for "county", after "notice of appeal" deleted "and a duplicate thereof with the state board", and substituted "30 calendar days" for "20 calendar days"; near middle of (1) deleted former language that read: "The county tax appeal boards shall mail their decisions to the property assessment division of the department. Receipt, for purposes of appeal, by the department is when the county tax appeal board decision is received by the property assessment division of the department" and inserted third sentence concerning notice of acceptance; near end of (1) substituted "respondent" for "county board"; at beginning of (2) substituted "At the time of giving notice of acceptance of an appeal" for "At the time of giving such notice"; near end of (2), after "transcript", substituted "or a tape recording of the hearing" for "of the testimony received"; inserted (3) authorizing employment of hearings officer (effective until June 30, 1989); near beginning of (4), relating to court reporter or stenographer, substituted "person" for "member" (effective until June 30, 1989); and made minor changes in phraseology.

Period of Effectiveness: Section 2, Ch. 611, L. 1979, provided: "This act is effective on passage and approval and remains in effect through June 30, 1981." Approved May 7, 1979. The code commissioner has returned the section to its form prior to being amended by Ch. 611, L. 1979, in compliance with sec. 2, Ch. 611, L. 1979.

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Case Notes

Continuance — Furtherance of Justice: The State Tax Appeal Board (STAB) has the inherent authority to grant a continuance upon good cause shown and in furtherance of justice. STAB did not act in the furtherance of justice when it denied a request for continuance when it could present no evidence, other than its compliance with minimum notice requirements, to support the denial. The case was remanded for further development of the record. Hi-Line Radio Fellowship v. Dept. of Revenue, 227 M 150, 737 P2d 886, 44 St. Rep. 955 (1987).

State Board to Take Evidence From Individual Protestors — Power to Affect County Board's Decision: Property taxpayers objected to the Department of Revenue (DOR) appraisal of their commercial property. They contend that commercial property is overvalued while residential property is undervalued. The State Tax Appeal Board (STAB) held a hearing applicable to all protesting taxpayers. STAB remanded all the cases to the DOR to reappraise the commercial property. On appeal, the court said that STAB was required to take evidence from individual protestors to determine if their individual property was overvalued. Based on that evidence, STAB may affirm, modify, or reverse the decisions of the County Tax Appeal Boards in only those cases in which it has jurisdiction (i.e., those involving protestors properly before it). Dept. of Revenue v. Countryside Village, 205 M 51, 667 P2d 936, 40 St. Rep. 1090 (1983).

State Tax Appeal Board — No Authority Over Department of Revenue: When a taxpayer appeals the action of the County Tax Appeal Board to the State Tax Appeal Board (STAB), STAB may take evidence and based on that evidence it may affirm, modify, or reverse the decision of the County Tax Appeal Board. STAB may not remand the matter to the Department of Revenue, and STAB has no mandatory or injunctive power over the Department of Revenue. Dept. of Revenue v. Countryside Village, 205 M 51, 667 P2d 936, 40 St. Rep. 1090 (1983).

Appeal to Local Board Exclusive Remedy — Late Assessment Precluding Hearing: The Montana Legislature determined that the County Tax Appeal Board provides the review procedure at the local government unit level mandated by Art. VIII, sec. 7, Mont. Const. An appeal and review before the local Board is a condition precedent to a State Tax Appeal Board review. Except in cases where fraud or the adoption of a fundamentally wrong principle of assessment is shown, an appeal to the local Board is the exclusive remedy granted the taxpayer. If a taxpayer is denied a hearing before the local Board because of a late assessment, the assessment is invalid because it denies the taxpayer a constitutional right to a hearing before the local Board. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Scope of Review: So long as the Department of Revenue acts pursuant to an administrative rule or regulation its decisions are entitled to a presumption of correctness, unless the rule or regulation is arbitrary, capricious, or otherwise unlawful. However, there is no presumption of

correctness when the Department has made an ad hoc determination unaided by rule or regulation, and in such cases the Board may examine the Department's procedures to determine whether they were fair, and whether the result is fair, just, and equitable. In order to do this the Board may conduct a hearing de novo at which it may examine the entire record sent by the Department, and may supplement it by taking additional testimony and receiving additional evidence. Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976).

Unconditional Assessment — No Need to Exhaust Administrative Remedies: A class action suit protesting method of assessment as being unconstitutional was properly filed directly against the Department of Revenue without first exhausting administrative remedies. Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975).

Mandamus to Correct Arbitrary Assessment: In an action in the District Court for a Writ of Mandamus by a taxpayer to compel the State Board of Equalization (duty now performed by Department of Revenue) to reduce the valuation of unimproved lots in the outskirts of a city from $51,325 to $5,420, when the evidence showed the value thereof not to exceed about $5,400, the assessed value was so far in excess of what the actual cash value was as to indicate the assessment was arbitrary and constructively fraudulent, and the trial court erred in not directing the defendant Board to reduce the valuation to a figure consistent with the proof of the actual cash value. Corcoran v. St. Bd. of Equalization, 116 M 499, 154 P2d 795 (1945).

Grounds for Court Appeal: The State Board of Equalization (duty now performed by State Tax Appeal Board) in a hearing on appeal to it involving a tax matter acted in a quasi-judicial capacity, and the presumption obtained that its findings were justified by the evidence taken at the hearing. An aggrieved taxpayer may resort to the courts for review if he can show fraud or other unlawful acts, such as arbitrary increase of valuation, wrong principle of assessment, or error so gross as to be inconsistent with any honest exercise of judgment, but if his complaint is not so predicated it does not state a cause of action. IBM Corp. v. Lewis & Clark County, 111 M 384, 112 P2d 477 (1941).

Reduction of Valuations of All Similar Property: When the State Board of Equalization (duty now performed by State Tax Appeal Board), at the time it made an order reducing assessments on a given class of lands on appeal of certain of the taxpayers, knew that there were other owners in like situation, its full duty in the premises was not discharged by the order of reduction in the specific instances, but it was its further duty, after giving notice, to reduce valuations of such others to avoid discrimination, i.e., to equalize the values; its failure in that behalf, however, did not deprive such others of their rights. State ex rel. Schoonover v. Stewart, 89 M 257, 297 P 476 (1931).

Nature of Findings: A decision of the State Board of Equalization (duty now performed by State Tax Appeal Board) made after hearing the appeal of a taxpayer from an adverse ruling of a County Board of Equalization (now County Tax Appeal Board) was quasi-judicial, and on application for Writ of Certiorari the Supreme Court could not go back of the record made by the State Board, the presumption obtaining that its findings were justified by the testimony heard by it at the hearing. State ex rel. Schoonover v. Stewart, 89 M 257, 297 P 476 (1931).

Appeal of Reduced Valuation by Third Party — Burden of Proof: The State Board of Equalization (duty now performed by State Tax Appeal Board) in an appeal by a number of owners of irrigated and irrigable lands in a certain county, after a hearing, reduced the valuations made by the Assessor and approved by the County Board of Equalization (now County Tax Appeal Board). Relator, owner of like lands in the same vicinity who had not complained of his assessment or appeared at the hearing to object to the granting of relief to appellants, instituted proceedings in certiorari in the Supreme Court, attacking the jurisdiction of the Board in making its order, in effect alleging that by the order he was being discriminated against. He charged neither fraud not that the Board had adopted a fundamentally wrong principle of assessment. The proceedings were dismissed on failure of the relator to show that the Board had acted in excess of its authority. State ex rel. Schoonover v. Stewart, 89 M 257, 297 P 476 (1931).

Collateral References

Taxation *key* 478 through 492.

84 C.J.S. Taxation §§496, 512 through 546.

72 Am. Jur. 2d State and Local Taxation §§712 through 720.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of tax board or commission. 61 ALR 2d 484.

15-2-302. Direct appeal from department decision to state tax appeal board — hearing.

Compiler's Comments

2005 Amendment: Chapter 67 in (2) at beginning deleted "Except as provided in subsection (2)(b)"; deleted former (2)(b) that read: "(b) An appeal from the department's determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department's final determination. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party"; in (3) at end after "complaint" deleted "or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set forth the department's response to each ground for and type of relief demanded in the complaint"; in (4) at beginning deleted "Except as provided in subsection (4)(b)"; deleted former (4)(b) that read: "(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board"; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1997 Amendment: Chapter 491 in (2)(a), at beginning, inserted exception clause; inserted (2)(b) concerning appeal of Department determination regarding proper reporting of wages earned by unemployment benefits claimant; in (3), in first sentence, inserted "or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board"; in (4)(a), at beginning, inserted exception clause; inserted (4)(b) concerning conduct of appeal and time of Board decision; and made minor changes in style. Amendment effective January 1, 1998.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1993 Amendments: Chapter 59 near beginning of (1) substituted "a final decision" for "any action"; in (2), at end of first sentence, substituted "department's final decision" for "department action"; in (4) substituted "conduct the appeal" for "hear the parties"; and made minor changes in style. Amendment effective February 19, 1993.

Chapter 594 near beginning of (1), before "action", inserted "final"; inserted (5) clarifying finality of State Tax Appeal Board decisions and proceedings for judicial review; and made minor changes in style.

Applicability: Section 2, Ch. 59, L. 1993, provided: "[This act] applies to final decisions made on or after [the effective date of this act]." Effective February 19, 1993.

Administrative Rules

ARM 42.4.4106 Appeal rights.

Case Notes

Complaint Limited to Department Action in Revised Assessment Rather Than Review of Entire Assessment: A taxpayer whose assessment has been revised by the Department of Revenue has a right to an administrative review of only those aspects of the assessment that were changed in the revision rather than to a review of the assessment in its entirety. Pac. Power & Light Co. v. Dept. of Revenue, 249 M 33, 813 P2d 433, 48 St. Rep. 565 (1991).

Jurisdiction When Illegal Tax Alleged — Improper Dismissal: The court erred in granting defendants' motions to dismiss for lack of subject matter jurisdiction because the complaints alleged an illegal tax and did not put into issue any question of valuation. Thus the courts and not the Tax Appeal Boards had original jurisdiction to hear the case under the rule of Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975). U.S. Nat'l Bank of Red Lodge v. Dept. of Revenue, 175 M 205, 573 P2d 188 (1977).

Attorney General's Opinions

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

Collateral References

Taxation *key* 460, 478.
84 C.J.S. Taxation §678, et seq.
72 Am. Jur. 2d State and Local Taxation §§712 through 720.

15-2-303. Judicial review.

Compiler's Comments

1993 Amendment: Chapter 594 in (1), after "decision", deleted "in a contested case"; in (2), after "district", deleted "and serving a copy of the petition on the department of revenue or taxpayer", at beginning of second sentence inserted "A petition for judicial review must be filed" and at end substituted "service of the final decision" for "the decision thereon", and inserted third sentence requiring service of petition copies on parties of record; inserted (3) requiring service of a petition copy on the County Treasurer of the county in which taxable property of a taxpayer seeking refund under protest is located; and made minor changes in style.

1981 Amendments: Chapter 77 substituted "department of revenue or taxpayer" for "state tax appeal board" in first sentence of (2) and at end of (2) substituted "The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review but failure to do so shall have no effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents" for "All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such proceedings".

Chapter 501 increased the time period for serving a copy of the petition after a final decision has been reached from 30 to 60 days.

Purpose: Section 1, Ch. 501, L. 1981, provided: "It is the purpose of this act to insure an orderly procedure for the payment of taxes and license fees under protest that may be appealed to a county or state tax appeal board and to insure that a taxpayer has exhausted all available remedies prior to filing an appeal in district court."

Revenue Oversight Committee [now Revenue and Transportation Interim Committee] Bill: Chapter 501, L. 1981 (SB 17), was introduced at the request of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee]. See committee report, "Payment of Taxes Under Protest", Legislative Council, 1980.

Case Notes

Standard of Appellate Review of Administrative Decision in Contested Case: When reviewing a District Court order affirming or reversing an administrative decision in a contested case, the Supreme Court employs the same standard applied by the District Court to determine whether the findings of fact are clearly erroneous and whether the agency correctly interpreted the law. O'Neill v. Dept. of Revenue, 2002 MT 130, 310 M 148, 49 P3d 43 (2002), followed in Ostergren v. Dept. of Revenue, 2004 MT 30, 319 M 405, 85 P3d 738 (2004). See also Glendive Medical Center, Inc. v. Dept. of Public Health and Human Services, 2002 MT 131, 310 M 156, 49 P3d 560 (2002).

Substitution of District Court Property Valuation for That of Tax Appeal Board Improper — Remand for Reinstatement of State Tax Appeal Board Assessment Absent Clear Error or Abuse of Discretion: The O'Neills contested the valuation ascribed to two parcels of property. The Department of Revenue had applied the market data approach in valuing one parcel, and the cost approach method in valuing the other parcel. The State Tax Appeal Board (STAB) ultimately granted further reductions to the land values and ordered that the properties be entered into the county tax rolls. Dissatisfied with the STAB reduction, the O'Neill appealed the STAB ruling to the District Court. The court applied the comparable sales method of valuation, and concluded that an even lower value should have been applied. The court then vacated the STAB valued and assigned significantly lower values to the properties. The Department of Revenue appealed. The Supreme Court applied 2-4-704, holding that the section does not contemplate a wholesale substitution of the District Court's opinion for that of the agency. The District Court could have reversed or modified the STAB decision and remanded the case for further proceedings if the O'Neills' substantial rights had been prejudiced because the administrative findings were clearly erroneous, but the court did not reach that conclusion, and instead simply applied its own analysis in place of the STAB analysis. Absent findings of clear error or abuse of discretion required in 2-4-704, the STAB valuation will be upheld. Thus, the Supreme Court reversed and remanded for reinstatement of the STAB assessments. O'Neill v.

Dept. of Revenue, 2002 MT 130, 310 M 148, 49 P3d 43 (2002), followed in Ostergren v. Dept. of Revenue, 2004 MT 30, 319 M 405, 85 P3d 738 (2004).

Proper Denial of Motion to Present Additional Evidence in Support of Petition for Judicial Review: Leahys contended that the District Court erred in failing to open the record and admit additional evidence in support of their motion for judicial review, contending that they were misinformed and ill-prepared for the administrative hearing before the State Tax Appeal Board and that they were not represented by counsel. The Supreme Court affirmed the denial of the motion, noting that it is not the obligation of the administrative agency or the District Court to second-guess litigants' decisions in their preparation for and presentation of their case before the agency, nor are they entitled to reopen their case on judicial review simply because they might have benefited from better preparation, different representation, or an alternative theory or approach than that presented at the hearing. An administrative hearing is not simply a dry run for retrial in District Court on judicial review with more, better, or different evidence. Under the rationale of O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456 (1987), it was a proper exercise of the District Court's discretion, absent good cause, to deny reopening of the record to allow additional evidence. Leahy v. Dept. of Revenue, 266 M 94, 879 P2d 653, 51 St. Rep. 665 (1994).

Right to Refund Not Affected by Failure to File Notice of Second Petition: DeVoe paid taxes under protest for several years but filed a notice of a petition for relief for only the first year and did not file notices for petitions filed for subsequent years. The Department of Revenue argued that he was not entitled to a refund for the years in which he had not filed a notice of the petitions with the County Treasurer. The Supreme Court held that the statutes were clear in indicating that the failure to file subsequent notices did not prohibit DeVoe from receiving refunds for the subsequent years since he did pay the taxes for those years under protest. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Refusal to Consider Taxpayer's Appraisal — Abuse of Discretion: A taxpayer presented evidence of market value but the State Tax Appeal Board (STAB) refused to consider the evidence in a commercial property tax appeal. Citing Dept. of Revenue v. Paxson, 205 M 194, 666 P2d 768 (1983), the Supreme Court held that STAB was required to consider the theory and figures offered by a taxpayer, although not bound to adopt them, and that to refuse to accept a taxpayer's appraisal was an abuse of discretion. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

Court Observations Beyond Scope of Judicial Notice in STAB Case: The District Court erred in reviewing a contested State Tax Appeal Board case when its observations of the business-generating capability of a motel could only be verified by income statements of other area motels, data which was not generally known or capable of accurate and ready determination. Such empirical observations passed beyond the scope of judicial notice and bordered on judicial impression. O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456, 44 St. Rep. 1037 (1987).

Showing of Good Cause Permissive, Not Mandatory — Introduction of Additional Evidence in STAB Cases: Judicial review of contested State Tax Appeal Board cases under this section allows the court to supplement the record; therefore, the court may, on its own initiative or upon motion of a party, find good cause and allow additional evidence to be introduced. The showing of good cause is permissive, not mandatory. Any legally sufficient reason meets the good cause requirement, and such sufficiency lies within the discretion of the reviewing court. Additional evidence is not restricted to the parties, but may be accepted from a variety of sources. O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456, 44 St. Rep. 1037 (1987).

Review of STAB Decision — Additional Evidence: When additional evidence is presented during review under this section, such evidence may be introduced before the court rather than the agency. Findings of fact and conclusions of law are then required to be made by the court. If the court does not permit or receive additional evidence, written findings and conclusions by the court are not required. Hi-Line Radio Fellowship v. Dept. of Revenue, 227 M 150, 737 P2d 886, 44 St. Rep. 955 (1987).

Factfinding Responsibility of Administrative Body: The Department of Revenue assessed Paxson's land for tax purposes. Paxson contended the valuation was too high because part of the land was in a flood plain. The County Tax Appeal Board entered an order granting a 20% reduction in the assessment. This was upheld by the State Tax Appeal Board. The District Court concluded that the 20% reduction was arbitrary and capricious since no evidence was contained in the record to support this figure. The court then adopted Paxson's theory of reduction and figures. On appeal, the Supreme Court upheld the overturning of the 20% reduction as not supported by the evidence but vacated the District Court's order and remanded the case to the State Tax Appeal Board. The Supreme Court held that the responsibility of factfinding and

arriving at the proper taxable valuation is the function of the administrative bodies. Dept. of Revenue v. Paxson, 205 M 194, 666 P2d 768, 40 St. Rep. 1210 (1983).

Tax Appeal — Standard of Review — Applicable Procedure: The Department of Revenue audited respondent's corporate license tax returns and assessed additional taxes. Respondent protested the assessment and appealed to the State Tax Appeal Board (STAB). After a hearing, STAB affirmed the Department's decision. Respondent filed for judicial review of the STAB decision in District Court. Respondent mailed a copy of the summons and petition to the attorney who represented the Department at the hearing and to STAB. The respondent received a default judgment and a reversal of STAB's final order. Separate standards of review for STAB decisions are not provided, with the exception of 15-2-303 which states that the District Court may permit additional evidence notwithstanding 2-4-704. The District Court reversed STAB's determination and granted the relief requested by respondent based on the Department's failure to answer and appear. The failure to appear does not suspend the standard of review. The District Court was not entitled to enter a default judgment reversing STAB without reviewing the record and complying with the standard of review contained in 2-4-704. In addition, the Department contends that respondent failed to obtain jurisdiction over the Department because it failed to comply with 2-4-702. Respondent asserts that 15-2-303 is the applicable statute. Section 15-2-303 is a specific statute while 2-4-702 is general. A specific statute controls over a general statute to the extent of any inconsistency. Dept. of Revenue v. Davidson Cattle Co., 190 M 326, 620 P2d 1232, 37 St. Rep. 2074 (1980).

Alternative to Payment Under Protest — Mootness: In effect this statute provides an alternative to paying taxes under protest, and payment of first tax installment 15 days prior to filing a petition for judicial review did not render the appeal moot. Compliance with the judgment did not make effective relief by the appellate court impossible and a decision regarding the issues presented will strongly affect future tax assessments by the Department of Revenue. Mont. Nat'l Bank of Roundup v. Dept. of Revenue, 167 M 429, 539 P2d 722 (1975), overruled, with regard to voluntary versus involuntary payment or performance as affecting waiver of right to appeal without having bearing on mootness, in Turner v. Mtn. Eng'r & Constr., Inc., 276 M 55, 915 P2d 799, 53 St. Rep. 23 (1996).

Attorney General's Opinions

County Attorney — Fees in Addition to Salary: A County Attorney may not accept a fee from the County Commissioners, in addition to his or her salary as County Attorney, for prosecuting an appeal from a decision of the Tax Appeal Board in which the county has intervened as party plaintiff. 37 A.G. Op. 63 (1977).

Collateral References

Taxation *key* 493 through 500.

84 C.J.S. Taxation §§727 through 751.

72 Am. Jur. 2d State and Local Taxation §§721 through 725.

Allowance of counsel fees in taxpayer's action in state court. 89 ALR 3d 690.

15-2-304. Petition for interlocutory adjudication.

Compiler's Comments

1991 Amendment: In (1)(b) substituted "may raise any question involving procedure, the admissibility of evidence, or a substantive question of law raised by the pleadings" for "must raise all questions raised by the pleadings involving the interpretation of a constitutional provision, a statute, or a rule"; inserted (1)(c) requiring a nonpetitioning party to respond to the petition within 30 days and stating what the response may raise; in (2) substituted "After the 30-day period specified in subsection (1)(b)" for "After a proceeding has commenced before the state tax appeal board" and after "proceeding may" inserted "jointly"; in (3) substituted "the issues presented involve procedure, the admissibility of evidence, or a substantive question of law and do not require the determination of questions of fact" for "the issues presented involve the interpretation of a constitutional provision, a statute, or a rule and do not require the hearing of evidence to be resolved" and at end inserted sentence requiring a court granting a petition to rule on all issues in the petition and response regardless of whether a ruling on less than all issues is dispositive of the case; and made minor changes in style.

1987 Amendment: Inserted (1) relating to interlocutory adjudication after answer filed before board; and at beginning of (3) inserted "In a petition under subsection (1) or (2)" and near middle substituted "a rule" for "regulation".

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board, asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. The Supreme Court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Collateral References

Taxation *key* 493.

84 C.J.S. Taxation §§727 through 751.

72 Am. Jur. 2d State and Local Taxation §§721 through 725.

15-2-305. Jurisdiction to make interlocutory adjudication.

Compiler's Comments

1991 Amendment: In first sentence substituted "involves procedure, the admissibility of evidence, or a substantive question of law and does not require the determination of a question of fact" for "involves only the interpretation of a constitutional provision, statute, or regulation and does not require the hearing of evidence" and inserted second sentence requiring a court granting a petition to rule on all issues in the petition and response regardless of whether a ruling on less than all issues is dispositive of the case; and made minor change in style.

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board, asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. The Supreme Court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Collateral References

Taxation *key* 493.

84 C.J.S. Taxation §§727 through 751.

72 Am. Jur. 2d State and Local Taxation §§721 through 725.

Allowance of counsel fees in taxpayer's action in state court. 89 ALR 3d 690.

15-2-306. Board may order refund.

Compiler's Comments

1993 Amendment: Chapter 594 in three places in (1) substituted reference to property tax or fee for reference to tax or license fee; in (2)(a), after "appeal", deleted "specified in 15-1-402(4)"; and made minor changes in style.

Purpose: Section 1, Ch. 501, L. 1981, provided: "It is the purpose of this act to insure an orderly procedure for the payment of taxes and license fees under protest that may be appealed to a county or state tax appeal board and to insure that a taxpayer has exhausted all available remedies prior to filing an appeal in district court."

Interim Study Bill: Chapter 501, L. 1981 (SB 17), was introduced at the request of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee]. See committee report, "Payment of Taxes Under Protest", Legislative Council, 1980.

CHAPTER 6
PROPERTY SUBJECT TO TAXATION

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Case Notes

Tribal Court — No Jurisdiction to Enjoin County Property Taxation: In an action by a Crow tribal member challenging a county's right to impose property taxes on reservation land held in fee by the member, the Ninth Circuit Court held that the Crow Tribal Court exceeded its jurisdiction by ruling that the tribal member was not required to pay the property taxes imposed by the county. Yellowstone County v. Pease, 96 F3d 1169 (9th Cir. 1996).

Chapter Law Review Articles

Of Castles and Kings: A Perspective for Property Tax Reform, Even, 50 Mont. L. Rev. 243 (1989).

Developing Theories of State Jurisdiction Over Indians: The Dominance of Preemption Analysis, Lynaugh, 38 Mont. L. Rev. 64 (1977).

Revenue and Taxation in the Montana Constitution: Present and Proposed, Harper, 33 Mont. L. Rev. 126 (1971).

Chapter Collateral References

Taxation *key* 57 through 251.

84 C.J.S. Taxation §§26, et seq., 92 through 132, 261, et seq.

71 Am. Jur. 2d State and Local Taxation §§170 through 243, 307 through 391.

Property taxation of computer software. 82 ALR 3d 606.

Separate assessment and taxation of air rights. 56 ALR 3d 1300.

Taxation of business of debt adjusting. 95 ALR 2d 1354.

Taxation of self-service laundries. 87 ALR 2d 1007.

Books or records of title abstracts as subject of property taxes. 149 ALR 1038.

Recipes for Change: A Menu of Property Tax Alternatives—A Report of the Interim Property Tax Committee to the 56th Legislature, 1998 Interim Report, Mont. Leg. Serv. Div.

An Overview of Taxation in Montana: Principles and Practice, 1992 Interim Report, Mont. Leg. Council.

Property Taxation and Other Issues Before the Revenue Oversight Committee, Mont. Leg. Council (1988).

Timber Taxation in Montana, 1977-78 Interim Report, Montana Legislative Council.

Taxation of Montana's Financial Institutions, 1977-78 Interim Report, Montana Legislative Council.

Taxation of Metal Mines, 1977-78 Interim Report, Montana Legislative Council.

Revision of Montana's Property Tax Classification System, 1977-78 Interim Report, Montana Legislative Council.

Motor Vehicle Fee System, 1977-78 Interim Report, Montana Legislative Council.

Comparative Individual Tax Burdens in the Fifty States, 1977-78 Interim Report, Montana Legislative Council.

Montana's Property Taxes: Assessment and Classification, 1975-76 Interim Report, Montana Legislative Council.

Uniform Fee Taxation and Anniversary Date Registration of Motor Vehicles, 1974 Interim Report, Montana Legislative Council.

Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

Property Taxation—Right of Entry, 1969-70 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 1
Classification

Part Compiler's Comments

Property Tax Committee: Section 10, Ch. 463, L. 1997, provided: "(1) There is an interim property tax committee. The committee consists of 12 members. The speaker of the house shall appoint six house members, three from each party, and the senate committee on committees shall appoint six senate members, three from each party.

(2) The committee may study all aspects of the state property tax system and shall prepare a menu of alternatives to revise, reform, or replace the property tax system. The alternatives should include methods that remove volatility from the valuation of property. The alternative methods should include options designed to supplement or replace the current valuation system in order to prevent the exclusive reliance on market value.

(3) In order to provide a wide-ranging series of options for consideration, each individual member of the committee may pursue proposals independently and receive staff assistance on the proposals. The committee may discuss and make suggestions on all proposals. A vote of one-fourth of the members may include a proposal on the menu of alternatives. The menu of alternatives must be presented to the 56th legislature.

(4) The committee may solicit the advice of appropriate persons and entities as the committee considers necessary.

(5) The legislative branch shall provide staff support to the committee. The committee may contract for services as the committee considers necessary."

The final report of the committee is entitled "Recipes for Change: A Menu of Property Tax Alternatives—A Report of the Interim Property Tax Committee to the 56th Legislature", 1998 Interim Report, Montana Legislative Services Division.

Part Case Notes

Effect on Statewide Special Levy: In the matter of refunding the state educational bonds under Ch. 23, L. 1931 (not codified), the issuance and sale of which were originally authorized by initiative measure No. 19, effective December 6, 1920, providing for their payment an annual levy at a given rate on each dollar of the assessed valuation of the taxable property in the state, measure No. 19 held a special act and as such was controlling over the general classification act (sections 84-301 and 84-302, R.C.M. 1947, now repealed), approved February 28, 1919 (Ch. 51, L. 1919), which prescribed the taxable value, at a certain percentage of the assessed value, as a basis of taxation. State ex rel. Judd v. Cooney, 97 M 75, 32 P2d 851 (1934), distinguished in N. Pac. Ry. v. Dunham, 108 M 338, 90 P2d 506 (1939).

Determination of Classification:

For the purposes of taxation, the use to which property is devoted and its productivity make up the measuring stick for determining its proper classification—a matter within the power of the Legislature. Bank of Miles City v. Custer County, 93 M 291, 19 P2d 885 (1933).

The basis for classification of the thing classified for taxation purposes need not be deducible from its nature, and discrimination merely is not inhibited, since there are discriminations which the best interests of society require. Bank of Miles City v. Custer County, 93 M 291, 19 P2d 885 (1933).

When there is a difference between various properties it need not be great or conspicuous in order to warrant classification by taxing officer; for that purpose there is a difference in the doing of business and its results. Bank of Miles City v. Custer County, 93 M 291, 19 P2d 885 (1933).

Part Attorney General's Opinions

State Taxation of Nontribe Member Not Preempted by Federal Concerns: While generally state taxation will be preempted if it impermissibly interferes with a comprehensive federal statutory scheme or established tradition of tribal governance, the simple fact that a particular on-reservation activity may validly be taxed by a tribe does not preclude state taxation of the same activity, and taxation of a nonmember has no effect on federal concerns. A tribe's sovereignty interest does not negate state authority over nonmember activity. Therefore, the interest of a nontribal member in motor vehicles, mobile homes, or personal property (whose tax

situs is within the exterior boundaries of the reservation) and which interest is held in joint tenancy or tenancy in common with a tribal member is subject to those state taxes generally applicable to such property. 42 A.G. Op. 11 (1987).

Part Collateral References

Taxation *key* 40 through 42, 60 through 77.

84 C.J.S. Taxation §§26, et seq., 92 through 132.

71 Am. Jur. 2d State and Local Taxation §§170 through 243.

Carriers: situs of aircraft, rolling stock, and vessels for purpose of property taxation. 3 ALR 4th 837.

Situs of tangible personal property for purposes of property taxation. 2 ALR 4th 432.

15-6-101. Property subject to taxation — classification.

Compiler's Comments

1985 Amendments: Chapters 20 and 681 in (2) substituted "this part" for "15-6-131 through 15-6-141".

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee]. See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Preamble: The preamble to Ch. 681, L. 1985, provided: "WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands."

Statement of Intent: The statement of intent attached to Ch. 681, L. 1985 (SB 33), provided: "It is the intent of the legislature that the department of revenue use the administrative rules for timberland currently in place on the effective date of this act.

Furthermore, it is the intent of the legislature that the changes embodied in Senate Bill No. 33 would ensure that the taxable value of timber, as a class, will not increase in 1986 as a result of being placed in a separate class and having the tax rate calculated as described in Senate Bill No. 33.

Finally, it is the intent of the legislature that the department of revenue may not subsequently change the valuation method for timber until 1991 or the completion of the next reappraisal cycle as required by 15-7-111."

Administrative Rules

Title 42, chapter 20, subchapter 3, ARM Classification of nonproductive patented mining claims.

Case Notes

Absent Equal Protection Violation, No Constitutional Violation for Legislature to Tax or Exempt From Taxation Property Without First Classifying Property: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas while at the same time exempting those properties from a statewide mill levy for education were invalid

because the statutes did not classify those properties as required by this section and, in addition, created a partial exemption from school funding instead of creating a total exemption. The Supreme Court held that the Legislature is not constitutionally limited to a classification system and that the Legislature is not constitutionally limited to providing tax exemptions for property exclusively within a classification system. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

Conflicting Taxation Statutes Not Invalid: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas were invalid because the statutes did not classify those properties as required by this section. The Supreme Court held that the specific statutes providing for taxation of coal, oil, and natural gas were superior to and not invalidated by the more general classification statute. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

Lease With Option to Purchase — Landlord Responsibility for Taxes: The city entered into an agreement with Pollard for construction and lease of a vehicle storage building, with an option to purchase throughout the term of the lease. After the city occupied the building, Pollard received notice that taxes had been assessed and were owing. Pollard maintained that the city had, by terms of the lease agreement, purchased the building and that he was not responsible for the taxes. He relied on the holding in Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985), that the lease was in fact a sale to the city and that the building was in effect a public works project. The Supreme Court found that the option to buy was not a sale and imposed no obligation to purchase. Rather, it found that the agreement fit the definition of a retail installment contract. Title bestowing ownership had not transferred to the city, so owner Pollard was responsible for the taxes on the building. Pollard v. Bozeman, 228 M 176, 741 P2d 776, 44 St. Rep. 1436 (1987).

Duty to File Return: It is the duty of every citizen to return his property for taxation and to pay the taxes levied upon it. Where property is discovered to have escaped taxation and assessment is made in a subsequent year as provided by law, the duty to pay is a continuing present obligation as valid at the time of subsequent assessment as in the year when the tax accrued. Butte & Superior Min. Co. v. McIntyre, 71 M 254, 229 P 730 (1924), followed in OEA Research, Inc. v. McGee, 217 M 321, 704 P2d 1042, 42 St. Rep. 1219 (1985).

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish & Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Bank Stock:

National bank stock was not subject to tax where state bank stock was not taxed. Mont. Nat'l Bank v. Yellowstone County, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928), reversing 78 M 62, 252 P 876 (1926).

Prior to the enactment of Ch. 634, L. 1979, to the extent that shares of stock of a bank had a value over and above the taxable real and personal property of the bank, they were taxable under the provisions of Art. XII, sec. 1, 2, 1889 Mont. Const., which provided that all property other than that specially exempted must be taxed without reference to the character of the securities which go to make up that value. Mont. Nat'l Bank v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928); 82 M 380, 267 P 304 (1928).

Securities of United States: The securities of the United States held by a bank are not taxable by the state, directly or indirectly. Mont. Nat'l Bank v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928); 82 M 380, 267 P 304 (1928).

Bank Property: The real estate, furniture and fixtures, and moneyed capital (prior to the enactment of 15-31-703) of a state bank, constituted all its taxable property. E. Helena St. Bank v. Rogers, 73 M 210, 236 P 1090 (1925).

Shares of Stock — Taxable Situs: Shares of stock in foreign corporations owned by a legal resident of the state who, however, for all intents and purposes had left Montana and was doing business as a stockbroker in the city of New York, which shares had never been within this state but were held and had their business situs in the State of New York, were not subject to taxation within this state. State ex rel. Rankin v. Harrington, 68 M 1, 217 P 681 (1923).

Personal Property: The maxim "mobilia sequuntur personam" as applied to determine the situs of personal property for purposes of taxation is not of universal application but must give way in the face of contrary facts. State ex rel. Rankin v. Harrington, 68 M 1, 217 P 681 (1923).

Extent of Taxing Power: The taxing power of the state does not extend beyond its territorial limits. State ex rel. Rankin v. Harrington, 68 M 1, 217 P 681 (1923).

Constitutionality of Prior Classification Section:

Section 84-301, R.C.M. 1947 (now repealed), which provided for the classification of property for purposes of taxation, did not infringe upon the guaranty of the equal protection of the laws. Hilger v. Moore, 56 M 146, 182 P 477 (1919).

Section 84-302, R.C.M. 1947 (now repealed), which set out the tax rates for the different classes of property, did not violate Art. XII, sec. 1, 1889 Mont. Const. Hilger v. Moore, 56 M 146, 182 P 477 (1919).

State and County Bonds: State and county bonds held in private ownership within the state are "property" within the meaning of that term as employed in the constitution and revenue laws of the state, and, not being exempt under former law, were taxable as such. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Reservation of Minerals: When lands are sold with reservations in the grantor of minerals therein and the right to mine the same, as well as of a right-of-way over them for mining purposes, and for the removal of timber from adjoining lands, such reservations constitute property subject to taxation under this section and 15-1-101. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

Separate Estates in Land: The separate estates which different persons may own in the same land, as where one owns the surface, another the growing timber, and a third the mineral underground, may each be subject to taxation, except such as specifically exempted. N. Pac. Ry. v. Mjelde, 48 M 287, 137 P 386 (1913), explained and overruled in part in N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Purpose of Statute: The provisions of the Political Code of 1895 (sections 3670 to 4083) relating to revenue, contained a scheme for assessment, equalization, and collection of taxes complete in itself, which is available for all taxing purposes for the state, county, and subdivision of counties. The fundamental idea of this scheme or plan was that there must be one tax roll for all purposes, and that the Board of County Commissioners must levy all taxes for the county and its subdivisions, except incorporated cities and towns which had ordinances providing for the assessment and collection of their own taxes. Hilburn v. St. Paul M. & M. Ry., 23 M 229, 58 P 551 (1899).

Collateral Security Mortgage: A mortgage regarded as collateral security belongs to the owner of the debt and is considered to have no situs except that of the domicile of the owner, and, if owned by one not a resident of the state, is not property in the state, subject to taxation, and can only be assessed at the domicile or place of residence of the creditor, without regard to the domicile of the debtor. Holland v. Bd. of Comm'rs, 15 M 460, 39 P 575 (1895). See also Monidah Trust v. Sheehan, 45 M 424, 123 P 692 (1912).

Attorney General's Opinions

Revenue Department Not Zoning Authority — Designation of Property for Assessment Purposes Only: The Department of Revenue is not a bona fide zoning authority that may designate an area as commercial for outdoor advertising purposes. A property designation made by the Department applies to tax assessment classifications only and may not be extended to zoning restrictions. 42 A.G. Op. 43 (1987).

Taxation of Well Casings: Oil and gas well casings that are permanently fixed in the well are taxable as class four property as improvements to real property. They are not mining fixtures. However, under legislation passed by the 1985 Legislature, oil and gas well casings are exempt from future taxation after December 31, 1984. 41 A.G. Op. 16 (1985).

Servicepersons — Registration to Vote — Tax Liability: The fact that a member of the military service has registered to vote in Montana is evidence, though not conclusive proof, that he is a Montana resident and is thus not exempt, under the federal Soldiers' and Sailors' Civil Relief Act of 1940, from property and income taxation by Montana. Montana's election law requires one to be a resident of Montana before voting in the state's elections, so a serviceperson who has registered to vote in Montana (thereby claiming to be a resident) may not claim tax exemption under the federal Act without offering convincing evidence that he is in fact not a Montana resident after all. However, to claim he is not in fact a resident after having registered to vote in Montana would subject him to prosecution for the misdemeanor of fraudulent registration. 41 A.G. Op. 2 (1985).

Collateral References

Taxation *key* 41, 42.

84 C.J.S. Taxation §26, et seq.

71 Am. Jur. 2d State and Local Taxation §§170 through 190.

15-6-131. Class one property — description — taxable percentage.

Compiler's Comments

2005 Amendment: Chapter 559 in (1) near end in exception clause inserted "bentonite". Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

1995 Amendment: Chapter 397 at end of (2) inserted "or, for industrial garnets and associated byproducts, as provided in 15-23-518". Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 in (2), at end, inserted "or, for limestone as provided in 15-23-517". Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 695 in (2), at end, inserted "or, for vermiculite, as provided in 15-23-516". Amendment effective April 27, 1991.

Chapter 700 near end of (1), after "coal", inserted "travertine, building stone". Amendment effective April 26, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

Section 3, Ch. 700, L. 1991, provided: "[This act] is effective on passage and approval [approved April 26, 1991] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 4, Ch. 700, L. 1991, provided: "[This act] terminates December 31, 1993."

1989 Amendment: At end of (2) inserted reference to talc. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1983 Amendment: Deleted former (1)(a), which read: "the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals; and"; in (2) after "is taxed" deleted "as follows"; deleted former (2)(a), which read: "Property described in subsection (1)(a) is taxed at 100% of its market value, as determined by the department of revenue."; and deleted introductory language of former (2)(b), which read: "Property described in subsection (1)(b) is taxed".

Case Notes

Mineral Reservation Right of Entry — Easement Only Does Not Include Property Interest in Minerals: A mineral reservation right of entry is an easement and conveys no interest in the

underlying oil, gas, or minerals or in oil, gas, or minerals produced from the land. McDonald v. Unirex, Inc., 221 M 156, 718 P2d 316, 43 St. Rep. 709 (1986).

Net Proceeds Tax Applies to Fluorspar Removed From Tailings: Fluorspar removed from tailings on land owned by Darby Spar is subject to the net proceeds tax despite the fact that 15-6-131 does not contain a reference to "dump or tailings". The reason for this discrepancy in the statutes is found in Foreman v. Beaverhead County, 117 M 557, 161 P2d 524 (1945). The decision in that case noted the absence of references to "dump or tailings" in holding they were not subject to the tax. The next Legislature specifically included those words in what is now 15-23-502. The Legislature clearly intended to impose the net proceeds tax on the yield from disposed tailings, and for 40 years that is what the Department of Revenue has done by administrative rule. Darby Spar, Ltd. v. Dept. of Revenue, 217 M 376, 705 P2d 111, 42 St. Rep. 1262 (1985).

Law Review Articles

Taxation of Mineral Interests Under the 1889 Constitution, 32 Mont. L. Rev. 47 (1971).

Collateral References

Taxation *key* 62, 63, 66.
84 C.J.S. Taxation §§95 through 98, 111.
71 Am. Jur. 2d State and Local Taxation §218.
Solid mineral royalty a real or personal property for tax purpose. 68 ALR 2d 734.
Property Taxation — Right of Entry, 1969-70 Interim Report, Montana Legislative Council.

15-6-132. Class two property — description — taxable percentage.

Compiler's Comments

1989 Special Session Amendment: Deleted former (1)(b) relating to the annual gross proceeds of underground coal mines and deleted (2)(b) that taxed the gross proceeds at 33 ⅓% of annual gross proceeds; deleted former (1)(c) relating to the annual gross proceeds of coal mines using the strip-mining method and deleted (2)(c) that taxed the gross proceeds at 45% of annual gross proceeds; and made minor change in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

Case Notes

Taxation of Coal Lands Under 1889 Constitution: Coal lands purchased from the federal government were taxed under Art. XII, sec. 3, 1889 Mont. Const., at the price paid therefor and not at 30% of such purchase price, the rate at which real property was taxable under a former classification act. State ex rel. Hinz v. Moody, 71 M 473, 230 P 575 (1924).

Law Review Articles

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Collateral References

Taxation *key* 63.
84 C.J.S. Taxation §§95 through 98.
71 Am. Jur. 2d State and Local Taxation §218.
Solid mineral royalty as real or personal property for tax purposes. 68 ALR 2d 734.
Taxation of Metal Mines, 1977-78 Interim Report, Montana Legislative Council.

15-6-133. Class three property — description — taxable percentage.

Compiler's Comments

2005 Amendment: Chapter 376 in (1)(c) at end of first sentence inserted "which are considered to be nonqualified agricultural land", at beginning of second sentence inserted "Nonqualified agricultural", and inserted third sentence providing that nonqualified agricultural land is valued at the productive capacity and average grade of grazing land; in (2) at beginning inserted "Subject to subsection (3)"; in (3) near beginning before "land" inserted "taxable value of", near middle after "is" deleted "valued at the productive capacity value of grazing land, at the average grade of grazing land, and the taxable value is", after "value" inserted "of the land", and near end after "taxable" inserted "percentage"; and made minor changes in style. Amendment effective October 1, 2005.

Applicability: Section 5, Ch. 376, L. 2005, provided: "[This act] applies to property tax years beginning after December 31, 2005."

Extension of Deadlines: Section 11, Ch. 463, L. 1997, provided: "As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 55th legislature,

it is not possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process will be delayed, which in turn will cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1997, all deadlines are extended as necessary and reasonable, except the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

1995 Amendment: Chapter 485 in (3), near middle, substituted "the average grade of grazing land" for "a production level set by the department". Amendment effective April 14, 1995.

Applicability: Section (6)(2), Ch. 485, L. 1995, provided: "[Sections 4 and 5] [15-6-133 and 15-7-221 (now repealed)] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1993 Amendments: Chapter 267 in (2) substituted "applicable to class four property, as provided in 15-6-134(2)(a)" for ""P" of its productive capacity"; deleted (3) and (4) relating to the taxable percentage rate prior to July 1, 1986, and how it was determined (see 1993 Session Law for text); deleted (5) that provided that after July 1, 1986, no adjustment would be made by the Department to the taxable percentage rate "P" until a revaluation was made; and made minor changes in style. Amendment effective April 2, 1993.

Chapter 627 inserted (1)(c) including as class three property parcels of land of 20 acres or more but less than 160 acres that are not eligible for classification as agricultural land; and inserted (3) establishing a method of valuation of those lands. Amendment effective January 1, 1994.

Severability: Section 11, Ch. 267, L. 1993, was a severability clause.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

Section 5(2), Ch. 627, L. 1993, provided that this section applies to tax years beginning after December 31, 1993.

1991 Amendment: Inserted (1)(b) to include certain nonproductive patented mining claims in class three property. Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1985 Amendment: In (2) substituted "at the taxable percentage rate "P" of its productive capacity" for "at 30% of its productive capacity"; and inserted (3) through (5) that read: "(3) Until July 1, 1986, the taxable percentage rate "P" for class three property is 30%.

(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class three property for the revaluation cycle beginning January 1, 1986, as follows:

(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class three as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the "certified statewide percentage increase".

(b) The taxable value of property in class three is determined as a function of the certified statewide percentage increase in accordance with the table shown below.

(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider agricultural use changes during calendar year 1985.

(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:

Certified Statewide Percentage Increase	Class Three Taxable Percentage "P"
0	30.00
10	27.27
20	25.00
30	23.08
40	21.43
50	20.00

(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111."

1983 Moratorium on Rulemaking by Department: In HB 851 (Ch. 510, L. 1983), the Legislature declared a moratorium on the adoption or amendment of rules governing the assessed valuation of agricultural lands. The bill, which was not codified, provided: "Whereas, the Department of Revenue has recently proposed the repeal of its current administrative rules governing the assessed valuation of agricultural lands and has proposed new rules governing such assessed valuation; and

Whereas, the rules proposed by the Department will increase the assessed valuation of all agricultural lands and will increase the assessed valuation of some agricultural lands by more than 10 times; and

Whereas, the House Agriculture Committee and the Legislature as a whole seriously question the need for and wisdom of the proposed increases, particularly in times of severe economic hardship for farmers and ranchers.

Therefore, it is the intent of this bill to establish a temporary moratorium on the effective date of any rules proposed by the Department of Revenue in the area of assessed valuation of agricultural lands, in order that any such proposals may be more carefully reviewed by the Legislature.

Section 1. **Proposed rules not to be effective until January 1, 1986.** The rules governing the assessed valuation of agricultural lands proposed for adoption by the department of revenue in Montana Administrative Register Notice No. 42-2-209 and published at pages 58 through 64 of Issue No. 2 of the 1983 Montana Administrative Register and any rules substantially equivalent to those rules may not be made effective by the department of revenue until January 1, 1986.

Section 2. **Current rules to remain in effect.** Any repeal or substantial amendment of rules governing the assessed value of agricultural lands now published as ARM 42.20.141 through 42.20.146 may not take effect prior to January 1, 1986."

Statement of Intent: The statement of intent attached to HB 851 (Ch. 510, L. 1983) provided: "It is the intent of the legislature that the Department of Revenue work closely with agricultural associations and representatives of the agricultural community in developing administrative rules on the valuing of agricultural lands for property taxation. The Department may adopt administrative rules prior to the next legislative session so long as those rules are not implemented for taxation purposes prior to January 1, 1986.

The legislature further intends to review these rules in 1985 to ensure the Department has worked closely with the agricultural groups in developing rules and that those rules treat agricultural land fairly for purposes of property taxation in relation to the Montana Constitution, statutes, and other property."

Administrative Rules

ARM 42.20.156 Agricultural and forest land use change criteria.

ARM 42.20.171 Land classification determination date for class three, four, and ten property.

Title 42, chapter 20, subchapter 3, ARM Classification of nonproductive patented mining claims.

ARM 42.20.305 Valuation of acreage beneath improvements on eligible mining claims.

ARM 42.20.306 Valuation of improvements located on eligible mining claims.

ARM 42.20.307 Valuation of eligible mining claim land.

ARM 42.20.516 Application of phasein provisions for class 3, class 4, and class 10 properties that decrease in value due to reappraisal.

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

ARM 42.20.615 Application for agricultural classification of land.

Law Review Articles

Recent Developments in Montana Land Use Law, Goetz, 38 Mont. L. Rev. 97 (1977).

Land Use Planning and the Montana Legislature: An Overview for 1973, Lundberg, 35 Mont. L. Rev. 38 (1974).

The Family: How Are You Going to Keep Them Down on the Farm?, MacDonald, 35 Mont. L. Rev. 88 (1974).

Real Property Tax Assessment in Montana, Sullivan, 34 Mont. L. Rev. 300 (1973).

Collateral References

Taxation *key* 8, 62.

84 C.J.S. Taxation §§94, 110.

71 Am. Jur. 2d State and Local Taxation §188.

Agricultural Land Taxation in Montana, 1984 Interim Report, Montana Legislative Council.

15-6-134. Class four property — description — taxable percentage.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 532 in (1)(a) and (1)(b) at beginning after "subject to" substituted "15-6-222" for "15-6-201(1)(z) and (1)(aa)"; in (1)(e) at beginning after "subject to" substituted "15-6-222(1)" for "15-6-201(1)(z)"; deleted former (2)(a)(i) and (2)(a)(ii) that read: "(i) 3.40% of its taxable market value in tax year 2003;

(ii) 3.3% of its taxable market value in tax year 2004"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 584 in (1)(a) and (1)(b) near beginning after "15-6-201" substituted "(1)(bb) and (1)(cc)" for "(1)(z) and (1)(aa)"; and in (1)(e) near beginning after "15-6-201" substituted "(1)(bb)" for "(1)(z)". Amendment effective May 6, 2005. The amendment by Ch. 532 rendered this amendment void.

Retroactive Applicability: Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2003 Amendment: Chapter 606 in (2)(a) in introductory clause after "15-24-1502" deleted "and subsection (2)(a)(ii) of this section"; in (2)(a)(i) decreased percentage from 3.794% to 3.40% and substituted "2003" for "1999"; inserted (2)(a)(ii) through (2)(a)(vi) stating the percentage of taxable market value in tax years 2004 through 2007 and tax years after 2007; deleted (2)(a)(ii) that read: "(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting 0.0835 percentage points each year until the tax rate is equal to or less than 3.46%"; in (2)(b)(i) in introductory clause substituted "subsection (2)(a)" for "subsection (2)(a)(ii)" and before "market value" inserted "taxable"; in (2)(c) substituted "subsection (2)(a)" for "subsection (2)(a)(i)"; and made minor changes in style. Amendment effective May 9, 2003.

Severability: Section 11, Ch. 606, L. 2003, was a severability clause.

Retroactive Applicability: Section 13(1), Ch. 606, L. 2003, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

2001 Amendment: Chapter 135 in (2)(a) inserted reference to 15-24-1502; and made minor changes in style. Amendment effective March 27, 2001.

Retroactive Applicability: Section 5, Ch. 135, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 436 in (1)(d) decreased lineal yards for golf course from 3,000 yards to 700 yards; and made minor changes in style. Amendment effective April 22, 1999.

Chapter 584 in (1)(a) and (1)(b) inserted "subject to 15-6-201(1)(z) and (1)(aa) and subsections (1)(f) and (1)(g) of this section"; in (1)(c) before "market" inserted "taxable"; in (1)(e) inserted "subject to 15-6-201(1)(z)"; inserted (1)(f) concerning single-family residences, rental multifamily dwelling units, appurtenant improvements, and vacant residential lots; inserted (1)(g) concerning commercial buildings and vacant commercial lots; in (2)(a)(i) inserted references to subsections (1)(f) and (1)(g), decreased tax rate from 3.86% to 3.794%, and substituted "taxable market value in tax year 1999" for "market value"; in (2)(a)(ii) increased percentage points from 0.022 to 0.0835 and at end substituted "less than 3.46%" for "less than 2.78%"; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 3, Ch. 436, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1998."

Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

1997 Amendments: Chapter 200 in (1)(b) and (1)(c), near beginning after "trailers", inserted "manufactured homes"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 463 in (2)(a)(i), after "15-24-1501", inserted "and subsection (2)(a)(ii) of this section"; inserted (2)(a)(ii) providing for annual reduction of taxable percentage rate; in (2)(b)(i), in introductory clause, substituted "the rate provided in subsection (2)(a)(ii)" for "3.86%"; in (2)(c) substituted reference to subsection (2)(a)(i) for reference to subsection (2)(a); and made minor changes in style. Amendment effective April 30, 1997.

Extension of Deadlines: Section 11, Ch. 463, L. 1997, provided: "As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 55th legislature, it is not possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment

process will be delayed, which in turn will cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1997, all deadlines are extended as necessary and reasonable, except the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

1995 Amendments: Chapter 485 in (1)(e), near middle after "15-7-202", deleted "(2)" and after "beneath" substituted "improvements on land described in 15-6-133(1)(c)" for "the agricultural improvements"; deleted former (3) that read: "(3) After July 1, 1986, an adjustment may not be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 574 in (1)(c) increased market value amount of improvement from $80,000 to $100,000, decreased time requirement for occupation of primary residential dwelling from 10 months to 7 months, and increased tax-exempt income eligibility amount for single person from $10,000 to $15,000 and for married couple or head of household from $12,000 to $20,000; in (2)(b)(i), after "Property", substituted "qualifying under the property tax assistance program" for "described" and after "table" substituted current class four property table (see 1995 Session Law for text) for table that read:

"Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$ 0 - $ 1,000	$ 0 - $ 1,200	0%
1,001 - 2,000	1,201 - 2,400	10%
2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%
6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%
8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%";

in (2)(b)(ii)(A) substituted "1995" for "1986"; deleted former (3) that read: "(3) After July 1, 1986, an adjustment may not be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111"; and made minor changes in style. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 6(1), Ch. 485, L. 1995, provided: "[Sections 1 through 3] [15-6-134, 15-7-202, and 15-7-206] apply to tax years beginning after December 31, 1995."

Section 14, Ch. 574, L. 1995, provided: "(1) [This act] is effective on passage and approval. [Approved May 1, 1995.]

(2) (a) Except as provided in subsection (2)(b), [this act] applies to tax years beginning after December 31, 1995.

(b) [Sections 1 through 7 and 11] [15-1-1001 through 15-1-1007, now terminated, and 15-30-176] apply retroactively, within the meaning of 1-2-209, to tax years beginning after December 31, 1994."

1993 Amendments: Chapter 267 inserted (1)(e) concerning improvements on land that is eligible under 15-7-202(2), including 1 acre of real property beneath the agricultural improvements, and requiring that the 1 acre must be valued at market value; in (2)(a) inserted reference to subsection (1)(e); and made minor changes in style. Amendment effective April 2, 1993.

Chapter 562 near middle of first sentence of (1)(c), after "business income", deleted "or loss" and inserted second sentence defining net business income as gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both; and made minor changes in style.

Severability: Section 11, Ch. 267, L. 1993, was a severability clause.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

Section 2, Ch. 562, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

1991 Amendments: Chapter 612 in (1)(c) inserted "but not including social security income paid directly to a nursing home". Amendment effective April 24, 1991.

Chapter 773 in (1)(b), after "improvements", inserted "including trailers or mobile homes used as a residence"; in (1)(c), near beginning after "property", inserted "including trailers or mobile homes", near middle, after "including", inserted "net business income or loss and", and near end, after "couple", inserted "or a head of household"; inserted (1)(e) classifying as class four certain real and personal property used exclusively for the processing of agricultural or timber products; and inserted (2)(d) regarding computation of market value of certain real and personal property used exclusively for the processing of agricultural or timber products. Amendment effective May 15, 1991.

Retroactive Applicability: Section 4, Ch. 612, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Termination: Section 17, Ch. 773, L. 1991, provided: "Subsections (1)(e) and (2)(d) of 15-6-134 terminate January 1, 1993."

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1987 Amendments: Chapter 427 in (1)(c), the "homestead exemption", increased from $35,000 to $80,000 the market value of a home given tax preference when owned by low-income person.

Chapters 427 and 575 in (2)(a) and (2)(b) substituted "3.86%" for "the taxable percentage rate "P""; deleted former (3) that read: "(3) Until January 1, 1986, the taxable percentage rate "P" for class four property is 8.55%"; and deleted former (4) that directed the Department to determine taxable percentage rate "P" for revaluation cycle beginning January 1, 1986, by calculating statewide percentage increase in taxable valuation resulting from reappraisal and applying appropriate class four taxable percentage as set forth in columnar form (the taxable rate was determined to be 3.86%).

Chapter 575 in (1)(c), the "homestead exemption", at end inserted "as adjusted according to subsection (2)(b)(ii)"; and in (3), prohibiting adjustment to the taxable percentage rate until revaluation, after "percentage rate", substituted "for class four property" for ""P"".

Amendments applicable to taxable years beginning after December 31, 1986.

1985 Amendments: Chapter 292 in (1)(d) after "lineal yards", deleted "and were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation"; and at end of (2)(c) after "(2)(a)", deleted "or 4.275%". Amendment applicable to taxable years beginning after December 31, 1984 (sec. 3, Ch. 292, L. 1985).

Chapter 663 deleted former (1)(c)(i) and (1)(c)(ii) and beginning portion of (1)(c)(iii) that read: "(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits"; in (1)(c), after "residential dwelling of", inserted "any person", and increased income limitation from $8,000 to $10,000 for a single person and from $10,000 to $12,000 for a married couple; and in (2)(b) substituted first two columns of income level table (see 1985 Session Law) for first two columns of former table that read:

"Income Single Person	Income Married Couple
$ 0 - $1,000	$ 0 - $1,000
1,001 - 2,000	1,001 - 2,000
2,001 - 2,800	2,001 - 3,000
2,801 - 3,600	3,001 - 4,000
3,601 - 4,400	4,001 - 5,000
4,401 - 5,200	5,001 - 6,000
5,201 - 6,000	6,001 - 7,000
6,001 - 6,800	7,001 - 8,000
6,801 - 7,600	8,001 - 9,000
7,601 - 8,000	9,001 - 10,000"

Amendment applicable to taxable years beginning after December 31, 1985 (sec. 5, Ch. 663, L. 1985).

Chapter 739 in (2)(a) and (2)(b) substituted "at the taxable percentage rate "P" of its market value" for "at 8.55% of its market value"; in (2)(c) substituted "percentage rate "P" established in subsection (2)(a)" for "percentage established in subsection (2)(a), or 4.275%"; and inserted (3) through (5) that read: "(3) Until January 1, 1986, the taxable percentage rate "P" for class four property is 8.55%.

(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class four property for the revaluation cycle beginning January 1, 1986, as follows:

(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class four as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the certified statewide percentage increase.

(b) The taxable value of property in class four is determined as a function of the certified statewide percentage increase in accordance with the table shown below.

(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider changes resulting from new construction, additions, or deletions during calendar year 1985.

(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:

Certified Statewide Percentage Increase	Class Four Taxable Percentage "P"
0	8.55
10	7.77
20	7.12
30	6.57
40	6.10
50	5.70
60	5.34
70	5.02
80	4.75
90	4.50
100	4.27
110	4.07
120	3.88
130	3.71
140	3.56
150	3.42
160	3.28
170	3.16
180	3.05
190	2.94
200	2.85
210	2.75
220	2.67
230	2.59
240	2.51
250	2.44
260	2.37
270	2.31
280	2.25
290	2.19
300	2.13

(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111."

Chapter 743 at end of (2)(c) deleted "or 4.275%"; and inserted (6) that reads: "(6) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as

other than commercial property." Amendment effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1983 Amendments: Chapter 25 made permanent the 1979 temporary amendments relating to golf courses.

Chapter 632 deleted former (1)(c), which read: "(c) all trailers and mobile homes used as permanent dwellings except:

(i) those held by a distributor or dealer of trailers or mobile homes as his stock in trade; and

(ii) those specifically included in another class;"; and in (1)(c) after "real property" deleted "or a trailer or mobile home used as a permanent dwelling".

1981 Amendments: Chapter 564 inserted "Except as provided in 15-24-1402" at the beginning of (2)(a).

Chapter 575 inserted "including otherwise tax-exempt income of all types" in (1)(d)(iii) relating to retirement or disability benefits recipients; changed "$7,000" to "$8,000" and "$8,000" to "$10,000" in (1)(d)(iii) relating to retirement or disability benefits recipients; inserted subsection (2)(b) relating to percentage multiplier calculation for tax rate on residential property owned by certain disadvantaged persons; deleted "(1)(d) and" after "subsection" in (2)(c).

Chapter 599 added "Except as provided in 15-24-1501" at the beginning of (2)(a).

Administrative Rules

ARM 42.18.124 Clarification of valuation periods.

ARM 42.19.401 Property tax assistance program.

ARM 42.19.402 Inflation adjustment for property tax assistance program.

Title 42, chapter 20, subchapter 5, ARM Phasein valuation.

ARM 42.20.516 Application of phasein provisions for class 3, class 4, and class 10 properties that decrease in value due to reappraisal.

ARM 42.20.517 Application of homestead or comstead exemption to mixed use properties.

ARM 42.20.655 Valuation of one acre beneath improvements on agricultural and nonqualified agricultural land.

ARM 42.20.750 Valuation of one acre beneath improvements on forest land.

ARM 42.21.112 Mobile home — improvement to real property.

ARM 42.22.1303 Classification of industrial buildings.

ARM 42.22.1304 Valuation of industrial improvements.

ARM 42.22.1313 Assessment of grain, seed, and fertilizer storage facilities.

Case Notes

Classification of Oil Refinery Equipment as Class Eight Property — Standard of Review: An industrial appraiser for the Department of Revenue properly classified and appraised as class eight property, rather than class four property, certain new oil refinery equipment, including a boiler house fuel gas manifold, cooling tower header improvements, a coal filter bed upgrade, three parts of a hydrocarbon loss recovery system, a plant air drier, an opticrom ADV gasoline chromatograph, a Grabner CCA-V, an alky unit KOH scrubber, two oxygen analyzers, asphalt product handling improvements, a crude truck unloading system for tank storage, a heavy

product flash point tester, two spare fuel oil pumps, eight hydrogen sulfide and carbon dioxide monitors, a breathing air compressor, a manlift, and tank level gauges. Class eight property is not limited to property used directly in a manufacturing process. Despite the fact that the District Court applied the "clearly erroneous" standard of review rather than the proper "correct interpretation" standard, the correct result was reached and the decision was affirmed on appeal. Farmers Union Cent. Exch., Inc. v. Dept. of Revenue, 272 M 471, 901 P2d 561, 52 St. Rep. 810 (1995), distinguishing United Grain v. Dept. of Revenue, 248 M 297, 811 P2d 555 (1991).

Grain Elevator Machinery as Class Four Property: The mixing of grain in a grain elevator does not produce an end product so significantly changed as to constitute a manufacturing process. Therefore, for taxation purposes, grain elevator machinery used to transport grain into and out of storage facilities is properly considered an improvement to land under class four rather than manufacturing property under class eight. United Grain Corp. v. Dept. of Revenue, 248 M 297, 811 P2d 555, 48 St. Rep. 440 (1991).

Power to Uniformly Lower Appraisals of a Type of Property to Equalize Appraisals — "34% Cases": Due to the use of different appraisal manuals for residential property and commercial improvements to real property, the two types of property being in the same tax class, equivalent values were not always placed upon similar properties. The Department of Revenue determined that the commercial valuations averaged 12% higher than the residential valuations and ordered each county assessor to reduce all commercial valuations by 12%. The Department properly assumed the responsibility of solving the problem and in equalizing the valuations in the manner it did was acting under its constitutional mandate and authority to equalize values of taxable property. The 12% reduction did not constitute a reappraisal. The power and duty to equalize included the power to alter appraised values set at the beginning of an appraisal cycle. Hanley v. Dept. of Revenue, 207 M 302, 673 P2d 1257, 40 St. Rep. 2054 (1983).

Taxation Standards — Uniformity Versus True Value: Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. Therefore, unequal appraisals may be reduced even though they result in an assessment at true market value or 100% of market value as required by 15-8-111. Reduction is required where it is satisfactorily shown that under the system as applied, it is impossible to meet both the true value and equality standards. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Petition for Rule Amendment Rendered Moot by Legislation: The Legislature, by placing automobiles and recreational vehicles in separate and distinct classes, emasculated plaintiff's contention that different methods of valuation and different appraisal guides were being improperly used by the Department of Revenue to appraise automobiles and recreational vehicles. The enactment of 15-6-110 and 15-6-111 (now repealed) rendered plaintiff's petition for rule amendment moot. Wetzel v. Dept. of Revenue, 180 M 123, 589 P2d 162 (1979).

Improvements: Improvements of a railroad right-of-way for purposes of taxation fell within class four of section 84-301, R.C.M. 1947 (now repealed), providing for taxation of all land, with improvements thereon, and therefore were assessable at 30% of their true and full value under section 84-302, R.C.M. 1947 (now repealed), and not within class seven embracing all property not included in the preceding six classes, and assessable at 30% of their true value. State ex rel. N. Pac. Ry. v. Duncan, 68 M 420, 219 P 638 (1923).

Attorney General's Opinions

Mobile Home as Improvement — Lienholder to Pay Delinquent Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home (see 1997 amendment) classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Taxation of Well Casings: Oil and gas well casings that are permanently fixed in the well are taxable as class four property as improvements to real property. They are not mining fixtures. However, under legislation passed by the 1985 Legislature, oil and gas well casings are exempt from future taxation after December 31, 1984. 41 A.G. Op. 16 (1985).

Amendment of Repealed Section Void: The amendment of a repealed section is ineffectual as required by 1-2-204. Therefore, the 1979 amendments to 15-6-102 through 15-6-121 made by Ch. 686, 706, and 712, L. 1979, are void by virtue of the repeal of those sections by Ch. 693, L. 1979. 38 A.G. Op. 71 (1980).

Taxable Value of Mobile Homes: The taxable value of mobile homes (see 1997 amendment) included in former class eleven was to be determined as a function of the certified statewide percentage increase pursuant to 15-7-121 (now repealed). 37 A.G. Op. 142 (1978).

Personal Property Tax — Indians: An enrolled member of an Indian tribe is not required to pay personal property taxes on a mobile home that he owns and uses as rental property within the exterior boundaries of a reservation. 37 A.G. Op. 122 (1978).

Law Review Articles

Real Property Tax Assessment in Montana, Sullivan, 34 Mont. L. Rev. 300 (1973).

Collateral References

Taxation *key* 62, 65.

84 C.J.S. Taxation §§94, 104 through 106.

71 Am. Jur. 2d State and Local Taxation §§201 through 211.

Mobile homes or trailers: classification as real estate or personal property for property tax purposes. 7 ALR 4th 1016.

Real estate taxation of condominiums. 71 ALR 3d 952.

Construction of statute or ordinance giving property tax exemption or favorable property tax rate to older persons. 45 ALR 3d 1153.

Validity of statute or ordinance giving property tax exemption or favorable property tax rate to older persons. 45 ALR 3d 1147.

Tenant's interest in respect of building or other structure erected by him as separate unit for property tax apart from land. 154 ALR 1309.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-6-135. Class five property — description — taxable percentage.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 51 in (4)(b)(iii) after "manufacturing in the" substituted "North American Industry Classification System Manual" for "1987 Standard Industrial Classification Manual". Amendment effective March 15, 1999.

Chapter 426 inserted (1)(g) relating to property of rural and small town telecommunications services; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

1995 Amendment: Chapter 418 substituted air and water pollution control equipment for air and water pollution equipment as defined term, in (c), in two places, substituted "department of environmental quality" for "department of health and environmental sciences" and in two places, before "equipment", inserted "control", and in (d) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

1993 Amendment: Chapter 510 in definition of air and water pollution equipment, in first sentence after "means", inserted "that portion of identifiable property", after "machinery" inserted "devices", after "equipment" substituted "designed, constructed, under construction, or operated for" for "use to reduce or control water or atmospheric pollution or contamination by", after "removing" deleted "reducing, altering", after "disposing" inserted "abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert", and after "storing" substituted "or preventing the creation of air or water pollutants, which, except for the use of the item, would be released to the environment" for "pollutants, contaminants, wastes, or heat", inserted second sentence relating to certificate ineligibility, and deleted last sentence that read: "The department of health and environmental sciences shall determine if such utilization is being made"; inserted (2)(b) relating to requests for certification; inserted (2)(c) relating to required rulemaking; and in (2)(d), in first sentence, substituted "A person may appeal the certification, classification, and valuation of the property to" for "The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or" and at beginning of second sentence substituted "Appeals on the property certification must name the department of health and environmental sciences as the respondent, and appeals on the classification or valuation" for "However, the appraised value", after "equipment" substituted "must name the" for "as determined by the", and after "revenue" substituted "as the respondent" for "may be appealed to the county tax appeal board and the state tax appeal board".

1993 Statement of Intent: The statement of intent attached to Ch. 510, L. 1993, provided: "A statement of intent is necessary for this bill because the amendment to 15-6-135 grants rulemaking authority to the department of revenue and the department of health and environmental sciences [now department of environmental quality].

It is intended that the rules promulgated by the departments clarify the definition, application for certification, and use of air and water pollution equipment eligible for special property tax treatment. It is further intended that the rules clarifying the definition and use of air and water pollution control equipment establish a procedure to apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control. The rules should provide certainty regarding the special tax treatment for air and water pollution equipment purchasers, affected local governments, and state departments, thus increasing the use of air and water pollution equipment."

Applicability — Rulemaking: Section 2, Ch. 510, L. 1993, provided: "(1) [This act] applies to tax years beginning after December 31, 1993.

(2) The department of revenue and the department of health and environmental sciences [now department of environmental quality] may institute rulemaking under Title 2, chapter 4, prior to October 1, 1993, to implement [this act], but the rules may not be effective prior to October 1, 1993."

1991 Amendment: In (4)(b)(iii) substituted "1987" for "1972"; inserted (4)(b)(iv) including as new industries those that transport, warehouse, or distribute commercial products if 50% or more of gross sales or receipts are earned from outside the state; inserted (4)(b)(v) including as new industries those that earn 50% or more of annual gross income from out-of-state sales; and in (5)(a), after "professions", inserted "unless the business or profession meets the requirements of subsection (4)(b)(v)". Amendment effective April 27, 1991.

Effective Date — Applicability: Section 5, Ch. 694, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies to taxable years beginning after December 31, 1991."

1987 Amendments: Chapter 370 in (1)(a), relating to cooperatives, at end, before "of 15-6-137" changed "(1)(c)" to "(1)(b)".

Chapter 519 inserted (1)(f) relating to electrolytic reduction facilities.

Chapter 659 inserted (1)(e) relating to research and development firms.

1987 Temporary Amendment: Chapter 568, L. 1987, redesignated tour boats (defined as watercraft, not less than 40 feet in length, designed and employed to accommodate passengers for a fee for the purpose of sightseeing, with or without food and beverage service, and intended primarily for tourism promotion) from class sixteen property to class five property. Section 4, Ch. 568, L. 1987, provided that if House Bill No. 658 was passed and approved, Ch. 568 terminates January 1, 1988. House Bill No. 658 (Ch. 649, L. 1987) was passed and approved May 11, 1987; therefore, the amendment by Ch. 568, L. 1987, being temporary, was not codified.

Effective Date — Applicability: Section 3, Ch. 519, L. 1987, provided: "This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986." The retroactive applicability applies to machinery and equipment used in electrolytic reduction facilities added to class five property by subsection (1)(e) of sec. 1. Effective April 16, 1987.

1981 Amendment: Deleted subsection (1)(c) relating to recreational vehicles owned by low-income retirees; substituted "department of health and environmental sciences'" for "department's" in (2)(b); deleted brackets before "as to" and after "equipment" in (2)(b); inserted "and water" after "air" in (2)(b).

Administrative Rules

ARM 42.19.1102 Treatment of gasohol production facilities.

Title 42, chapter 19, subchapter 12, ARM New industrial property.

ARM 42.20.512 Valuation of class five locally assessed electric and telephone cooperatives and telecommunications companies.

ARM 42.21.113 Leased and rental equipment.

ARM 42.21.123 Farm machinery and equipment.

ARM 42.21.131 Market value of heavy equipment.

ARM 42.21.132 Market value of mining equipment.

ARM 42.21.137 Seismograph units and allied equipment.

ARM 42.21.138 Oil and gas field machinery and equipment.

ARM 42.21.139 Work-over and service rigs.

ARM 42.21.140 Oil drilling rigs.

ARM 42.21.151 Television cable systems.

ARM 42.21.153 Ski lift equipment.
ARM 42.21.155 Depreciation schedules.
ARM 42.22.108 Market value of pollution control equipment.
ARM 42.23.112 Research and development — application and eligibility.

Case Notes

New Industrial Property: The purpose of the tax break for new industrial property is to encourage out-of-state businesses to establish new industrial plants in Montana as well as to encourage the creation of new industries by Montana citizens and businesses. The business need not be creating a totally new market but may be relying on existing out-of-state markets. The tax status cannot be denied merely because already existing industry in the state will benefit. The completion of a second unit of one generating plant 1 year after the completion of the first unit is not a mere expansion of an existing industry when a single agreement called for the construction of the two units. The generation of electricity is a manufacturing process, and electricity is a commercial product. Dept. of Revenue v. Puget Sound Power & Light Co., 179 M 255, 587 P2d 1282 (1978).

Reclassification of Industrial Property Under 1951 Amendment Unconstitutional: Chapter 178, L. 1951, by permitting the reclassification of some industrial property into class five while similar property is in class 4 thwarts the mandate of Art XII, sec. 1 and 11, 1889 Mont. Const. and is invalid. Victor Chem. Works v. Silver Bow County, 130 M 308, 301 P2d 730 (1956), distinguished in Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Manufacturing Machinery: While machinery capable of being used for and actually used in the generation of electricity as a business fell within the designation of "manufacturing machinery", within the meaning of section 84-301, R.C.M. 1947 (now repealed) classifying property for purposes of taxation, it was the use to which it was devoted and its productivity which fixed the rate of taxation. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Custer County, 96 M 566, 32 P2d 8 (1934).

Attorney General's Opinions

Amendment of Repealed Section Void: The amendment of a repealed section is ineffectual as required by 1-2-204. Therefore, the 1979 amendments to 15-6-102 through 15-6-121 made by Ch. 686, 706, and 712, L. 1979, are void by virtue of the repeal of those sections by Ch. 693, L. 1979. 38 A.G. Op. 71 (1980).

Collateral References

Taxation *key* 40, 62, 65, 67.
84 C.J.S. Taxation §§94, 104 through 109, 125.
71 Am. Jur. 2d State and Local Taxation §§186, 189.
Validity and construction of statute or ordinance allowing tax exemption for property used in pollution control. 65 ALR 3d 434.
Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

15-6-137. Class seven property — description — taxable percentage.

Compiler's Comments

2005 Amendment: Chapter 563 in (1) at beginning inserted exception clause; inserted (2) providing that class seven property does not include wind generation facilities classified under 15-6-157; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

1999 Amendment: Chapter 426 deleted former (1)(a) that read: "(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less"; deleted former (2) that read: "(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

1997 Amendment: Chapter 505 in (1)(b), at end, inserted exception clause. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

1989 Special Session Amendment: Deleted former (1)(d) relating to tools or implements not included in another class or exempt from taxation and used to repair and maintain machinery not used for manufacturing and mining purposes. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1989 Amendment: Inserted (1)(d) including as class seven property tools or implements not included in another class or included in statutorily exempted categories; and made minor change in form. Amendment effective April 20, 1989. (See 1989 Special Session amendment.)

Effective Date — Retroactive Applicability: Section 5, Ch. 576, L. 1989, provided: "[This act] is effective on passage and approval [approved April 20, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1981 Amendments: Chapter 330 deleted former subsection (1)(a) that read: "livestock, poultry, and unprocessed products of both".

Chapter 352 reduced the mileage limitation on telephone communications equipment that qualifies for class seven taxation from 1 ¼ to 1 circuit mile for each station in (2).

Chapter 575 substituted "noncentrally" for "centrally" in (1)(c).

Administrative Rules

ARM 42.21.154 Valuation of furniture and fixtures.

Case Notes

Manufacturing Machinery: While machinery capable of being used for and actually used in the generation of electricity as a business fell within the designation of "manufacturing machinery", within the meaning of section 84-301, R.C.M. 1947 (now repealed) classifying property for purposes of taxation, it was the use to which it was devoted and its productivity which fixed the rate of taxation. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Custer County, 96 M 566, 32 P2d 8 (1934).

Tools, Implements, and Machinery Not Used in Manufacture of Article of Trade:

Tools, implements, and machinery employed as an aid to the operation of a business not devoted to the manufacture of an article of trade, fell properly within class two of section 84-301, R.C.M. 1947 (now repealed), and as such were taxable at 20% of their actual value. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Custer County, 96 M 566, 32 P2d 8 (1934).

Machinery and electric appliances located in a substation and used by a railway company in the transformation of electric current employed in the propulsion of its trains, and engine pumps and pipes used for the pumping of water for use in the substation shop, machinery and movable shop tools used for repairing equipment, properly fell within class two of section 84-301, R.C.M. 1947 (now repealed), and within the designation "implements and machinery" and were therefore assessable at 20% of their true value. Chicago, Milwaukee, & St. Paul R.R. v. Powell County, 76 M 596, 247 P 1096 (1926).

Attorney General's Opinions

Amendment of Repealed Section Void: The amendment of a repealed section is ineffectual as required by 1-2-204. Therefore, the 1979 amendments to 15-6-102 through 15-6-121 made by Ch. 686, 706, and 712, L. 1979, are void by virtue of the repeal of those sections by Ch. 693, L. 1979. 38 A.G. Op. 71 (1980).

Collateral References

Taxation *key* 40, 62, 67, 70.

84 C.J.S. Taxation §§94, 104 through 106, 120, 121.

71 Am. Jur. 2d State and Local Taxation §§186, 195, 196.

15-6-138. Class eight property — description — taxable percentage.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 3 in (5)(d) near middle of first sentence substituted "SA07N" for "SA07", inserted second sentence requiring the use of the most recent available wage and salary data if the fall state annual SA07N series is not available, and inserted third sentence requiring the use of a replacement series if the name of the SA07N series changes. Amendment effective February 23, 2005. The amendment by Ch. 531 rendered this amendment void.

Chapter 531 substituted (5) exempting from taxation class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property for former (5) and (6) that read: "(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from

the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula (W/CPI) - 1, where:

(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and

(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).

(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year wage and salary data series.

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of $5,000 or less in market value of class eight property is exempt from taxation." Amendment effective April 28, 2005.

Chapter 532 in (1)(a) at end after "under" substituted "15-6-207 or 15-6-220" for "15-6-201(1)(bb)"; in (1)(b) near middle and in (1)(c) near end after "under" substituted "15-6-219" for "15-6-201(1)(r)"; in (1)(d) near end after "provided in" substituted "15-6-220" for "15-6-201"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1)(f) at end substituted "61-1-101" for "61-1-104". Amendment effective January 1, 2006.

Chapter 584 in (1)(a) at end after "15-6-201" substituted "(1)(dd)" for "(1)(bb)"; and in (1)(b) near middle and in (1)(c) near end after "15-6-201" substituted "(1)(t)" for "(1)(r)". Amendment effective May 6, 2005. The amendment by Ch. 532 rendered this amendment void.

Retroactive Applicability: Section 3, Ch. 3, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to calculations of inflation-adjusted Montana wage and salary income growth made by the department of revenue before [the effective date of this act]." Effective February 23, 2005.

Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

Contingent Effective Date Provision Repealed: Sections 3 through 5, Ch. 531, L. 2005, amended sec. 27(2), Ch. 285, L. 1999, sec. 31(4), Ch. 285, L. 1999, and sec. 5, Ch. 577, L. 2003, which would have repealed this section if the tax rate in subsection (4) of this section reached zero.

Repealer — Contingent Effective Date: Section 31(4), Ch. 285, L. 1999, provided: "[Sections 13(1)(aa) through (1)(ll) and 27(2) [repealing this section]] are effective if the tax rate in [section 12], amending 15-6-138, reaches zero."

2003 Amendments — Composite Section: Chapter 114 in (1)(d) near end after "milk processors" deleted "as providers". Amendment effective October 1, 2003.

Chapter 505 in (5)(a) after "income" deleted "in the last full year for which data is available" and after "from the" substituted "year prior to the base year" for "prior year"; inserted (5)(b) concerning base year; in (5)(c) after "subsection (5)(a)" inserted "by October 30 of each target year"; in (5)(c)(i) and (5)(c)(ii) near beginning substituted "calendar base year" for "most current available year"; in (5)(c)(i) near end substituted "calendar year prior to the base year" for "year prior to the most current available year"; in (5)(c)(ii) substituted "calendar year prior to the base year" for "available year"; in (5)(d) after "use" inserted "the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year" and at end deleted "referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements"; and made minor changes in style. Amendment effective April 25, 2003.

Transition: Section 2(2), Ch. 505, L. 2003, provided that the department of revenue shall perform the calculation in 15-16-138(5) (sic, 15-6-138(5)) for the tax year 2004 not later than June 24, 2003. Effective April 25, 2003.

2001 Amendment: Chapter 438 in (1)(d) after "tools" substituted "except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and

industrial dairies and milk processors as providers as provided in 15-6-201" for "that are not exempt under 15-6-201(1)(r) or (1)(bb)"; in (4) substituted "is taxed at 3% of its market value" for former language that read: "is taxed at:

(a) 6% of its market value for tax years beginning after December 31, 1997; and

(b) 3% of its market value for tax years beginning after December 31, 1999"; in (6) at beginning deleted "Beginning with tax year 2000"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 3, Ch. 438, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

2000 Amendment: Chapter 11 in two places substituted reference to 15-6-201(1)(bb) for reference to 15-6-201(1)(cc). Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 285 deleted former (4)(a) that read: "(a) 7% of its market value for tax year 1997"; inserted (4)(b) relating to tax years beginning after December 31, 1999; inserted (5) providing for reduction in class eight property tax rate based on percentage growth in inflation-adjusted Montana wage and salary income; inserted (6) exempting from taxation certain class eight property beginning with tax year 2000; and made minor changes in style. Amendment effective April 11, 1999.

Chapter 551 inserted (1)(c) regarding oil and gas production equipment; deleted former (4)(a) that read: "(a) 7% of its market value for tax year 1997"; and made minor changes in style. Amendment effective April 30, 1999.

Chapter 555 in (1)(a) at end inserted "that are not exempt under 15-6-201(1)(z)"; in (1)(d) inserted "or (1)(z)"; deleted former (4)(a) that read: "(a) 7% of its market value for tax year 1997"; in (4) after "market value" deleted "for tax years beginning after December 31, 1997" (amendment voided by amendment by Ch. 285); and made minor changes in style. Amendment effective October 1, 1999. The code commissioner changed the references to 15-6-201(1)(z) to 15-6-201(1)(cc) to reflect the composite of that section.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Retroactive Applicability: Section 3, Ch. 551, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Applicability: Section 4, Ch. 555, L. 1999, provided: "[This act] applies to industrial dairies and industrial milk processors established after June 30, 1999."

1997 Amendments: Chapter 121 deleted former (1)(d) that read: "all trailers and semitrailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2) or exempt under 15-6-201(1)(v)"; deleted former (1)(g) that read: "(g) truck toppers weighing more than 300 pounds"; deleted former (4)(a) and (4)(b) that read: "9% of its market value for tax years ending on or before December 31, 1995;

(b) 8% of its market value for tax year 1996"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 496 in (1)(d), after "all trailers and semitrailers", deleted "including those prorated under 15-24-102" and after "except those" deleted "subject to taxation under 61-3-504(2) or" (voided by Ch. 121 amendment); deleted former (1)(f) that read: "buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102"; inserted (1)(g) concerning special mobile equipment; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 570 in (4)(a) inserted "for tax years ending on or before December 31, 1995"; inserted (4)(b) taxing class eight property at 8% of its market value for tax year 1996; inserted (4)(c) taxing class eight property at 7% of its market value for tax year 1997; inserted (4)(d) taxing class eight property at 6% of its market value for tax years beginning after December 31, 1997; and made minor changes in style.

1993 Amendment: Chapter 575 in (1)(d) inserted "and semitrailers" and at end inserted "or exempt under 15-6-201(1)(v)". Amendment effective January 1, 1994.

1989 Special Session Amendment: Deleted (1)(b)(ii) exempting coal and ore haulers from class eight property; deleted former (1)(g) referring to all machinery except that included in another class; inserted (1)(g) relating to truck toppers; inserted (1)(h) relating to furniture,

fixtures, and equipment; inserted (1)(i) relating to x-ray, medical, and dental equipment; inserted (1)(j) relating to citizens' band radios and mobile telephones; inserted (1)(k) relating to radio and television broadcasting and transmitting equipment; inserted (1)(l) relating to cable television systems; inserted (1)(m) relating to coal and ore haulers; inserted (1)(n) relating to theater projectors and sound equipment; inserted (1)(o) relating to other property not included in another class or subject to a fee in lieu of tax; inserted definitions of coal and ore haulers and commercial establishment; reduced tax rate from 11% to 9%; and made minor changes in form. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1989 Amendments: Chapter 576 in (1)(b) and (1)(c), after "tools", inserted "that are not exempt under 15-6-201(1)(r)". Amendment effective April 20, 1989.

Chapter 598 at beginning of (1)(f) inserted "buses and" and after "more than" substituted "1 ton" for "1 ½ tons".

Effective Date — Retroactive Applicability: Section 5, Ch. 576, L. 1989, provided: "[This act] is effective on passage and approval [approved April 20, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

1987 Amendments: Chapter 453 deleted former (1)(e) that read: "(e) aircraft". Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 584 in (1)(d) substituted "all trailers, including those prorated under 15-24-102" for "all trailers up to and including 18,000 pounds maximum gross loaded weight"; and inserted (1)(f) relating to trucks over 1 ½ tons.

Chapter 611 in (1)(d), relating to trailers, at end after "subject to" substituted "taxation under 61-3-504(2)" for "a fee in lieu of property tax".

1985 Amendments — Composite Section: Chapter 516 deleted former (1)(d) that read "motorcycles"; and in former (1)(h) after "all-terrain vehicles", inserted "not registered under 61-3-301". Amendment effective January 1, 1986.

Chapter 743 in (1), deleted former (d) that read "motorcycles", former (e) that read "watercraft", former (h) that read "all-terrain vehicles", and former (i) that read "harness, saddlery, and other tack equipment". Amendment effective January 1, 1986.

Chapter 516 amended former (1)(h) to read "all-terrain vehicles not registered under 61-3-301" because licensed all-terrain vehicles and motorcycles were changed to a fee in lieu of tax by Ch. 516. Because Ch. 743 removes motorcycles and all-terrain vehicles from class eight and transfers them to class 16, a composite section is created for this section and 15-6-146 (now repealed) (class 16). This section makes the Ch. 743 deletion of all-terrain vehicles despite the Ch. 516 amendment of that category of property, but since that category of property is now listed in 15-6-146 (now repealed), the Ch. 516 amendment appears there. Additionally, "motorcycles" is deleted from 15-6-146 (now repealed) following the intent of Ch. 516.

Preamble: For preamble to Ch. 743, L. 1985, see Compiler's Comments to 15-6-134.

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1983 Amendments: Chapter 278 in (1)(f) substituted "all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax" for "light utility and boat trailers".

Chapter 599 inserted (1)(j) relating to goods and equipment intended for rent or lease.

1981 Amendment: In (1)(h), relating to all-terrain vehicles, deleted reference to snowmobiles.

Administrative Rules

ARM 42.19.1103 Treatment of ethanol manufacturing facilities.
Title 42, chapter 21, subchapter 1, ARM Market value of personal property.
ARM 42.21.137 Seismograph units and allied equipment.
ARM 42.21.138 Oil and gas field machinery and equipment.
ARM 42.21.139 Work-over and service rigs.
ARM 42.21.140 Oil drilling rigs.
ARM 42.21.151 Television cable systems.
ARM 42.22.1305 Industrial property other than land.
ARM 42.22.1311 Industrial machinery and equipment trend factors.
ARM 42.22.1312 Industrial machinery and equipment depreciation schedule.
ARM 42.22.1313 Assessment of grain, seed, and fertilizer storage facilities.

Case Notes

Classification of Oil Refinery Equipment as Class Eight Property — Standard of Review: An industrial appraiser for the Department of Revenue properly classified and appraised as class

eight property, rather than class four property, certain new oil refinery equipment, including a boiler house fuel gas manifold, cooling tower header improvements, a coal filter bed upgrade, three parts of a hydrocarbon loss recovery system, a plant air drier, an opticrom ADV gasoline chromatograph, a Grabner CCA-V, an alky unit KOH scrubber, two oxygen analyzers, asphalt product handling improvements, a crude truck unloading system for tank storage, a heavy product flash point tester, two spare fuel oil pumps, eight hydrogen sulfide and carbon dioxide monitors, a breathing air compressor, a manlift, and tank level gauges. Class eight property is not limited to property used directly in a manufacturing process. Despite the fact that the District Court applied the "clearly erroneous" standard of review rather than the proper "correct interpretation" standard, the correct result was reached and the decision was affirmed on appeal. Farmers Union Cent. Exch., Inc. v. Dept. of Revenue, 272 M 471, 901 P2d 561, 52 St. Rep. 810 (1995), distinguishing United Grain v. Dept. of Revenue, 248 M 297, 811 P2d 555 (1991).

Grain Elevator Machinery as Class Four Property: The mixing of grain in a grain elevator does not produce an end product so significantly changed as to constitute a manufacturing process. Therefore, for taxation purposes, grain elevator machinery used to transport grain into and out of storage facilities is properly considered an improvement to land under class four rather than manufacturing property under class eight. United Grain Corp. v. Dept. of Revenue, 248 M 297, 811 P2d 555, 48 St. Rep. 440 (1991).

Petition for Rule Amendment Rendered Moot by Legislation: Under former law, the Legislature, by placing automobiles and recreational vehicles in separate and distinct classes, emasculated plaintiff's contention that different methods of valuation and different appraisal guides were being improperly used by the Department of Revenue to appraise automobiles and recreational vehicles. The enactment of 15-6-110 and 15-6-111 (now repealed) rendered plaintiff's petition for rule amendment moot. Wetzel v. Dept. of Revenue, 180 M 123, 589 P2d 162 (1979).

Property Not Included in Other Classes: Under former law, tailings dump forming a definite and segregated body or mass classifiable as personal property was not a "mine" and hence proceeds of the sale of valuable minerals removed therefrom were not taxable as "net proceeds of a mine". A tailings dump containing valuable minerals was taxable as personal property in class 7 of section 84-301, R.C.M. 1947 (now repealed). Foreman v. Beaverhead County, 117 M 557, 161 P2d 524 (1945).

Taxing Motor Vehicles: Assertion that the Legislature, by enacting Ch. 72, L. 1937, making special provisions for taxing automobiles included in class two of section 84-301, R.C.M. 1947 (now repealed), among other property without express amendment, singled out motor vehicles for special consideration and unlawfully discriminated against them, was not well made, since Legislature may properly place identical articles in the hands of different owners, different uses resulting in different productivity. Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Manufacturing Machinery: While machinery capable of being used for and actually used in the generation of electricity as a business fell within the designation of "manufacturing machinery", within the meaning of section 84-301, R.C.M. 1947 (now repealed) classifying property for purposes of taxation, it was the use to which it was devoted and its productivity which fixed the rate of taxation. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Custer County, 96 M 566, 32 P2d 8 (1934).

Property Not Included in Other Classes:

Under former law, individually owned shares of state bank stock are not "credits" as defined by subsection 6 of section 84-301, R.C.M. 1947 (now repealed) and therefore could not properly be placed in class five of a former classification act; nor did they properly belong in class six, which embraced only shares of national bank stock and moneyed capital owned by a bank and employed in its business, but in the absence of more specific provision should have gone into class seven, as property not included in the preceding six classes. State ex rel. Conrad Banking Corp. v. Mady, 83 M 418, 272 P 691 (1928).

The constituent parts of a street railway track, poles, and trolley wires are personal property and taxable as such under a former classification act, falling within class seven of section 84-301, R.C.M. 1947 (now repealed), at 40% of their true and full value as property not included in the preceding six classes. Butte Elec. Ry. v. Brett, 80 M 12, 257 P 478 (1927).

Supplies: The term "supplies", as used in section 84-301, R.C.M. 1947 (now repealed), in declaring that machinery, fixtures, and supplies shall fall under class four of the property designated therein for taxation purposes, was employed in its ordinary sense, and railroad ties kept on hand for replacement or new construction fall fairly within its meaning. They were not subject to assessment under class seven, comprising all property not included in the six

preceding classes, and taxable at a higher rate than that enumerated in class four. N. Pac. Ry. v. Sanders County, 66 M 608, 214 P 596 (1923).

Attorney General's Opinions

Revenue Department Not Zoning Authority — Designation of Property for Assessment Purposes Only: The Department of Revenue is not a bona fide zoning authority that may designate an area as commercial for outdoor advertising purposes. A property designation made by the Department applies to tax assessment classifications only and may not be extended to zoning restrictions. 42 A.G. Op. 43 (1987).

Taxation of Well Casings: Oil and gas well casings that are permanently fixed in the well are taxable as class four property as improvements to real property. They are not mining fixtures. However, under legislation passed by the 1985 Legislature, oil and gas well casings are exempt from future taxation after December 31, 1984. 41 A.G. Op. 16 (1985).

Amendment of Repealed Section Void: The amendment of a repealed section is ineffectual as required by 1-2-204. Therefore, the 1979 amendments to 15-6-102 through 15-6-121 made by Ch. 686, 706, and 712, L. 1979, are void by virtue of the repeal of those sections by Ch. 693, L. 1979. 38 A.G. Op. 71 (1980).

Collateral References

Taxation *key* 67.

84 C.J.S. Taxation §§107 through 109, 120, 125, 126.

71 Am. Jur. 2d State and Local Taxation §§193, 196.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-6-141. Class nine property — description — taxable percentage.

Compiler's Comments

2005 Amendment: Chapter 563 in (1)(a) near beginning of second sentence after "property" inserted "except wind generation facilities classified under 15-6-157"; in (1)(c)(i) after "facilities" substituted "classified under 15-6-156 and wind generation facilities classified under 15-6-157" for "included in class thirteen"; in (1)(c)(ii) and (1)(c)(iii) at end after "classified" substituted "under 15-6-135" for "in class five"; in (1)(c)(iv) and (1)(c)(v) at end after "included in" substituted "15-6-145" for "class twelve"; in (1)(c)(vi) at end after "included in" substituted "15-6-156" for "class thirteen"; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

2001 Amendments — Composite Section: Chapter 7 near middle of (1)(a) substituted "electrical energy" for "electric energy"; and in (1)(c)(i) substituted "electrical generation facilities" for "electrical generation facility property". Amendment effective October 1, 2001.

Chapter 406 in (1)(a) in second sentence near end after "company also owns property" inserted reference to property serving incorporated municipality that received service from facilities of electric cooperative. Amendment effective April 28, 2001.

Saving Clause: Section 7, Ch. 406, L. 2001, was a saving clause.

1999 Amendments — Composite Section: Chapter 426 in (1)(c)(iii) at end substituted "class five" for "class seven"; inserted (1)(c)(vi) relating to telecommunications property included in class thirteen; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 556 in (1)(a) near beginning inserted "allocations of an" and substituted "company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both" for "companies' allocations"; and in (1)(c)(i) substituted "electrical generation facility property included in class thirteen" for "electric power and natural gas companies' property". Amendment effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Section 39(1), Ch. 556, L. 1999, provided that this section applies to tax years beginning after December 31, 1999.

Saving Clause: Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

1997 Amendment: Chapter 505 in (1)(a) inserted second and third sentences concerning certain rural electric cooperatives' property and definition of property used for the sole purpose; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

1991 Amendment: In (1), near beginning, and in (2) substituted reference to class nine for reference to class eleven; in (1)(c)(iv) substituted reference to class twelve for reference to class fifteen; and in (1)(c)(v) substituted reference to class twelve for reference to class seventeen. Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1986 Amendment: In (1)(c)(iv) before "railroad" deleted "airline and"; and inserted (1)(c)(v) relating to airline transportation property.

1985 Amendments — Code Commissioner Correction — Composite Section: Chapter 722 in (2) substituted "Class eleven property is taxed at 12% of market value except as provided in 15-23-202 for railroad property" for former (2) that read: "(2) Class eleven property is taxed as follows:

(a) Property described in subsection (1)(a) and (b) is taxed at 12% of market value.

(b) Except as provided in 15-23-202, property described in subsection (1)(c) is taxed at 15% of market value". Amendment applicable to taxable years beginning after December 31, 1985 (sec. 3, Ch. 722, L. 1985).

Chapter 743 inserted (1)(c)(iv) relating to airline and railroad transportation property. Amendment effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

In (1)(c)(iv) the Code Commissioner changed "class thirteen" to "class fifteen". See 1985 compiler's comments (*Effective Date . . .*) at 15-6-145.

A composite section was prepared by the Code Commissioner for (2) since the transfer by Ch. 743 to class fifteen of airline and railroad property obviated the exception clause in (2). Without Ch. 743 the tax rate would, under Ch. 722, be 12% for all class eleven property. Hence, it would have been appropriate to include the exception language "except as provided in 15-23-202 for railroad property" at the end of (2). But with the creation of a new class for railroad property with pertinent tax rate provisions, the exception language is obsolete and has been deleted.

Preamble: For preamble to Ch. 743, L. 1985, see Compiler's Comments to 15-6-134.

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1981 Amendments: Chapter 367 inserted "Except as provided in 15-23-202" at the beginning of (2)(b).

Chapter 478 added the language relating to allocations of properties of public agencies to the end of (1)(a).

Composite of 1981 Amendment and Effective Date: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy." The Code Commissioner has composited this effective date with the substantive amendment made by sec. 2, Ch. 478, L. 1981, in subsection (1)(a). In the composite the Code Commissioner has substituted "if" for "This act is not effective until" to reflect the substance of the effective date within the code section.

Applicability: Section 12, Ch. 686, L. 1979, provided: "This act applies to taxable years after December 31, 1979."

Collateral References

Taxation *key* 62, 67.

84 C.J.S. Taxation §§94, 104 through 109, 120, 125.

71 Am. Jur. 2d State and Local Taxation §§186, 196.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-6-143. Class ten property — description — taxable percentage.

Compiler's Comments

1999 Amendment: Chapter 584 at end of (2) inserted "in tax year 1999, and the rate is reduced by 0.11% each year until the property is taxed at 0.35% of its forest productivity value". Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 297 in (2) substituted "taxed at 0.79%" for "taxed at the percentage rate "P""; deleted (3) and (4) that read: "(3) For taxable years beginning January 1, 1994, and thereafter, the taxable percentage rate "P" applicable to class ten property is 4%/B, where B is the certified statewide percentage increase to be determined by the department of

revenue as provided in subsection (4). The taxable percentage rate "P" must be rounded downward to the nearest 0.01% and must be calculated by the department before July 1, 1994.

(4) (a) Prior to July 1, 1994, the department shall determine the certified statewide percentage increase for class ten property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1994, of all property in the state, excluding use changes occurring during the preceding year, classified under class ten as class ten is described in this section; and

(ii) Y is the appraised value, as of January 1, 1993, of all property in the state that would be classified under class ten as class ten is described in this section as this section reads in 1993.

(b) B must be rounded downward to the nearest 0.0001%."; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 4, Ch. 297, L. 1997, provided: "[This act] [15-6-143, 15-44-102, 15-44-103] is effective on passage and approval [approved April 17, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Extension of Deadlines: Section 11, Ch. 463, L. 1997, provided: "As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 55th legislature, it is not possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process will be delayed, which in turn will cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1997, all deadlines are extended as necessary and reasonable, except the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

1991 Amendment: (Temporary version) Chapter 783 in (3), after "taxed at", substituted "4%" for "the percentage rate "P""; and deleted (4) through (6) that read: "(4) For taxable years beginning January 1, 1986, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 30%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (5). The taxable percentage rate "P" shall be rounded downward to the nearest 0.01% and shall be calculated by the department before July 1, 1986.

(5) (a) Prior to July 1, 1986, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1986, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and

(ii) Y is the appraised value, as of January 1, 1985, of all property in the state that, as of January 1, 1986, would be classified under class thirteen as class thirteen is described in this section.

(b) B shall be rounded downward to the nearest 0.0001%.

(6) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a valuation has been made as provided in 15-7-111". Amendment effective May 17, 1991, and terminates January 1, 1994.

(Version effective January 1, 1994) Chapter 783 deleted former text that read: "(1) Class thirteen property includes all timberland.

(2) Timberland is contiguous land exceeding 15 acres in one ownership that is capable of producing timber that can be harvested in commercial quantity.

(3) Class thirteen property is taxed at the percentage rate "P" of the combined appraised value of the standing timber and grazing productivity of the property.

(4) For taxable years beginning January 1, 1986, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 30%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (5). The taxable percentage rate "P" shall be rounded downward to the nearest 0.01% and shall be calculated by the department before July 1, 1986.

(5) (a) Prior to July 1, 1986, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1986, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and

(ii) Y is the appraised value, as of January 1, 1985, of all property in the state that, as of January 1, 1986, would be classified under class thirteen as class thirteen is described in this section.

(b) B shall be rounded downward to the nearest 0.0001%.

(6) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a valuation has been made as provided in 15-7-111"; inserted (1) designating forest land as class thirteen (now class ten, pursuant to sec. 16, Ch. 773, L. 1991, a coordination instruction) property; inserted (2) taxing class thirteen (now class ten) property at the percentage rate "P" of its forest productivity value; inserted (3) concerning calculating the percentage rate "P" for taxable years beginning January 1, 1994; and inserted (4) concerning formula for determining certified statewide percentage increase for class thirteen (now class ten) property prior to July 1, 1994.

Termination Amended: Section 5, Ch. 680, L. 1991, and sec. 11, Ch. 783, L. 1991, amended sec. 10, Ch. 681, L. 1985, to remove the termination of the amendments to this section.

Coordination: Section 12, Ch. 680, L. 1991, provided: "If House Bill No. 340 is passed and approved and if it includes a section that amends 15-6-143, then the amendments made by [this act] to 15-6-143 are void." House Bill No. 340 was passed and approved as Ch. 783, L. 1991.

Retroactive Applicability of Termination Amendment: Section 13(3), Ch. 680, L. 1991, provided that sec. 5, Ch. 680, L. 1991, applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Coordination Instruction: Section 16(1), Ch. 773, L. 1991, provided: "If House Bill No. 340 is passed by the 52nd legislature and approved by the governor, then the code commissioner is instructed, at the time of codification of that enactment, to change references in that enactment from class thirteen property to class ten property." House Bill No. 340 was approved May 17, 1991, as Ch. 783, L. 1991. Therefore, the Code Commissioner has changed references to the respective tax classes where they appear in this section in accordance with the coordination instruction.

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee].

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation] , landowners of private forest lands, the timber industry, and local governments."

Assessment on Privately Owned Timberland — Collection — Disposition: Section 13, Ch. 783, L. 1991, provided: "(1) An assessment of 10 cents per acre or portion of an acre is imposed on all privately owned timberland for tax years 1991 through 1993. The assessment is imposed on the owner of the land as of January 1 of each year.

(2) This assessment is done on November 30 of each year and must be paid with the property tax due as provided in 15-16-101.

(3) (a) By September 1 of each year, the department of revenue shall provide county treasurers with a list showing:

(i) all owners of private timberland in the county as of January 1 of that year; and

(ii) the number of acres of timberland owned by each as of January 1 of that year.

(b) The county treasurer shall send each listed owner a bill for the assessment imposed in subsection (1) with the property tax notice required in 15-16-101.

(4) The county treasurer shall collect the assessment imposed in subsection (1) and remit collections to the state treasurer by December 20 of each year.

(5) The state treasurer shall deposit all collections from the assessment imposed in subsection (1) in the general fund." Section 17(2), Ch. 783, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990. Section 19, Ch. 783, L. 1991, provided that this section terminates January 1, 1994.

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

Applicability: Section 17(1), Ch. 783, L. 1991, provided that the amendment to the version of this section effective January 1, 1994, applies to taxable years beginning after December 31, 1993.

Retroactive Applicability of Amendment: Section 17(2), Ch. 783, L. 1991, provided that the temporary version of this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Preamble: The preamble to Ch. 681, L. 1985, provided: "WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands."

1985 Statement of Intent: The statement of intent attached to Ch. 681, L. 1985 (SB 33), provided: "It is the intent of the legislature that the department of revenue use the administrative rules for timberland currently in place on the effective date of this act.

Furthermore, it is the intent of the legislature that the changes embodied in Senate Bill No. 33 would ensure that the taxable value of timber, as a class, will not increase in 1986 as a result of being placed in a separate class and having the tax rate calculated as described in Senate Bill No. 33.

Finally, it is the intent of the legislature that the department of revenue may not subsequently change the valuation method for timber until 1991 or the completion of the next reappraisal cycle as required by 15-7-111."

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Administrative Rules

ARM 42.20.516 Application of phasein provisions for class 3, class 4, and class 10 properties that decrease in value due to reappraisal.

15-6-145. Class twelve property — description — taxable percentage.

Compiler's Comments

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, near beginning of (1) inserted reference to property of a railroad car company.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

1991 Amendment: Throughout section substituted reference to class twelve for reference to class fifteen; in (1), after "1986", inserted "and all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986"; in (2), in two places, substituted reference to tax year for reference to taxable year and substituted "1991" for "1986"; in (3)(a) and (3)(b), after "15-1-101(1)(d)", deleted "including class 1 and class 2 property"; and in (4)(b) inserted reference to subsection (a) of subsection (4) and subsection (3). Amendment effective May 15, 1991.

Retroactive Applicability: Section 18(3), Ch. 773 L. 1991, provided in part that the amendments to class fifteen property contained in 15-6-145, as amended by [section 8] of Ch. 773, L. 1991, except those amendment that change the number of the class, are effective on passage and approval (approved May 15, 1991) and apply retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1991.

June 1986 Amendment: At end of (2) inserted "or 12%, whichever is less".

March 1986 Amendment: Deleted former (1)(b) that read: "all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986"; in (3) inserted "except class fifteen property" in two places; in (4)(c) deleted "and airline" before "taxable values"; and in (5) after "1976" deleted "and the Tax Equity and Fiscal Responsibility Act of 1982", substituted "it" for "they", and after "industrial property" inserted "except class fifteen property".

Effective Date — Applicability Dates — Code Commissioner Correction: This section is effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

The March 1986 and June 1986 amendments apply retroactively to tax years beginning after December 31, 1985 (sec. 8, Ch. 7, Sp. L. March 1986, and sec. 3, Ch. 24, Sp. L. June 1986).

In (1) and (2), the Code Commissioner changed "class thirteen" to "class fifteen" because Ch. 681, L. 1985, and Ch. 699, L. 1985, also enacted class thirteen property classifications.

Preamble: For preamble to Ch. 743, L. 1985, see Compiler's Comments to 15-6-134.

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

Administrative Rules

ARM 42.22.116 Determination of tax rate for class twelve property.

ARM 42.22.117 Methodology for preparation of sales assessment ratio study.

Collateral References

From Liquor Stores to Burlington Northern Railroad: Issues Before the Revenue Oversight Committee, 1986 Interim Report, Montana Legislative Council.

15-6-156. Class thirteen property — description — taxable percentage.

Compiler's Comments

2005 Amendment: Chapter 563 in (1)(a), (1)(b), and (1)(c) after "facilities" inserted "except wind generation facilities classified under 15-6-157"; in (2)(b) at end after "15-6-137" inserted "or 15-6-157"; in (2)(e) and (2)(f) at end after "classified" substituted "under 15-6-135" for "in class five"; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

2001 Amendment: Chapter 591 in (1) in exception clause substituted reference to (2)(g) for reference to (2)(f); inserted (2)(g) concerning exempt generation facilities; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

1999 Enactment: The enactment of a class thirteen property section by sec. 27, Ch. 556, L. 1999, was rendered void by sec. 34(2), Ch. 556, L. 1999, a coordination section. Pursuant to sec. 34, the text of sec. 27 was replaced.

Saving Clause: Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

Effective Date: Section 38(1), Ch. 556, L. 1999, provided that this section is effective January 1, 2000.

Applicability: Section 39(1), Ch. 556, L. 1999, provided that this section applies to tax years beginning after December 31, 1999.

Administrative Rules

ARM 42.22.101 Centrally assessed property — definitions.

ARM 42.22.1312 Industrial machinery and equipment depreciation schedule.

15-6-157. Class fourteen property — description — taxable percentage.

Compiler's Comments

Effective Date: Section 14, Ch. 563, L. 2005, provided: "[This act] is effective on passage and approval." Approved May 2, 2005.

Retroactive Applicability: Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

15-6-191. Application for certain class four classifications.

Compiler's Comments

1995 Amendment: Chapter 574 in (1), after "property", inserted "under the property tax assistance program"; in (2) substituted "March 15" for "March 1"; and made minor changes in style. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 14, Ch. 574, L. 1995, provided: "(1) [This act] is effective on passage and approval. [Approved May 1, 1995.]

(2) (a) Except as provided in subsection (2)(b), [this act] applies to tax years beginning after December 31, 1995.

(b) [Sections 1 through 7 and 11] [15-1-1001 through 15-1-1007, now terminated, and 15-30-176] apply retroactively, within the meaning of 1-2-209, to tax years beginning after December 31, 1994."

1985 Amendment: Deleted former (1)(b) and (1)(c) that read: "(b) his retirement benefits;

(c) his marital status". Amendment applicable to taxable years beginning after December 31, 1985 (sec. 5, Ch. 663, L. 1985).

1983 Amendment: In (1), substituted reference to (1)(c) of 15-6-134 for (1)(d) to reflect amendment to that section.

1981 Amendments: Chapter 101 in (2) added the last three sentences relating to change in eligibility.

Chapter 575 deleted "subsection (1)(c) of 15-6-135 or" after "described in" in (1).

Administrative Rules

ARM 42.19.401 Property tax assistance program.

ARM 42.19.402 Inflation adjustment for property tax assistance program.

ARM 42.19.501 Property tax exemption for qualified disabled veterans.

Collateral References

Construction of statute or ordinance giving property tax exemption or favorable property tax rate to older persons. 45 ALR 3d 1153.

Validity of statute or ordinance giving property tax exemption or favorable property tax rate to older persons. 45 ALR 3d 1147.

15-6-192. Application for classification as new industrial property.

Administrative Rules

Title 42, chapter 19, subchaper 12, ARM New industrial property.

Collateral References

Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

15-6-193. Extended property tax assistance — phasein.

Compiler's Comments

Severability: Section 11, Ch. 606, L. 2003, was a severability clause.

Effective Dates: Section 12, Ch. 606, L. 2003, provided "(1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval [approved May 9, 2003].

(2) [Section 8] [not codified] is effective July 1, 2003.

(3) [Section 2] [15-6-193, version effective January 1, 2009] is effective January 1, 2009."

Applicability: Section 13, Ch. 606, L.2003, provided: "(1) [Sections 1 and 3 through 5] [15-6-193, temporary version, 15-6-134, 15-6-201, and 15-7-111] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

(2) [Section 2] [15-6-193, version effective January 1, 2009] applies to tax years beginning after December 31, 2008."

Termination: Section 14, Ch. 606, L. 2003, provided: "[Section 1] [15-6-193, temporary version] terminates December 31, 2008."

Administrative Rules

ARM 42.19.405 Definitions.

ARM 42.19.406 Extended property tax assistance program.

Part 2
Tax-Exempt Property

Part Compiler's Comments

Section Not Codified: Section 84-5201.2, R.C.M. 1947, which is a short title that applies to several sections in this part, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 507, L. 1975.

Part Case Notes

Tribal Court — No Jurisdiction to Enjoin County Property Taxation: In an action by a Crow tribal member challenging a county's right to impose property taxes on reservation land held in fee by the member, the Ninth Circuit Court held that the Crow Tribal Court exceeded its jurisdiction by ruling that the tribal member was not required to pay the property taxes imposed by the county. Yellowstone County v. Pease, 96 F3d 1169 (9th Cir. 1996).

Part Attorney General's Opinions

Nonprofit Organization Not Exempt — Rented Building — Special Improvement District Exemptions: A nonprofit organization's building rented for gain or profit is not exempt from property taxes, nor is its real property within a special improvement district exempt from special improvement assessments. 35 A.G. Op. 77 (1974).

Part Collateral References

Taxation *key* 173 through 251.

84 C.J.S. Taxation §223, et seq.

71 Am. Jur. 2d State and Local Taxation §§307 through 391.

Exemption of property leased by and used for purposes of otherwise tax-exempt body. 55 ALR 3d 430.

Availability of tax exemption to property held on lease from exempt owner. 54 ALR 3d 402.

Prospective use for tax-exempt purposes as entitling property to tax exemption. 54 ALR 3d 9.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution. 61 ALR 2d 938.

Tax exemption of real property as affected by time of acquisition of title by private owner entitled to exemption. 54 ALR 2d 996.

Exemption from taxation of municipally owned or operated stadium, auditorium, and similar property. 16 ALR 2d 1376.

Constitutional exemption from taxation as subject to legislative regulation respecting conditions of its assertion. 4 ALR 2d 744.

15-6-201. Governmental, charitable, and educational categories — exempt property.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 2 inserted (2)(a)(iv) exempting from taxation up to 160 acres by a public charity that applies for an exemption after December 31, 2004; and requiring that the application contain a legal description of the property proposed for exemption. Amendment effective February 23, 2005.

Chapter 531 deleted former (1)(ff) that read: "(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(i) all agricultural implements and equipment;

(ii) all mining machinery, fixtures, equipment, tools, and supplies;

(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;

(v) all goods and equipment that are intended for rent or lease;

(vi) special mobile equipment as defined in 61-1-104;

(vii) furniture, fixtures, and equipment;

(viii) x-ray and medical and dental equipment;

(ix) citizens' band radios and mobile telephones;

(x) radio and television broadcasting and transmitting equipment;

(xi) cable television systems;

(xii) coal and ore haulers; and

(xiii) theater projectors and sound equipment"; and made minor changes in style. Amendment effective April 28, 2005.

Chapter 532 deleted former (1)(h) through (1)(l) that read: "(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft"; deleted former (1)(p) that read: "(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100"; deleted former (1)(r) through (1)(ff) that read: "(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004;

(iii) 32% for tax year 2005;

(iv) 32.6% for tax year 2006;

(v) 33.2% for tax year 2007;

(vi) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004;

(iii) 13.8% for tax year 2005;

(iv) 14.2% for tax year 2006;

(v) 14.6% for tax year 2007;

(vi) 15% for tax year 2008 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

(ee) light vehicles as defined in 61-1-139; and

(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(i) all agricultural implements and equipment;

(ii) all mining machinery, fixtures, equipment, tools, and supplies;

(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;

(v) all goods and equipment that are intended for rent or lease;

(vi) special mobile equipment as defined in 61-1-104;

(vii) furniture, fixtures, and equipment;

(viii) x-ray and medical and dental equipment;
(ix) citizens' band radios and mobile telephones;
(x) radio and television broadcasting and transmitting equipment;
(xi) cable television systems;
(xii) coal and ore haulers; and
(xiii) theater projectors and sound equipment"; deleted former (3) and (4) that read: "(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1)(j) substituted "61-8-102" for "61-1-123"; in (1)(v) substituted current text incorporating definitions in 61-1-101 for former text that read: "all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131"; deleted former (1)(z)(i) and (1)(z)(ii) that read: "(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004"; deleted former (1)(aa)(i) and (1)(aa)(ii) that read: "(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004"; in (1)(ee) at end substituted "61-1-101" for "61-1-139"; in (1)(ff)(vi) at end substituted "61-1-101" for "61-1-104"; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 532 rendered this amendment void.

Chapter 563 deleted former (1)(z)(i) and (1)(z)(ii) that read: "(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004"; deleted former (1)(aa)(i) and (1)(aa)(ii) that read: "(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004"; in (1)(ff) after "15-6-156" inserted "and 15-6-157"; and made minor changes in style. Amendment effective May 2, 2005. The amendment by Ch. 532 rendered this amendment void.

Chapter 584 in (1)(a)(iii) at end before "profit" inserted "gain or"; in (1)(b) near beginning after "clergy" inserted "not to exceed one residence for each member of the clergy" and at end after "buildings" inserted "which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements"; in (1)(c) at beginning after "property" inserted "owned and" and at end after "societies" substituted "not operated for gain or profit" for "for educational purposes"; inserted (1)(d) exempting certain property used exclusively for educational purposes; in (1)(e) at beginning inserted "property used exclusively"; in (1)(f)(iii) after "maintained and" inserted "not" and after "operated for" substituted "gain or" for "private or corporate"; in (1)(i) at end before "profit" substituted "operated for gain or" for "used or held for private or corporate"; inserted (2)(a) defining clergy; inserted (2)(b)(iii) exempting up to 15 acres of property owned by a purely public charity and providing that if the property is not directly used for the charitable purpose within 8 years of receiving an exemption or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable; in (2)(c) in second sentence after "personal property" inserted "owned by the public museum, art gallery, zoo, or observatory that is"; and made minor changes in style. Amendment effective May 6, 2005.

Retroactive Applicability: Section 3, Ch. 2, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2003 Amendments — Coordination — Composite Section: Chapter 577 inserted (1)(ff) enumerating exempt property if the tax rate in 15-6-138 reaches zero; and made minor changes in style. The effect of the amendment by Ch. 577 was to eliminate the version of this section that was effective upon the contingency of the tax rate in 15-6-138 reaching zero. Amendment effective October 1, 2003.

The amendments to (1)(z) and (1)(aa) made by sec. 2, Ch. 577, L. 2003, were rendered void by sec. 10, Ch. 606, L. 2003, a coordination section.

Chapter 606 substituted (1)(z) and (1)(aa) relating to the percentage of market value of residential and commercial property for tax years beginning with 2003 for former text that read: "(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 23% for tax year 2000;

(ii) 27.5% for tax year 2001; and

(iii) 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 9% for tax year 2000;

(ii) 11% for tax year 2001; and

(iii) 13% for tax year 2002 and succeeding tax years"; and made minor changes in style. Amendment effective May 9, 2003.

Severability: Section 11, Ch. 606, L. 2003, was a severability clause.

Retroactive Applicability: Section 13(1), Ch. 606, L. 2003, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Contingent Effective Date: Section 31(4), Ch. 285, L. 1999, provided: "[Sections 13(1)(aa) through (1)(ll) [15-6-201(1)(aa) through (1)(ll), now 15-6-201(1)(ff)] and 27(2)] are effective if the tax rate in [section 12], amending 15-6-138, reaches zero." Section 5, Ch. 577, L. 2003, amended Sec. 31(4), Ch. 285, L. 1999, so that the contingency applies only to sec. 27(2), Ch. 285, L. 1999 (repeal of 15-6-138).

2001 Amendment: (Temporary version) Chapter 438 deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; inserted (1)(dd) providing exemption for all manufacturing machinery, fixtures, equipment, and tools used during construction and for 10 years after initial ethanol production; and made minor changes in style. Amendment effective October 1, 2001.

(Version effective January 1, 2003) Deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; inserted (1)(dd) providing exemption for all manufacturing machinery, fixtures, equipment, and tools used in construction of and for 10 years after completion of ethanol manufacturing facility; and made minor changes in style.

(Version effective on occurrence of contingency) Deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; in (1)(ee) and (1)(ff) after "tools" deleted "that are not exempt under 15-6-201(1)(r)"; and made minor changes in style.

Applicability: Section 3, Ch. 438, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

2000 Amendment by Referendum: Chapter 515, L. 1999, in temporary version inserted (1)(cc), in 2003 version inserted (1)(dd), and in contingent version inserted (1)(pp) exempting light vehicles from taxation; and made minor changes in style. Amendment in temporary version effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

2000 Amendment: Chapter 11 deleted former (1)(bb) that read: "(bb) the percentage of valuation of land calculated pursuant to 15-7-111(4)"; and made minor changes in style. Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

1999 Amendments — Composite Section: (Version effective January 1, 2003) Chapter 285 inserted (1)(dd) exempting personal property intended for rent or lease in ordinary course of business; and made minor changes in style. Amendment effective January 1, 2003.

(Version effective on occurrence of contingency) Inserted (1)(ee) exempting agricultural implements and equipment; inserted (1)(ff) exempting certain mining machinery, fixtures, equipment, tools, and supplies; inserted (1)(gg) exempting certain manufacturing machinery, fixtures, equipment, tools, and supplies; inserted (1)(hh) exempting certain goods and equipment intended for rent or lease; inserted (1)(ii) exempting special mobile equipment; inserted (1)(jj) exempting certain furniture, fixtures, and equipment used in commercial establishments; inserted (1)(kk) exempting x-ray and medical and dental equipment; inserted (1)(ll) exempting citizens' band radios and mobile telephones; inserted (1)(mm) exempting radio and television broadcasting and transmitting equipment; inserted (1)(nn) exempting cable television systems; inserted (1)(oo) exempting coal and ore haulers; inserted (1)(pp) exempting theater projectors and sound equipment; and made minor changes in style. Amendment effective on occurrence of contingency.

Chapter 438 at beginning of (1)(e) inserted "subject to subsection (2)"; in (2)(a)(i)(A) inserted "offers its charitable goods or services to persons without regard to race, religion, creed, or gender and"; inserted (2)(a)(ii) concerning agricultural property owned by purely public charity; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 539 inserted (1)(r)(ii) exempting space vehicles and business personal property used to design, manufacture, launch, and repair space vehicles from property taxation; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 555 inserted (1)(cc) regarding personal property used by an industrial dairy or milk processor and dairy livestock used by an industrial dairy; inserted (3) defining industrial dairy and industrial milk processor; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 584 inserted (1)(z) outlining exemption rates applied to market value of certain residential property; inserted (1)(aa) concerning commercial property; inserted (1)(bb) concerning land; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Section 172, Ch. 584, L. 1999, was a severability clause.

Applicability: Section 2, Ch. 438, L. 1999, provided: "[This act] applies to tax periods beginning after December 31, 1999."

Section 2, Ch. 539, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Section 4, Ch. 555, L. 1999, provided: "[This act] applies to industrial dairies and industrial milk processors established after June 30, 1999."

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 121 in (1)(i) substituted "and campers" for "weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537"; in (1)(k), at end, deleted "travel trailers, and campers"; substituted (1)(v) concerning trailers, semitrailers, pole trailers, and travel trailers for former text that read: "that have a licensed gross weight of 26,000 pounds or more or that are registered through a proportional registration agreement under 61-3-721. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 472 in (1)(o) substituted "persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment" for "the mentally ill or the vocationally handicapped as defined in 18-5-101"; and made minor changes in style.

Chapter 496 in (1)(i), near end, substituted "61-3-504" for "61-3-504(2)" (voided by Ch. 121 amendment); inserted (1)(x) concerning buses, trucks, and truck tractors; inserted (1)(y) concerning motorcycles and quadricycles; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 88 at beginning of (1)(u) deleted "beginning January 1, 1994"; in (1)(v), after "more", inserted "or that are registered through a proportional registration agreement under 61-3-721"; in (3), after "investment", deleted "made after January 1, 1979"; and made minor changes in style. Amendment effective January 1, 1996.

Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (1)(o), the Code Commissioner has made the change and made minor conforming changes in grammar.

Chapter 257 inserted (1)(w) exempting vehicles registered under 61-3-456; and made minor changes in style.

Chapter 418 in (1)(c), in two places, substituted "department of public health" for "department of health and environmental sciences"; in (1)(u), at beginning, deleted "beginning January 1, 1994"; at beginning of (2)(a) inserted "For the purposes of subsection (1)(e)"; in (3), after "made", deleted "after January 1, 1979"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(c), in two places, substituted "department of public health and human services" for "department of health and environmental sciences"; in (1)(u), at beginning, deleted "beginning January 1, 1994"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 585 in (1)(e), after "owned", inserted "or property that is leased from a federal, state, or local governmental entity" and after "charity" substituted "if the property is" for "and". Amendment effective May 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Retroactive Applicability: Section 2, Ch. 585, L. 1995, provided that [this act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

1993 Amendments — Composite Section: Chapter 54 in (1)(a), at beginning, inserted exception clause; in (1)(a)(i), after "owned by", inserted "the federal government or" and at end, after "congress", deleted "to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives)"; and made minor changes in style. Amendment effective February 18, 1993.

Chapter 80 inserted (1)(a)(i)(B) excepting United States property, as provided in 15-24-1103, from exemption from taxation; and made minor changes in style. Amendment effective February 25, 1993.

Chapter 575 inserted (1)(a)(v) relating to rural fire districts and other entities providing fire protection; inserted (1)(v) relating to and defining trailers and semitrailers with a licensed gross weight of 26,000 pounds or more; and made minor changes in style. Amendment effective January 1, 1994.

A style change in (1)(b) was slightly different. The codifier chose the more appropriate of the two.

Effective Date — Retroactive Applicability: Section 2, Ch. 54, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved February 18, 1993.

Effective Date — Applicability: Section 4, Ch. 80, L. 1993, provided: "[This act] is effective on passage and approval and applies to any foreclosures occurring after [the effective date of this act]." Effective February 25, 1993.

1991 Amendments: Chapter 71 at beginning of (1)(m) inserted "motor vehicles". Amendment effective March 15, 1991.

Chapter 123 at beginning of (1)(e) inserted "property owned by" and after "charity" inserted "and directly used for purely public charitable purposes"; at end of (1)(o) inserted exemption for property owned and used by a nonprofit organization for care of the retired, aged, or chronically ill; and near beginning of (2)(a), after "includes", substituted requirements of tax-exempt status and method of accomplishing activities for former language that read: "organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit". Amendment effective March 20, 1991.

Chapter 271 in (1)(g) substituted "public museums, art galleries, zoos, and observatories" for "public art galleries and public observatories"; and substituted present (2)(b) relating to tax

exemption for public museums, art galleries, zoos, and observatories for former (2)(b) that read: "(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only". Amendment effective March 29, 1991.

Chapter 467 in (3), in introductory clause after "generation", inserted "or low emission wood or biomass combustion devices". Amendment effective April 17, 1991.

Chapter 783 inserted (1)(u) including timber as exempt property beginning January 1, 1994. Amendment effective July 1, 1991.

Effective Date — Retroactive Applicability: Section 2, Ch. 71, L. 1991, provided: "[This act] is effective on passage and approval [approved March 15, 1991] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Section 2, Ch. 271, L. 1991, provided: "[This act] is effective on passage and approval [approved March 29, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Retroactive Applicability: Section 3, Ch. 123, L. 1991, provided: "[Section 1] [15-6-201] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1991 Statement of Intent: The statement of intent attached to Ch. 467, L. 1991, provided: "A statement of intent is required for this bill because it is anticipated that rulemaking proceedings will be required for implementation.

Montana currently has nine communities that exceed the state and federal ambient air quality standards for particulate matter smaller than 10 microns in diameter (PM-10) and two communities that exceed carbon monoxide standards. Several other communities have PM-10 concentrations approaching the ambient standards.

It is the intention of the legislature that the tax credit available for the cost of purchasing and installing a low emission wood or biomass combustion device be restricted to only the most efficient devices available on the market. While replacing older wood stoves with newer low-emission wood stoves may reduce ambient levels of PM-10, carbon monoxide, and other pollutants, the legislature finds that the current tax incentives do not encourage the improvements in efficiency and reductions in pollutants that will be required in the future to improve air quality.

While it restricts the availability of these tax incentives, the legislature finds it appropriate to increase the amount of the incentive available for those devices that qualify. This action is intended to stimulate the availability of the more efficient devices and further promote their use. Changes are also being made, as appropriate, to preserve the application of other incentives to the installation and production of these devices."

Applicability: Section 5, Ch. 467, L. 1991, provided: "[This act] applies to taxable years beginning after December 31, 1991, and before January 1, 1996."

Section 17(1), Ch. 783, L. 1991, provided that the amendment to this section applies to taxable years beginning after December 31, 1993.

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee].

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

1989 Amendments: Chapter 59 inserted (1)(s) that read: "(s) harness, saddlery, and other tack equipment". Amendment effective March 10, 1989.

Chapter 576 inserted (1)(r) exempting from taxation the first $15,000 or less of value of certain hand-held tools; and made minor changes in phraseology. Amendment effective April 20, 1989.

Chapter 617 inserted (1)(t) exempting title plant owned by title insurer or agent as defined in 33-25-105.

Chapter 713 in (1)(t) substituted "title insurance producer" for "title agent". Amendment effective January 1, 1990.

Effective Date — Retroactive Applicability: Section 4, Ch. 59, L. 1989, provided: "[This act] is effective on passage and approval [approved March 10, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Section 5, Ch. 576, L. 1989, provided: "[This act] is effective on passage and approval [approved April 20, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Applicability: Section 6, Ch. 617, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1987 Amendments: Chapter 455 in (1)(c), after "for educational purposes, and for", substituted reference to nonprofit health care facilities for "hospitals" and inserted sentence relating to unlicensed health care facilities. Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 545 in (1)(m), relating to certain entities furnishing potable water, at beginning inserted "land". Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 556 inserted (1)(q) relating to facility for international sports events. Amendment applicable to taxable years beginning after December 31, 1986.

Chapter 611 in (1)(i), relating to truck canopies, at end after "exempt from" substituted "taxation under 61-3-504(2) and 61-3-537" for "the fee in lieu of tax"; inserted (1)(k) relating to motor homes, travel trailers, and campers; and deleted former (1)(k) and (1)(l) that read: "(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) motorcycles and quadricycles". Amendment applicable to motor vehicles registered on or after July 1, 1987.

Chapter 649 inserted (1)(l) relating to all watercraft. Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

Applicability: Section 3, Ch. 556, L. 1987, provided in part: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986." The retroactivity applies to property owned by a nonprofit corporation and provides primarily for training for or competition in international sports or athletic events, which was added as an exemption by subsection (1)(q) of sec. 1.

1985 Amendments: Chapter 463 exempted certain farm buildings and machinery.

Chapter 516 exempted motorcycles and quadricycles. Amendment effective January 1, 1986.

1983 Amendments: Chapter 170 exempted property of certain companies that furnish potable water.

Chapter 323 exempted the right of entry to explore for oil, gas, coal, or minerals.

Chapter 523 exempted property owned by entities caring for certain disadvantaged persons.

1981 Amendments: Chapter 478 added the exception at the end of (1)(a)(i) relating to privately owned generating facilities.

Chapter 614 exempted light vehicles.

Composite of 1981 Amendment and Effective Date: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy." The Code Commissioner has composited this effective date with the substantive amendment made by sec. 1, Ch. 478, L. 1981, in subsection (1)(a). In the composite the Code Commissioner has substituted "if" for "This act is not effective until" to reflect the substance of the effective date within the code section.

Administrative Rules

Title 42, chapter 4, ARM Tax credits.

ARM 42.19.502 Exemptions involving an ownership test.

ARM 42.19.506 Exemptions involving a use test.

ARM 42.19.1102 Treatment of gasohol production facilities.

ARM 42.19.1103 Treatment of ethanol manufacturing facilities.

ARM 42.19.1104 Property tax exemption for nonfossil energy system.

ARM 42.20.102 Applications for property tax exemptions.

ARM 42.20.501 Definitions.

ARM 42.20.505 Assessment notices and valuation reviews.

Case Notes

Cattle Not Institutions of Purely Public Charity: The respondent operated a stewardship program that raised and sold cattle. The profit from the livestock sales was donated to evangelical organizations that used most of the money for evangelical services and a small portion for charitable purposes. The Supreme Court held that the cattle were raised to be sold for profit rather than for direct distribution to the needy. Therefore, the cattle did not qualify as institutions of purely public charity and were not tax-exempt. Steer, Inc. v. Dept. of Revenue, 245 M 470, 803 P2d 601, 47 St. Rep. 2199 (1990).

Tax-Exempt Status of Property Determined by Use, Not Ownership: The respondent operated a stewardship program that raised and sold cattle. The profit from the livestock sales was donated to evangelical organizations that used most of the money for evangelical services and a small portion for charitable purposes. The Supreme Court held that the cattle were not tax-exempt property because they were raised for profit rather than being distributed directly to the needy. Steer, Inc. v. Dept. of Revenue, 245 M 470, 803 P2d 601, 47 St. Rep. 2199 (1990).

Outpatient Clinic Not Considered Hospital for Property Tax Exemption Purposes: Applying the definitions set out in 50-5-101, the District Court properly found that an outpatient clinic was not a hospital and was not entitled to property tax exemptions under this section for property used "for hospital purposes". Dept. of Revenue v. Gallatin Outpatient Clinic, Inc., 234 M 425, 763 P2d 1128, 45 St. Rep. 2025 (1988).

State's Tax Appeal — Costs and Attorney Fees Denied Taxpayer — Appeal Not Frivolous or in Bad Faith: There was substantial evidence to support trial court's determination that Department of Revenue's appeal was neither frivolous nor in bad faith and that taxpayer thus was not entitled to costs and attorney fees under 25-10-711. An issue raised by the Department was retroactive application to a prior landowner of the tax-exempt status granted taxpayer. This issue was well within the bounds of legitimate argument on a substantial issue on which there was a bona fide difference of opinion, and the Department prevailed on the issue. Taxpayer's contention that the appeal was in bad faith because the Department challenged existing law in a prior case was unfounded, since the prior case was 20 years old. The law is not static.

Furthermore, there was an issue not resolved by the prior case. Dept. of Revenue v. New Life Fellowship of Mont., Inc., 217 M 192, 703 P2d 860, 42 St. Rep. 1129 (1985).

Tax Exemption for Undeveloped Property Adjacent to Church Buildings — Application of Doctrine of Strict Construction of Tax Exemptions: Where the plaintiff church owned land, adjacent to the church, that was used for a church road and recreational activities of church members, the District Court erred, in a quiet title action brought by the church, in denying a tax exemption for the land actually used for the road providing access to the church. However, as there was no direct evidence of the use for church purposes of the other undeveloped property adjacent to the road and church, the Supreme Court strictly construed the tax exemption laws to deny an exemption for the other undeveloped property. Old Fashion Baptist Church v. Dept. of Revenue, 206 M 451, 671 P2d 625, 40 St. Rep. 1774 (1983).

Leased Property of Hospitals: Personal property leased by nonprofit hospital and used exclusively for hospital purposes was exempt from taxation even though the lessor, a private profit corporation, received a profit from the lease. The Legislature intended to exclude "ownership" of property as a criterion in determining applicability of exemption to property "used exclusively for hospitals". Mont. Deaconess Hosp. v. Cascade County, 164 M 256, 521 P2d 203 (1974).

Institution of Public Charity — Nonprofit Foundation: Nonprofit foundation operating and maintaining home for aged was entitled to tax exemption under statute granting exemption to institutions of purely public charity, notwithstanding evidence that foundation charged fees and imposed admission requirements. Bozeman Deaconess Foundation v. Ford, 151 M 143, 439 P2d 915, 37 ALR 3d 558 (1968).

Exclusive Use: The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

Educational Purposes: The term "educational purposes", as used in Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school, and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

Religious Education — Church Camp: Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. When church summer camp, containing 22 acres of land and 28 improvements, was "exclusively used for educational purposes" within the meaning of this section and Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.), it was exempt from taxation. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

Limits of Public Charity — Nominal Payment — Limitation on Beneficiaries:

An institution of purely public charity, which is exempt from taxation under Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

A summer camp for children operated by a Methodist church was not exempt from taxation as an "institution of purely public charity". Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

Property Leased for School Purposes:

Under Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section, ownership of property is of no importance. It is exempt from taxation if it is used exclusively for educational purposes. NW. Improvement Co. v. Rosebud County, 129 M 412, 288 P2d 657 (1955).

A school building, built by an improvement company and leased by it to a school district, wherein the school district was to pay any tax which might be assessed and wherein the amount of the lease just covered the cost of the building, was exempt from taxation. NW. Improvement Co. v. Rosebud County, 129 M 412, 288 P2d 657 (1955).

Assessments Within Irrigation District — Not "Taxes": Assessments for irrigation district purposes, in their nature akin to special assessments for local improvements, are not "taxes" within the meaning of this section and Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.), declaring that state property shall be exempt from taxation, and

state-owned lands within the district are subject to assessments levied by the district for district purposes. Toole County Irrigation District v. St., 104 M 420, 67 P2d 989 (1937).

Land Purchased From the State:

Under section 1868, R.C.M. 1921 (now repealed), lands purchased from the state on deferred payments may be taxed only at the percentage of the value of the land which the amount actually paid bears to the total purchase price. Under Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section, state property is exempt from taxation. Instead of assessing only the interest of a purchaser of such lands represented by his initial payment, the assessor levied taxes upon them at their full cash value. Taxes paid by the State under protest on the value in excess of the equity the purchaser had in the land were illegally levied as upon state property. St. v. Lewis & Clark County, 84 M 204, 274 P 855 (1929), distinguishing Courtney v. Missoula County, 21 M 591, 55 P 359 (1898).

Under Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section providing, inter alia, that state property is exempt from taxation, where the purchaser of state lands reconveyed them to the state to obviate foreclosure of the mortgage thereon, the lands were thereafter property of the state and nontaxable, entitling it to recover back taxes paid thereon under protest. St. v. Lewis & Clark County, 84 M 204, 274 P 855 (1929).

Lands to which the state retains the title under a contract of purchase are subject to taxation as property of the purchaser. Courtney v. Missoula County, 21 M 591, 55 P 359 (1898).

Property of a County — Special Assessments: When a city lot owned by the county is not used for county purposes and special municipal improvements enhance its value for building purposes, the county is liable for the payment of the consequent special assessments, constitutional and statutory provisions exempting its property from taxation not applying under such conditions. State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928).

Bank Stock: Prior to the enactment of Ch. 634, L. 1979, to the extent that shares of stock of a bank had a value over and above the taxable real and personal property of the bank they were taxable, under the 1889 constitutional provision that all property other than that specially exempted must be taxed without reference to the character of the securities which go to make up that value. Mont. Nat'l Bank v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928); 82 M 380, 267 P 304 (1928).

United States Securities: The securities of the United States held by a bank are not taxable by the state, directly or indirectly. Mont. Nat'l Bank v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928); 82 M 380, 267 P 304 (1928).

Property of the United States:

Property of a state bank represented by bonds of the United States is exempt from taxation under the supreme law of the land, irrespective of the fact that it is not made so by the state constitution or statutes. E. Helena St. Bank v. Rogers, 73 M 210, 236 P 1090 (1925).

Property belonging to the United States is exempt from special assessments, as well as from ordinary taxes, even in the absence of such provisions relative thereto as those found in the constitution or state laws. Ford v. Great Falls, 46 M 292, 127 P 1004 (1912).

State and County Bonds: State and county bonds held in private ownership within the state are "property" within the meaning of that term as employed in the constitution and revenue laws of the state, and not being declared exempt, are taxable as such. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.), expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. This section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Property of School Districts — Assessments for Special Improvements: Assessments for special municipal improvements are not taxes; hence constitutional and statutory provisions exempting property from taxation are not applicable to such assessments. Under this rule the property of a school district, devoted exclusively to school purposes, in the absence of express constitutional or statutory exemption, is liable for assessments made for special municipal improvements. Kalispell v. School District, 45 M 221, 122 P 742 (1912). Compare with Ford v. Great Falls, 46 M 292, 127 P 1004 (1912).

Property Must Be Used for Charitable Purposes: The provisions of the constitution and of this section, making certain property exempt from taxation, do not extend to a charitable institution as an association or corporate body, but only to such property of the institution as is used

exclusively for charitable purposes, and the mere intention of such institution to devote certain of its lands to the erection of buildings for charitable purposes does not change the rule. Mont. Catholic Missions v. Lewis & Clark County, 13 M 559, 35 P 2 (1893).

Attorney General's Opinions

School District Not Allowed to Claim Special Fuel Tax Refund Paid by Bus Service Contractor: When a school district has paid a tax on special fuels, the district may seek a special fuel tax refund regardless of the district activity for which the fuels were used. However, a school district may not claim a special fuel tax refund paid on special fuels by a company that contracts with the school district to provide bus service for the district. 51 A.G. Op. 7 (2005).

School District Not Exempt From Payment of Solid Waste Management District Assessments: Article VIII, sec. 5, Mont. Const., authorizes the Legislature to exempt state property from taxation, and this section exempts school district property from taxation. However, taxation does not generally include special assessments or user fees. The purpose of a solid waste management district assessment is to recoup the costs of providing infrastructure and services that directly and tangibly benefit affected properties, not to raise general revenue or fund other programs. Therefore, solid waste management district assessments are not considered taxes within the meaning of this section. School district properties are not exempt from paying reasonable solid waste management fees that do not exceed the cost of waste management services. 48 A.G. Op. 21 (2000). See also 46 A.G. Op. 7 (1995).

No Authority for Self-Governing City to Assess Fire Service Fees to State Property Within Fire Service Area: The city of Helena, a self-governing city, is precluded from assessing fire service fees to state property located in the city fire service area because the fees are a tax for services provided for the general public good, and thus prohibited by subsection (1)(a)(ii) of this section, rather than an assessment commensurate with a specific benefit conferred on the assessed property. 46 A.G. Op. 7 (1995).

Irrigation District Property: Irrigation district property that is not related to or used in irrigation work is not exempt from taxation under the general irrigation district exemptions in 15-6-201 and 85-7-2011. 41 A.G. Op. 17 (1985).

Servicepersons — Registration to Vote — Tax Liability: The fact that a member of the military service has registered to vote in Montana is evidence, though not conclusive proof, that he is a Montana resident and is thus not exempt, under the federal Soldiers' and Sailors' Civil Relief Act of 1940, from property and income taxation by Montana. Montana's election law requires one to be a resident of Montana before voting in the state's elections, so a serviceperson who has registered to vote in Montana (thereby claiming to be a resident) may not claim tax exemption under the federal Act without offering convincing evidence that he is in fact not a Montana resident after all. However, to claim he is not in fact a resident after having registered to vote in Montana would subject him to prosecution for the misdemeanor of fraudulent registration. 41 A.G. Op. 2 (1985).

"Nonresidential Structure" to Refer to Entire System: The exemption given to each "nonresidential structure" in 15-6-201 refers to each energy generating system, not to its individual parts. The reference to nonfossil forms of energy generation is defined in 15-32-102 to be a system for capturing or converting energy into usable sources. The legislative intent behind 15-6-201 indicates the intention of encouraging, through tax incentives, the development of alternative energy systems. Whether a single structure contains all the components that generate energy, thereby making it a system, must be made on a case-by-case basis. 40 A.G. Op. 6 (1983).

Collateral References

Taxation *key* 191 through 251.

84 C.J.S. Taxation §287, et seq.

71 Am. Jur. 2d State and Local Taxation §§332 through 391.

Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others. 61 ALR 4th 1105.

Property tax: effect of tax-exempt lessor's reversionary interest on valuation of nonexempt lessee's interest. 57 ALR 4th 950.

What are educational institutions or schools within state property tax exemption provisions. 34 ALR 4th 698.

What constitutes church, religious society, or institution exempt from property tax. 28 ALR 4th 344.

Recovery of tax paid on exempt property. 25 ALR 4th 186.

Tax exemption of educational body as extending to property used by personnel as living quarters. 55 ALR 3d 485.

Nursing homes as exempt from property taxation. 45 ALR 3d 1147.

Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes. 39 ALR 3d 640.

Homes for the aged as exempt from property taxation. 37 ALR 3d 565.

Garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations. 33 ALR 3d 938.

Charitable, educational, or religious tax exemption of property held in trust for tax-exempt organization. 94 ALR 2d 626.

Property of agricultural fair society or association engaged in educational activities. 89 ALR 2d 1104.

Tax exemption of Blue Cross, Blue Shield, or other hospital or medical service corporation. 88 ALR 2d 1414.

Church parking lots as entitled to tax exemptions. 75 ALR 2d 1106.

Dining rooms or restaurants as within tax exemptions extended to property of religious, educational, charitable, or hospital organizations. 72 ALR 2d 521.

Constitutionality of exemption for college fraternity or sorority houses. 66 ALR 2d 904.

"Scientific institution" within property tax exemption provisions. 34 ALR 2d 1221.

Living quarters or property used for recreation purposes as within contemplation of tax exemptions extended to property of religious, educational, charitable, or hospital organizations. 15 ALR 2d 1064.

15-6-202. Freeport merchandise and business inventories exemption.

Compiler's Comments

1995 Amendment: Chapter 99 at end of definition of business inventories, after "rented", deleted "or mobile homes held by a dealer or distributor as part of his stock in trade"; and made minor changes in style. Amendment effective March 9, 1995.

1983 Amendment: In (5), after ""Business inventories" includes goods" substituted "primarily intended for sale and not for lease" for "intended for sale or lease".

1981 Amendment: In (1), substituted "and business inventories are exempt" for "is exempt"; in (4), substituted "the freeport merchandise class" for "this class"; and added definition of business inventories.

Administrative Rules

ARM 42.21.116 Exempt intangible personal property deduction for commercial and industrial property.

ARM 42.21.125 Business equipment.

Case Notes

Tax Exemption for Business Inventory While Taxing Livestock Not Violative of State or Federal Equal Protection Laws: The Supreme Court reversed a lower court decision that held that taxing livestock while exempting business inventories was unconstitutional in that the law denied certain individuals equal protection under the federal and state constitutions. The Supreme Court ruled that a middle tier scrutiny was not required; rather the proper test was a rational basis test to determine if there was a basis for treating inventory and livestock differently. Under the rational basis test, it was clear that the Legislature had acted rationally in applying different classifications, and historically the two properties had been treated differently. Mont. Stockgrowers Ass'n v. St., 238 M 113, 777 P2d 285, 46 St. Rep. 1132 (1989).

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.) expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. This section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Attorney General's Opinions

Grain Stored in Farmer's Granaries: Grain stored in a farmer's granaries does not qualify for the business inventories exemption set forth in 15-6-202. Such grain is taxable as class six property under 15-6-136 (now repealed), but if it is held in the possession of the original producer for less than 7 months following harvest, it qualifies for the tax exemption provided in 15-6-207. 41 A.G. Op. 13 (1985).

Sugar Refinery's Piled Sugar Beets Exempt From Tax — Business Inventory: If the products of a sugar refinery qualify as business inventory under 15-6-202, then the raw materials (sugar beets) used to produce such products also qualify for the exemption, since the definition of business inventory also includes "raw materials and work in progress with respect to such goods". While not defined by the Legislature, the term "raw materials" is generally defined as the material or substance out of which other products or the final product is made. 40 A.G. Op. 82 (1984).

15-6-203. Veterans' clubhouse exemption — incompetent veterans' trusts.

Compiler's Comments

1999 Amendment: Chapter 204 in (1) in first sentence after "is used" substituted "primarily" for "exclusively" and substituted "personal property" for "library and furniture" and inserted second sentence regarding application of tax exemption; and made minor changes in style. Amendment effective March 29, 1999.

Retroactive Applicability: Section 3, Ch. 204, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after December 31, 1998."

Administrative Rules

ARM 42.19.502 Exemptions involving an ownership test.
ARM 42.19.506 Exemptions involving a use test.
ARM 42.20.102 Applications for property tax exemptions.

Case Notes

Constitutionality:

The provisions of this section exempting property purchased with funds received from the United States as pensions or compensation are constitutional, being a valid exercise of legislative power. Henderson v. Missoula, 106 M 596, 79 P2d 547 (1938).

It was within the power of the Legislature to declare it the policy of the state, based upon an admissible construction of the federal statutes in that behalf, that title to funds received from the United States as pension, etc., after their delivery to the guardian should remain in the United States, and that the benefit of such statutes should extend to real property purchased with such funds. Henderson v. Missoula, 106 M 596, 79 P2d 547 (1938).

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.) expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. This section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Collateral References

84 C.J.S. Taxation §300.

Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes. 39 ALR 3d 640.

15-6-204. Money and credits exemption.

Compiler's Comments

2005 Amendment: Chapter 532 in (2) near beginning after "credits are" substituted "for the purposes of this section, all money" for "hereby defined for the purpose of taxation as all moneys not constituting moneyed capital as hereinafter defined" and at end after "offset" deleted "provided, however, that credits as herein defined shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana"; and made minor changes in style. Amendment effective October 1, 2005.

Case Notes

Evidence of Debt Secured by Mortgages: Chapter 64, L. 1929 (this section, 15-24-501 (now repealed), and 15-24-508 (now repealed)), in providing that mortgages on real and personal property belonging to a banking institution shall be included in the computation looking to the ascertainment of the value of its moneyed capital and its shares of stock for taxation purposes, while others owning mortgages are exempt from taxation thereon, does not violate the state or federal constitution. Bank of Miles City v. Custer County, 93 M 291, 19 P2d 885 (1933).

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.), expressed the entire will of the people with respect to property absolutely exempt from

taxation, and the extent of legislative power to create exemptions. Subsection (1) of this section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Collateral References

Taxation *key* 73, 74.
84 C.J.S. Taxation §§116, 117, 123, 287.
71 Am. Jur. 2d State and Local Taxation §212.
Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

15-6-205. State water conservation projects exempt.

Compiler's Comments

2005 Amendment: Chapter 532 made minor changes in style. Amendment effective October 1, 2005.

Collateral References

Taxation *key* 234.
84 C.J.S. Taxation §§293, 294, 320.
71 Am. Jur. 2d State and Local Taxation §336.

15-6-206. Irrigation and drainage facilities — when exempt.

Case Notes

Statute Unconstitutional: This section is unconstitutional since at the time of its enactment an exemption for agricultural irrigation equipment was not specifically provided for under Art. XII, sec. 2, 1889 Mont. Const. Passage of this statute was unconstitutional from its inception because the Legislature was without authority to give legal effect to the statute. The statute would have been constitutional if the Legislature had reenacted it under the 1972 Constitution. Bucher v. Powell County, 180 M 145, 589 P2d 660 (1979).

Law Review Articles

Taxability of Property of Mutual Irrigation Company, 1 Mont. L. Rev. 94 (1940).

Collateral References

Taxation *key* 234.
84 C.J.S. Taxation §320.
71 Am. Jur. 2d State and Local Taxation §332.

15-6-207. Agricultural producer exemptions — products — unused beet equipment — low-value buildings, implements, and machinery.

Compiler's Comments

2005 Amendment — Code Commissioner Correction: Chapter 532 inserted (3) exempting all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100 from taxation. Amendment effective October 1, 2005.

Chapter 532 also inserted a new (4) providing that all agricultural implements and equipment were exempt from taxation if the tax rate in 15-6-138 reached zero. However, Senate Bill No. 48, approved as Ch. 531, L. 2005, removed the class eight property tax provision that would have phased out the taxation of class eight property contingent on a certain increase in state wages and salaries. Thus, the amendment in Ch. 532 inserting a new subsection (4) contingent on the tax rate in 15-6-138 reaching zero was rendered void by Ch. 531, so pursuant to sec. 81, Ch. 130, L. 2005, the code commissioner did not codify the new subsection (4).

2003 Amendment: Chapter 577 inserted (1)(g) exempting biological control insects from taxation; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 285 at end of (1)(c) after "products" deleted "except livestock"; in (1)(d) substituted "all livestock and the unprocessed products of livestock" for "except as provided in subsection (1)(e), livestock that have not attained the age of 24 months as of February 1 or as of the last day of any month of the prior tax year if assessed on the average inventory basis as provided in 15-24-902(2)"; deleted former (1)(e) that read: "(e) swine that have not attained the age of 6 months as of January 1"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (1)(d), at end, inserted "or as of the last day of any month of the prior tax year if assessed on the average inventory basis as provided in 15-24-902(2)"; and made minor changes in style.

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 in (1)(d) substituted "February" for "March"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

1989 Amendment: In (1)(a), after "unprocessed", substituted "agricultural products on the farm or in storage" for "perishable fruits and vegetables in farm storage"; in (1)(c), after "all", deleted "nonperishable" and after "livestock" deleted "held in possession of the original producer for less than 7 months following harvest"; and in (1)(d), after "months as of", deleted "The last day of any month if assessed on the average inventory basis or on" and after "March 1" deleted "if assessed as provided in 15-24-911(1)(a)".

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

1987 Amendment: Inserted (1)(b) exempting producer-held grain; in (1)(d), relating to livestock, changed reference to subsection (1)(d) to reference to subsection (1)(e) and changed "9 months" to "24 months"; in (1)(e), relating to swine, changed "3 months" to "6 months"; inserted (1)(f) relating to poultry; and inserted (1)(g) relating to bees. Amendment effective January 1, 1988.

1985 Amendments: Chapter 570 in (1)(c) at beginning inserted "except as provided in subsection (1)(d)", and after "livestock", deleted "defined as cattle, sheep, horses, or mules".

Chapter 627 exempted certain sugar beet equipment.

Administrative Rules

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

ARM 42.21.113 Leased and rental equipment.

ARM 42.21.123 Farm machinery and equipment.

ARM 42.21.124 Per capita livestock tax reporting procedure.

ARM 42.21.131 Heavy equipment.

Case Notes

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.), expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. This section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Attorney General's Opinions

Grain Stored in Farmer's Granaries: Prior to exemption of producer-held grain in 1987, grain stored in a farmer's granaries was taxable as class six property under 15-6-136, but if it was held in the possession of the original producer for less than 7 months following harvest, it qualified for the tax exemption provided in this section. Such grain did not qualify for the business inventories exemption set forth in 15-6-202. 41 A.G. Op. 13 (1985).

Collateral References

Taxation *key* 222, 223.

84 C.J.S. Taxation §§272, 273.

71 Am. Jur. 2d State and Local Taxation §335.

15-6-208. Mineral exemptions — small coal or metal mines producer — travertine — bentonite.

Compiler's Comments

2005 Amendment: Chapter 559 inserted (4) related to bentonite. Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

1995 Amendment: Chapter 451 deleted former (3)(a) and (3)(b) that read: "(a) New production, as defined in 15-23-601, is exempt from taxation for the first 12 months of production as provided in 15-23-612.

(b) Production from horizontally completed wells, as defined in 15-23-601, is exempt from taxation for the first 18 months of production as provided in 15-23-612"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 9 inserted (3)(b) to provide a temporary tax exemption for production from horizontally completed wells; and made minor changes in style. Amendment effective December 17, 1993.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee [now revenue and transportation interim committee] regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

1993 Amendment: Chapter 89 inserted (4) exempting from property taxation the first 1,000 tons of travertine and building stone extracted in a tax year; and made minor changes in style.

Applicability: Section 2, Ch. 89, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

1987 Amendment: Inserted (3) relating to new production.

Effective Date — Applicability: Section 28, Ch. 655, L. 1987, provided: "This act is effective on passage and approval [approved April 13, 1987] and applies retroactively, within the meaning of 1-2-109, to taxable quarters beginning on or after April 1, 1987. The tax rate and filing method applicable to a well that qualifies as interim production under section 10 [15-23-601, now repealed] but which did not qualify as new production under 15-23-601 [now repealed] prior to the applicability date of this act does not change for tax periods prior to the applicability date."

1983 Amendment: In (1), increased amount of coal exempt from taxation from 20,000 tons to 50,000 tons.

Nonseverability: Section 3, Ch. 303, L. 1983, provided: "It is the intent of the Legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid, and the prior law as reflected in sections 15-6-208 and 15-35-103 prior to the passage of this act shall remain in full force and effect."

Case Notes

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.), expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. Subsection (1) of this section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Collateral References

Taxation *key* 233.

84 C.J.S. Taxation §317.

71 Am. Jur. 2d State and Local Taxation §332.

15-6-209. Community services buildings exempt.

Compiler's Comments

1997 Amendment: Chapter 166 in (1), in introductory clause, substituted "3 acres" for "1 acre"; in (1)(a), at end, deleted "and does not sell food or beverages under license from the state of Montana"; in (1)(b)(i), after "activities", inserted "that are recognized in the state plan on aging adopted by the department of public health and human services"; in (1)(b)(ii), at end, deleted "or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of public health and human services"; inserted (3) allowing sale of food and beverages by an exempt community service organization; in (4), in two places, substituted "land" for "lot"; adjusted subsection references; and made minor changes in style. Amendment effective March 27, 1997.

Application for Exemption: Section 2, Ch. 166, L. 1997, provided: "To qualify for the exemption under 15-6-209 for tax year 1997, a community service organization that sells food and beverages under license with the state or that has 3 acres of land shall apply for the exemption on a form available from the department of revenue within 30 days of passage and approval of [this act]." Approved March 27, 1997.

Effective Date — Retroactive Applicability: Section 3, Ch. 166, L. 1997, provided: "[This act] is effective on passage and approval [approved March 27, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendment: Chapter 546 in (1)(b), at end, substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

1981 Amendment: Substituted "1981" for "1976" in subsection (2).

Administrative Rules

ARM 42.19.502 Exemptions involving ownership test.

ARM 42.19.506 Exemptions involving use test.

ARM 42.20.102 Applications for property tax exemptions.

Collateral References

Taxation *key* 241.

84 C.J.S. Taxation §§374 through 376.

71 Am. Jur. 2d State and Local Taxation §§384, 391.

Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes. 39 ALR 3d 640.

15-6-211. Certain disabled or deceased veterans' residences exempt.

Compiler's Comments

2003 Amendment: Chapter 399 in (1)(b)(ii) substituted language exempting from tax property of veteran verified by official documentation as currently rated 100% disabled or veteran paid at 100% disabled rate by department of veterans affairs for service-connected disability for "has been rated 100% disabled because of a service-connected disability by the United States department of veterans affairs or its successor"; deleted former (1)(b)(iii) that read: "(iii) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $30,000 for a single person and $36,000 for a married couple"; inserted (2) establishing table for determining property tax exemption for veteran or deceased veteran; deleted former (3)(b) that read: "(b) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $25,000"; in (3)(c) in middle after "veteran" substituted "was rated 100% disabled or was paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-related disability at the time of death" for "was 100% service-connected disabled at the time of death"; inserted (4) establishing table for determining property tax on primary residence according to income of veteran's surviving spouse; inserted (5) providing that income for exemption is taxpayer's federal adjusted gross income as reported on latest federal income tax return; inserted (6) outlining procedure to be used to annually adjust income levels and defining PCE; and made minor changes in style. Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

1997 Amendment: Chapter 301 in (1)(b) increased the income limitations from $15,000 to $30,000 for a single person and from $18,000 to $36,000 for a married couple; in (2)(b) increased the income limitation from $15,000 to $25,000; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 2, Ch. 301, L. 1997, provided: "[This act] is effective January 1, 1998, and applies to property tax years beginning after December 31, 1997."

1987 Amendment: In (1), at beginning in sentence exempting veteran's residence, substituted "veteran or a veteran's spouse" for "disabled veteran" and in introduction to (1)(a) and (1)(b) substituted "veteran" for "owner"; inserted (1)(a) relating to deceased veteran; inserted (1)(b) relating to living veteran; substituted "(2) Property shall continue to be exempt under this section so long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

(a) is the owner and occupant of the house;

(b) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $15,000;

(c) is unmarried; and

(d) has obtained from the United States veterans administration (now department of veterans affairs) a letter indicating that the veteran was 100% service-connected disabled at the time of death or that the veteran died while on active duty or as a result of a service-connected disability" for "(2) If a veteran whose property has been eligible for this exemption dies, the property shall continue to be exempt so long as the surviving spouse:

(a) remains unmarried;
(b) is the owner and occupant of the house; and
(c) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $15,000;" and made minor change in grammar.

1981 Amendment: Substituted "adjusted gross income, as reported on the latest federal income tax return" for "income from all sources" in (1)(c); increased income limitations to $15,000 from $7,000 and $18,000 from $8,000 in (1)(c); substituted "has an annual adjusted gross income, as reported on the latest federal income tax return," for "has a total income from all sources" in (2)(c); and increased income limitation to $15,000 from $7,000 at the end of (2)(c).

Statement of Intent: The statement of intent attached to HB 34 (Ch. 590, L. 1981) provided: "In the event that an individual or married couple, otherwise entitled to the exemption provided by this act, are not required to file a federal income tax return, the department of revenue may adopt rules to enable these taxpayers to demonstrate that they meet the income limitations."

Administrative Rules

ARM 42.19.501 Property tax exemption for qualified disabled veterans.

ARM 42.19.503 Inflation adjustment for qualified disabled veteran property tax exemption program.

ARM 42.20.102 Applications for property tax exemptions.

Attorney General's Opinions

Qualifications for Exemption: The property tax exemption provided by this section is purely a state-granted right and is not required by federal statute. A surviving spouse's entitlement to the property tax exemption under this section terminates upon remarriage, is not reinstated upon conclusion of the second marriage, and applies only to the residence as to which the veteran was granted the exemption immediately prior to death. A condition of a surviving spouse's entitlement is a determination that the veteran was 100% disabled due to a service-connected disability (see 2003 amendment) prior to death and was otherwise eligible for the exemption. 41 A.G. Op. 93 (1986).

Collateral References

Taxation *key* 219, 220.
84 C.J.S. Taxation §288.
71 Am. Jur. 2d State and Local Taxation §334.

15-6-215. Exemption for motion picture and television commercial property.

Compiler's Comments

2005 Amendment: Chapter 542 near end substituted "61-3-321(2)" for "61-3-560 and 61-3-561". Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, near end inserted "and registration fees under 61-3-560 and 61-3-561". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated this section effective December 31, 1993. Repealer effective February 18, 1993.

1989 Statement of Intent: The statement of intent attached to Ch. 525, L. 1989, provided: "A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property."

Preamble: The preamble attached to Ch. 525, L. 1989, provided: "WHEREAS, Montana has abundant scenery, resources, and accommodations that are uniquely suited to the filming of motion pictures and television commercials; and

WHEREAS, the motion picture industry and the television commercial filming industry are increasingly recognizing Montana's intrinsic beauty and character that enhance the products produced by both industries; and

WHEREAS, the State of Montana and her citizens welcome the filming industry to this beautiful state.

THEREFORE, the Legislature of the State of Montana finds it appropriate to extend the state's inherent hospitality to these industries by exempting from taxation certain property used in the production of motion pictures and television commercials."

Effective Date — Retroactive Applicability: Section 10, Ch. 525, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 13, 1989.

15-6-217. Exemption for vehicle of certain health care professionals.

Compiler's Comments

2003 Amendment: Chapter 224 near end of first sentence after "chapter 3" deleted reference to chapter 5; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

2001 Amendment: Chapter 436 in introduction after "state" inserted "is exempt from the registration fees imposed in 15-24-301 if the motor vehicle" and at end substituted "located in an area that has been" for "located in a medically underserved area is exempt from taxation as provided in 15-24-301"; inserted (1) providing exemption if facility is located in area designated by secretary of federal department of health and human services as health professional shortage area; inserted (2) providing exemption if facility is located in area determined to have critical shortage of nurses; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 5, Ch. 246, L. 1999, provided that this section is effective July 1, 1999.

15-6-218. Intangible personal property exemption.

Compiler's Comments

2005 Amendment: Chapter 318 in (1) at beginning deleted exception clause; deleted former (3) that read: "(3) The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter"; in (3) deleted former first sentence that read: "The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property", near middle inserted "of centrally assessed property", and at end deleted "according to the provisions in subsection (3)"; deleted former (5) that read: "(5) The department shall report intangible personal property annually to the revenue and transportation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001"; and made minor changes in style. Amendment effective April 21, 2005.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.22.105 Reporting requirements.

ARM 42.22.110 Deductions for intangible personal property.

15-6-219. Personal and other property exemptions.

Compiler's Comments

2005 Enactment — Coordination — Code Commissioner Correction: Section 19, Ch. 532, L. 2005, a coordination section, provided that if Senate Bill No. 48 was passed and approved and it removed the class eight property tax provision that would have phased out the taxation of class eight property contingent on a certain increase in state wages and salaries, then 15-6-219, as enacted in sec. 6, Ch. 532, L. 2005, was to be amended as follows: deleted former (8) that read: "(8)

the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

(d) all manufacturing machinery, fixtures, equipment, tools, and supplies;

(e) all goods and equipment that are intended for rent or lease;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers; and

(m) theater projectors and sound equipment."

Senate Bill No. 48, including removal of the class eight property tax provision that would have phased out the taxation of class eight property, was approved as Ch. 531, L. 2005, so sec. 6 of Senate Bill No. 68, enacting 15-6-219, was codified as directed in sec. 19, Ch. 532, L. 2005.

Pursuant to sec. 81, Ch. 130, L. 2005, in (4) the code commissioner substituted "61-8-102" for "61-1-123".

Effective Date: This section is effective October 1, 2005.

15-6-220. Agricultural processing facilities exemption — canola — malting barley — industrial dairy — ethanol.

Compiler's Comments

2005 Amendment: Chapter 532 inserted (1)(c) exempting personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy; inserted (1)(d) exempting manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; inserted definitions of industrial dairy and industrial milk processor; and made minor changes in style. Amendment effective October 1, 2005.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Effective Date: Section 31(3), Ch. 285, L. 1999, provided that this section is effective January 1, 2003.

15-6-221. Exemption for rental housing providing affordable housing to lower-income tenants.

Compiler's Comments

Applicability: Section 3, Ch. 452, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1998."

Effective Date: Section 4, Ch. 452, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 22, 1999.

15-6-222. Residential and commercial improvements — percentage of value exempt.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

15-6-223. Timber exemption.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

15-6-224. Nonfossil energy generation.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

15-6-225. Small electrical generation equipment exemption.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 405 inserted (1)(b) requiring a generation facility to be powered by alternative renewable energy source to qualify for exemption; inserted (2)(a) defining alternative renewable energy source; deleted former (2)(b) that read: "(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 524 in (1) at beginning deleted "Except as provided in subsection (1)(b)" and after "qualifying" deleted "generation facilities built and operated after July 1, 2001, are exempt from taxation"; and made minor changes in style. Amendment effective April 26, 2003.

Retroactive Applicability: Section 7, Ch. 524, L. 2003, provided: "[Sections 1 and 4] [amendments to 15-6-225 and 15-32-402] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001."

Effective Date: Section 29(1), Ch. 591, L. 2001, provided that this section is effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

Administrative Rules

ARM 42.4.4105 Alternate renewable energy generation facilities exemption — less than one megawatt.

15-6-227. Property on railroad land leased by nonprofit organizations.

Compiler's Comments

Effective Date: Section 3, Ch. 370, L. 2003, provided that this section is effective on passage and approval. Approved April 16, 2003.

Retroactive Applicability: Section 4, Ch. 370, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002."

15-6-228. Property subject to registration fee.

Compiler's Comments

2005 Enactment — Coordination: Section 245, Ch. 542, L. 2005, a coordination section, provided that if both Senate Bill No. 68, approved as Ch. 532, L. 2005, and Senate Bill No. 285 were passed and approved, then 15-6-228, as enacted in sec. 4, Ch. 532, L. 2005, was to be amended as follows: in introductory clause substituted "registration fee" for "fee in lieu of taxes"; in (4) and (8) substituted references to 61-1-101 for references to 61-1-111, 61-1-112, 61-1-114, 61-1-131, and 61-1-139; and made minor changes in style.

Senate Bill No. 285 was approved as Ch. 542, L. 2005, so the language in sec. 245, Ch. 542, L. 2005, was substituted for sec. 4 of Senate Bill No. 68, enacting 15-6-228, as directed in the coordination instruction.

Effective Date: This section is effective October 1, 2005.

CHAPTER 7
APPRAISAL

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Law Review Articles

Real Property Tax Assessment in Montana, Sullivan, 34 Mont. L. Rev. 300 (1973).

Chapter Collateral References

Judicial notice as to assessed valuations. 42 ALR 3d 1439.

Income or rental value as a factor in evaluation of real property for purposes of taxation. 96 ALR 2d 666.

Civil liability of tax assessor to taxpayer for excessive or improper assessment of real property. 82 ALR 2d 1148.

Valuation for taxation purposes as admissible to show value for other purposes. 39 ALR 2d 209.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Agricultural Land Taxation in Montana, 1984 Interim Report, Montana Legislative Council.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

Part 1
General Methods

Part Collateral References

Taxation *key* 327 through 407.

84 C.J.S. Taxation §478, et seq.

72 Am. Jur. 2d State and Local Taxation §§667 through 699.

Sale price of real property as evidence in determining value for tax assessment purposes. 89 ALR 3d 1126.

Real estate tax equalization, reassessment, or revaluation program commenced, but not completed within the year as violative of constitutional provision requiring equal and uniform taxation. 76 ALR 2d 1077.

15-7-101. Classification and appraisal — duties of the department of revenue.

Compiler's Comments

Severability: Section 2, Ch. 353, L. 1975, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from invalid applications."

Administrative Rules

Title 42, chapter 20, ARM Real property.

ARM 42.20.101 Assessment of city and town lots and improvements.

Case Notes

Status of Property for Taxation Purposes Not Relevant to Determination of Its Status Under Property Law: The method by which property is assessed for purposes of taxation has no bearing on whether the structure is real or personal property. Pac. Metal Co. v. NW. Bank of Helena, 205 M 323, 667 P2d 958, 40 St. Rep. 1301 (1983).

Jurisdiction of District Court to Enjoin Revision: The District Court acted beyond its jurisdiction by enjoining Board of Equalization (duty now performed by Department of Revenue) from revising, grading, and valuation of nonirrigated farmland pursuant to this section (prior to amendment). State ex rel. Lord v. District Court, 154 M 269, 463 P2d 323 (1969).

Injunction Against Valuations: Taxpayers were not entitled to an injunction under 15-1-405 against County Assessor and County Commissioners to prohibit use of valuations furnished by reclassification office in making up 1965 tax assessment roll, when there was no showing of irreparable injury and the law could furnish all relief to which complainants were entitled. State ex rel. Keast v. Krieg, 145 M 521, 402 P2d 405 (1965).

Hearings on Value Classification: The State Board of Equalization (duty now performed by Department of Revenue), acting under sections 429.7 through 429.13, R.C.M. 1947 (now this section, 15-8-112, and 15-7-102 through 15-7-104, 15-7-104 now repealed), and pursuant to section 84-710, R.C.M. 1947 (now repealed), held "show cause hearings" to afford opportunity to protest Board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses or hear evidence, and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. St. Bd. of Equalization v. Kovich, 142 M 201, 383 P2d 818 (1963).

Jurisdiction of District Court: District Court had jurisdiction of action by taxpayers against State and County Boards of Equalization (duties now performed by Department of Revenue) when the amended complaint sufficiently alleged that the appraisal leading to an assessment was being done contrary to this act. State ex rel. Fulton v. District Court, 140 M 166, 369 P2d 416 (1962).

Predecessor Act Unconstitutional: A predecessor to this act, Ch. 198, L. 1955, which purported to tax one class of property only and excluded and exempted all other classes of property, including personal property, violated Art. XII, sec. 2, 1889 Mont. Const. (but see Art. VIII, sec. 5, 1972 Mont. Const.). Schladweiler v. St. Bd. of Equalization, 131 M 13, 306 P2d 673 (1957), reaffirming Stoner v. Timmons, 59 M 158, 196 P 519 (1921).

15-7-102. Notice of classification and appraisal to owners — appeals.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 532 in (1)(b) near end after "under" substituted "15-6-222" for "15-6-201(1)(z) and (1)(aa)". Amendment effective October 1, 2005.

Chapter 584 in (1)(b) near end after "15-6-201" substituted "(1)(bb) and (1)(cc)" for "(1)(z) and (1)(aa)". Amendment effective May 6, 2005. The amendment by Ch. 532 rendered this amendment void.

Retroactive Applicability: Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2003 Amendment: Chapter 114 in (1)(b) near end substituted "exemptions under 15-6-201(1)(z) and (1)(aa)" for "exemption under 15-6-201". Amendment effective October 1, 2003.

2001 Amendment: Chapter 444 in (1)(a) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 56 in second sentence in (2)(c) substituted "The department shall notify the county tax appeal board of the date of the mailing" for "The date of the mailing is the date reported to the county tax appeal board pursuant to 15-15-101." Amendment effective October 1, 1999.

Chapter 584 in (1)(b) before "incremental" inserted "annual" and after "reappraisal" inserted "under 15-7-111 or the application of the exemption under 15-6-201 or caused by an incremental change in the tax rate". Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 414 in (2)(a), at beginning, inserted exception clause; inserted (2)(c) concerning mailing of notices to new owner under contract for deed; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 463 at beginning of (1)(a)(iii) inserted exception clause; inserted (1)(b) concerning notice if valuation change is due to phasing in of reappraisal; deleted former (1)(c)(ii) and (1)(c)(iii) that read: "(ii) the amount of the prior year's taxes resulting from levied mills;

(iii) an estimate of the current year's taxes based on the prior year's mills"; in (1)(d) substituted reference to subsection (1)(c) for reference to subsection (1)(b); and made minor changes in style. Amendment effective April 30, 1997.

Applicability: Section 6, Ch. 414, L. 1997, provided: "[This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997."

Effective Date — Rulemaking: Section 7, Ch. 414, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998."

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

1995 Amendments: Chapter 30 in first sentence of (3) increased from 15 to 30 the number of days within which a request for an assessment review must be submitted after receipt of a notice of classification and appraisal; and in second sentence of (6) increased from 15 to 30 the number of days within which an appeal to the county tax appeal board must be filed. Amendment effective February 6, 1995.

Chapter 574 inserted (1)(b) providing specific items required to be included in notice for taxpayer's informational purposes; inserted (1)(c) providing that misinformation in informational notice does not affect notice validity and may not be used to challenge notice legality; and made minor changes in style. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 14, Ch. 574, L. 1995, provided: "(1) [This act] is effective on passage and approval. [Approved May 1, 1995.]

(2) (a) Except as provided in subsection (2)(b), [this act] applies to tax years beginning after December 31, 1995.

(b) [Sections 1 through 7 and 11] [15-1-1001 through 15-1-1007, now terminated, and 15-30-176] apply retroactively, within the meaning of 1-2-209, to tax years beginning after December 31, 1994."

1993 Special Session Amendment: Chapter 27 in (1), near beginning after "department shall", deleted "through its agent as specified in subsection (2)"; in (2)(a), near beginning, substituted "department" for "county assessor"; in (4) and (4)(b), after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendments: Chapter 227 in (1), near beginning, substituted "owner or purchaser" for "owner and purchaser"; in (3), in first sentence, substituted "request and assessment review by submitting an objection in writing to the department" for "submit his objection in writing to the department's agent" and inserted provision that the submission be on forms provided by the Department within 15 days after receipt of the notice of classification and appraisal, inserted second sentence providing that the review be informal and is not subject to contested case procedure, at beginning of third sentence substituted "As a part of the review" for "In an objection to the appraisal of the property" and near end, after "taxpayer", substituted "in support of the taxpayer's opinion as to" for "as evidence of", in fourth sentence, after "place of", substituted "the review" for "hearing and hear any testimony or other evidence that the taxpayer may desire to produce at that time and afford the opportunity to other interested persons to produce evidence at the hearing", and near beginning of fifth sentence substituted "review" for "hearing"; in (4), near beginning, substituted "review" for "hearing"; in (5), at beginning of last sentence, substituted "The department" for "Each county appraiser"; in (6), in first sentence after "department", inserted "after the review provided for in subsection (3)" and before "appeal" inserted "first" and substituted second sentence providing that appeal to county tax appeal board must be filed within 15 days after notice is mailed to the taxpayer for "The property owner may appeal the base valuation and the classification determination"; and made minor changes in style. Amendment effective March 30, 1993.

Chapter 594 inserted (2)(b) requiring that a notice must advise the taxpayer that in order to be eligible for a refund, taxes must be paid under protest; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

1991 Amendment: (Temporary version) Inserted (2)(b) providing what a notice must contain if property valuation increases; in (3), after "appraisal", inserted "as it reflects the market value of the property as determined by the department" and inserted second sentence concerning what may be considered as evidence in an objection to an appraisal; in (6)(a), near middle of second sentence after "base", deleted "year", deleted "The property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111", and inserted last three sentences concerning what the Tax Appeal Board may consider as evidence, the Department's adjustment of valuation, and percentage adjustment based upon the sales assessment ratio study; inserted (6)(b) providing time for filing a declaratory judgment action; inserted (6)(c) concerning consolidation of actions; inserted (6)(d) prohibiting restraining order or injunction and providing for disposition of protested tax; and made minor change in style. Amendment effective April 27, 1991.

(Version effective January 1, 1994, but the effective date was changed to January 1, 1993, by sec. 2 and 3, Ch. 13, Sp. L. July 1992) In (3), in first sentence after "appraisal", inserted "as it reflects the market value of the property as determined by the department" and inserted second sentence concerning what may be considered as evidence in an objection to an appraisal; in (6), in second sentence after "base", deleted "year", deleted "The property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111", and

inserted last two sentences concerning what the Tax Appeal Board may consider as evidence and providing for Department adjustment of base value; deleted (7) that read: "(7) The percentage adjustments, stratum, and area designations must be adopted by administrative rule. An annual hearing must be held to accept testimony on the percentage adjustments, stratum, and area designations. The department shall present its findings and the proposed rules to the revenue oversight committee"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 13(2), Ch. 680, L. 1991, provided that this section (version effective January 1, 1994, now effective January 1, 1993, pursuant to sec. 2 and 3, Ch. 13, Sp. L. July 1992) applies to all taxable years beginning after December 31, 1993. The applicability date was changed to taxable years beginning after December 31, 1992, by sec. 1, Ch. 13, Sp. L. July 1992.

Termination Date: Section 14, Ch. 680, L. 1991, provided that the amendments to this section made in sec. 1, Ch. 680, L. 1991, terminate December 31, 1993. The termination date was changed to December 31, 1992, by sec. 2, Ch. 13, Sp. L. July 1992. These amendments are reflected in the temporary version and the version effective July 1, 1993. The version effective July 1, 1993, was deleted by sec. 2 and 3, Ch. 13, Sp. L. July 1992.

1989 Amendments: Chapter 9 near beginning of (1) inserted phrase referring to Department's agent; at beginning of (2) substituted language requiring County Assessor to assign assessment and mail classification and appraisal notice for language that required notice sent by Department; and made minor changes in grammar. Amendment effective February 13, 1989.

Chapter 636 at end of (6) substituted "The property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111" for former language that read: "the property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study. The property owner may not appeal the stratum or area designations as specified in 15-7-111"; inserted (7) requiring adoption of percentage adjustments, stratum, and area designations by administrative rule; and made minor changes in phraseology. Amendment effective April 28, 1989.

Retroactive Applicability: Section 6, Ch. 9, L. 1989, provided that this amendment applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

Effective Date — Applicability: Section 6, Ch. 636, L. 1989, provided: "[This act] is effective on passage and approval [approved April 28, 1989] and applies to taxable years beginning after December 31, 1989."

1987 Amendment: Inserted last two sentences in (6) concerning what is appealable. Amendment applicable to taxable years beginning after December 31, 1987.

1986 Amendment: Inserted (2) requiring standardized notice.

1986 Assessment Review Procedure: Sections 1, 4, and 5 of Ch. 29, Sp. L. June 1986, provided a special procedure for review of 1986 assessments. Section 1 provided for review in the aggregate, by the county tax appeal boards, of assessments that exceeded the 1985 assessment by 180% or more. Section 4 provided for renotification to taxpayers whose 1986 assessment on class four property increased as a result of reappraisal of class four property by 180% or more when compared with 1985. Section 5 extended the application deadline for reduction in 1986 valuations to August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever was later.

Effective Date: Section 7, Ch. 29, Sp. L. June 1986, provided: "This act is effective on passage and approval and applies to tax year 1986." Approved July 16, 1986.

Preamble: The preamble to Ch. 29, Sp. L. June 1986, provided: "WHEREAS, the Department of Revenue should carry the burden of substantiating exceptional increases in assessments made under section 15-7-111, MCA, before placement on assessment books; and

WHEREAS, each property taxpayer in the state should be properly notified regarding the classification and value of the taxpayer's property for property tax purposes; and

WHEREAS, the lack of a standardized property tax classification and appraisal notice results in a variety of notices being sent by the counties with a wide range in the clarity of the notices; and

WHEREAS, incomplete or incomprehensible tax classification and appraisal notices create much confusion and misunderstanding regarding the property tax system and, in particular, the property revaluation process as implemented in the 1986 tax year.

THEREFORE, the Legislature of the State of Montana finds it appropriate to direct the Department of Revenue to submit assessments made under section 15-7-111, MCA, with exceptional increases for review by the county tax appeal boards before placement on assessment

books, to adopt a standardized property tax classification and appraisal notice and to send such notice to taxpayers with exceptional increases in 1986 assessments, and to extend the application deadline for reduction in 1986 valuations."

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

1983 Amendments: Chapter 105, at end of (1), inserted "only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;
(b) change in classification;
(c) change in valuation; or
(d) addition or subtraction of personal property affixed to the land".

Chapter 526, in (1), after "owner" inserted "and purchaser under contract for deed"; and after "land owned" inserted "or being purchased".

Administrative Rules

ARM 42.20.102 Applications for property tax exemptions.
ARM 42.20.454 Consideration of sales price as indication of market value.
ARM 42.20.455 Consideration of independent appraisals as indication of market value.
Title 42, chapter 20, subchapter 5, ARM Phasein valuation.
ARM 42.20.505 Assessment notices and valuation reviews.

Case Notes

Filing Application for Reduction of Property Valuation Synonymous With Filing Appeal to Tax Appeal Board: The filing of an application for a reduction of property valuation pursuant to 15-15-102 is synonymous with filing an appeal to the County Tax Appeal Board. The 15-day (now 30-day) filing requirement for an appeal is extended if the taxpayer has submitted a timely request for assessment review under subsection (3) of this section and does not commence until the Department of Revenue has responded to the request. If the taxpayer is aggrieved by the Department's appraisal after the review, the taxpayer can then appeal to the County Tax Appeal Board within 15 days (now 30 days) after receiving notice of the Department's determination. As used in this section, the term "submit" is a less restrictive requirement than filing, implying that the receiving party is not required to act but that a unilateral action on the part of a taxpayer will suffice. Canbra Foods Ltd. v. Dept. of Revenue, 278 M 368, 925 P2d 855, 53 St. Rep. 954 (1996).

Unconstitutional Provision Disallowing Appeal of Yearly Property Tax Percentage Adjustments: The provisions of this section prohibiting a property owner from appealing the yearly percentage adjustments made as the result of the sales assessment ratio study, the stratum, or area designations are an unconstitutional violation of Art. VIII, sec. 7, Mont. Const., which provides independent appeal procedures for taxpayer grievances. (The offensive provisions were subsequently deleted by 1991 amendment of this section.) Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533, 47 St. Rep. 1869 (1990).

Appellate Review of Appraisal Methods: Section 15-7-102 gives the State Tax Appeal Board specific power to hear tax appraisal appeals, including the power to pass judgment on appraisal methods. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

State Directives as to Assessments: Under former law, Boards of County Commissioners could not ignore directives of the State Board of Equalization (duties now performed by Department of Revenue) on subject of timberland valuation and make their own valuation on theory that State Board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, County Boards do not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M 335, 485 P2d 948 (1971).

Summary Judgment — Failure to Comply With Section: In declaratory judgment action in which notice of reclassification was found not to comply with this section, the District Court did not abuse its discretion in granting plaintiff-landowners' motion for summary judgment without

considering further issues raised by plaintiffs since they lacked standing as to those issues. Mittelstadt v. Buckingham, 156 M 407, 480 P2d 831 (1971).

Collateral References

Taxation *key* 363.

84 C.J.S. Taxation §530.

72 Am. Jur. 2d State and Local Taxation §§694 through 699.

Sufficiency of compliance with statute providing for service by mail of notice in tax procedure. 155 ALR 1279.

15-7-103. Classification and appraisal — general and uniform methods.

Compiler's Comments

1999 Amendment: Chapter 584 in (5) after "15-7-111" deleted "after January 1, 1986" and after "appraised on" inserted "the taxable portion of"; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1987 Amendment: In (5), relating to base year for revaluation purposes, after "January 1" changed "1979" to "1986". Amendment applicable to taxable years beginning after December 31, 1987.

1985 Amendment: In (5) substituted "15-6-134" for "[15-6-112]".

Subsection Codification: Section 4, Ch. 583, L. 1985, instructed that sections 1 and 2 be codified in Title 15, chapter 6, since those sections both set out exemptions from taxation. However, sec. 1, Ch. 583, L. 1985 (SB 67), was amended after introduction to address appraisal and assessment of sewage disposal and water supply systems. Therefore, section 1 was codified as subsection (6) of 15-7-103 for logic and convenience. This placement of section 1 outside of chapter 6 does not alter the apparent meaning or application of section 1 in any degree.

1983 Amendment: In (3), after "classified by" substituted "parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land" for "40-acre tracts or fractional lots".

Moratorium on Rulemaking by Department: In HB 851 (Ch. 510, L. 1983), the Legislature declared a moratorium on the adoption or amendment of rules governing the assessed valuation of agricultural lands. The bill, which was not codified, provided: "Whereas, the Department of Revenue has recently proposed the repeal of its current administrative rules governing the assessed valuation of agricultural lands and has proposed new rules governing such assessed valuation; and

Whereas, the rules proposed by the Department will increase the assessed valuation of all agricultural lands and will increase the assessed valuation of some agricultural lands by more than 10 times; and

Whereas, the House Agriculture Committee and the Legislature as a whole seriously question the need for and wisdom of the proposed increases, particularly in times of severe economic hardship for farmers and ranchers.

Therefore, it is the intent of this bill to establish a temporary moratorium on the effective date of any rules proposed by the Department of Revenue in the area of assessed valuation of agricultural lands, in order that any such proposals may be more carefully reviewed by the Legislature.

Section 1. Proposed rules not to be effective until January 1, 1986. The rules governing the assessed valuation of agricultural lands proposed for adoption by the department of revenue in Montana Administrative Register Notice No. 42-2-209 and published at pages 58 through 64 of Issue No. 2 of the 1983 Montana Administrative Register and any rules substantially equivalent to those rules may not be made effective by the department of revenue until January 1, 1986.

Section 2. Current rules to remain in effect. Any repeal or substantial amendment of rules governing the assessed value of agricultural lands now published as ARM 42.20.141 through 42.20.146 may not take effect prior to January 1, 1986."

Statement of Intent: The statement of intent attached to HB 851 (Ch. 510, L. 1983) provided: "It is the intent of the legislature that the Department of Revenue work closely with agricultural associations and representatives of the agricultural community in developing administrative rules on the valuing of agricultural lands for property taxation. The Department may adopt administrative rules prior to the next legislative session so long as those rules are not implemented for taxation purposes prior to January 1, 1986.

The legislature further intends to review these rules in 1985 to ensure the Department has worked closely with the agricultural groups in developing rules and that those rules treat agricultural land fairly for purposes of property taxation in relation to the Montana Constitution, statutes, and other property."

Administrative Rules

Title 42, chapter 18, ARM Montana appraisal plan.
ARM 42.18.124 Clarification of valuation periods.
ARM 42.19.102 Commercial appraisal firms.
ARM 42.20.101 City and town lots and improvements.
ARM 42.20.105 Condominiums.
ARM 42.20.156 Agricultural and forest land use change criteria.
ARM 42.20.171 Land classification determination date for class three, four, and ten property.
ARM 42.20.605 Agricultural lands.
ARM 42.20.610 Classification and appraisal of easements on agricultural land.
ARM 42.20.655 Valuation of one acre beneath improvements on agricultural land and nonqualified agricultural land.
ARM 42.20.660 Nonirrigated summer fallow farm land.
ARM 42.20.665 Nonirrigated, continuously cropped farm land.
ARM 42.20.670 Nonirrigated, continuously cropped hay land.
ARM 42.20.675 Tillable, irrigated farm land.
ARM 42.20.680 Grazing land.
ARM 42.20.750 Valuation of one acre beneath improvements on forest land.
ARM 42.22.1313 Assessment of grain, seed, and fertilizer storage facilities.

Case Notes

Failure to Consider Effect of Zoning Ordinance on Market Value: The State Tax Appeal Board erred in failing to consider the effect, if any, of a zoning ordinance on market value and in failing to make findings on this issue. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

Taxation Standards — Uniformity Versus True Value: Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. Therefore, unequal appraisals may be reduced even though they result in an assessment at true market value or 100% of market value as required by 15-8-111. Reduction is required where it is satisfactorily shown that under the system as applied, it is impossible to meet both the true value and equality standards. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property; (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988), and partially overruled in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648, and NW. Land & Dev. of Mont., Inc. v. St. Tax Appeal Bd., 203 M 313, 661 P2d 44, 40 St. Rep. 470 (1983).

Constitutionality: The Montana appraisal plan and its implementing legislation are constitutional. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

Violation of Administrative Procedure Act: The Montana appraisal plan, adopted August 25, 1975, was void because it was never legally adopted in accordance with the Montana Administrative Procedure Act. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

Uniform Method Mandatory: When a county conducted a property appraisal through a private firm prior to the effective date of this section and the Department of Revenue adopted that appraisal prior to the adoption of a general and uniform method of appraising, an injunction against the use of the appraisal was proper. Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975).

County May Not Ignore State Board Directive — Increase of Valuation: Under former law, Boards of County Commissioners could not ignore directives of State Board of Equalization (duties now performed by Department of Revenue) on subject of timberland valuation and make their own valuation on theory that State Board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, County Boards did not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M 335, 485 P2d 948 (1971).

Authority of County Board of Equalization: Under former law, the County Board of Equalization (duties now performed by Department of Revenue) possessed jurisdiction and authority to direct and sanction classification, appraisal, and assessment of rural and urban improvements using "market value" as basis and classifying them according to use or uses other than those to which such land was actually devoted. Mohland v. St. Bd. of Equalization, 155 M 49, 466 P2d 582 (1970), certiorari denied, 400 US 940, 27 L Ed 2d 244, 91 S Ct 232 (1970).

Assessment of Agricultural Land: Under former law, a County Board of Equalization (duties now performed by Department of Revenue) properly assessed plaintiff's property on basis of "market value" rather than on basis of agricultural land, even though it was being used for agricultural purposes, where property was within commercial area and its value was much greater than that assigned to agricultural property. Mohland v. St. Bd. of Equalization, 155 M 49, 466 P2d 582 (1970), certiorari denied, 400 US 940, 27 L Ed 2d 244, 91 S Ct 232 (1970).

Attorney General's Opinions

Filing of Subdivision Plat Does Not Defeat Agricultural Status: The filing of a subdivision plat does not, by that fact alone, foreclose the possibility that land within that subdivision may qualify as "agricultural" property rather than "residential" and thus lower the owner's tax liability. 36 A.G. Op. 51 (1976).

Taxation of Land Separated From Agricultural Land: Land separated or split off from agricultural land and no longer used for agricultural purposes is subject to a rollback tax. 35 A.G. Op. 29 (1973).

Collateral References

84 C.J.S. Taxation §§494 through 525.

72 Am. Jur. 2d State and Local Taxation §§667 through 693.

15-7-106. Courses of instruction, examination, and certification — additional courses.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (2), at beginning, deleted "Twice each year"; deleted former (3) that read: "(3) The department shall issue a certificate to each appraiser successfully completing a course of instruction and passing an examination in any of these fields"; inserted (4) relating to conducting other courses; inserted (5) concerning certificate of completion; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-7-107. Certification required.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), at beginning, deleted "Within 1 year after his employment by the department or by July 1, 1980, whichever occurs later"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Statement of Intent: The statement of intent adopted with SB 71 (Ch. 602, L. 1979) provided: "The Senate Taxation Committee understands that the cost produced by this bill will be minimal because the Department of Revenue will continue to offer yearly appraisal seminars to the appraisers it employs on the same basis as at present. The only additional cost may result from conducting the semiannual examinations required by the bill.

In allowing the Department of Revenue to promulgate rules requiring appraisers to complete continuing education courses, the Senate Taxation Committee expects the department to require only that appraisers attend the annual appraisal seminars now held by the department and possibly complete examinations on the material presented."

Administrative Rules

ARM 42.18.120 Certification and training requirements.

Title 42, chapter 18, subchapter 2, ARM Certification requirements.

15-7-108. Land split.

Compiler's Comments

Applicability: Section 6, Ch. 414, L. 1997, provided: "[This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997."

Effective Date — Rulemaking: Section 7, Ch. 414, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998."

15-7-111. Periodic revaluation of certain taxable property.

Compiler's Comments

2005 Amendment: Chapter 554 in (3) in third sentence after "revalued by January 1" substituted "2009" for "2008". Amendment effective October 1, 2005.

2003 Amendment: Chapter 606 in (1) at end deleted former second and third sentences that read: "The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 25% of the change in valuation from December 31, 1998, to the appropriate percentage of taxable market value for each class"; and in (3) in first sentence at beginning deleted "Beginning January 1, 2001", in third sentence substituted "January 1, 2008, effective for January 1, 2009" for "January 1, 2003", and deleted former last sentence that read: "The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county." Amendment effective May 9, 2003.

Severability: Section 11, Ch. 606, L. 2003, was a severability clause.

Retroactive Applicability: Section 13(1), Ch. 606, L. 2003, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

2000 Amendment: Chapter 11 deleted former (4) and (5) that read: "(4) (a) If the value of an individual property is equal to or less than 75% of the appraised value of the improvements situated on the land, then the assessed value of the land is the land's appraised value as phased in under subsection (1) and the other provisions of subsection (1) do not apply.

(b) Subject to subsection (4)(c), if the value of an individual property is greater than 75% of the appraised value of the improvements situated on the land, then the value of the land must be determined as follows:

(i) the department shall calculate the average value of improvements in the state;

(ii) if the value of the improvements on an individual property is greater than the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation; and

(iii) if the value of the improvements on an individual property is less than or equal to the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation.

(c) The value of land upon which improvements are situated may not exceed the phased-in value of the land.

(5) For purposes of subsection (4), the following definitions apply:

(a) "average value of improvements" means the statewide arithmetic mean of the appraised value of all improvements that have a market value in excess of $7,500;

(b) "improvements" means residential dwellings and includes housetrailers, mobile homes, and manufactured homes;

(c) "land" includes contiguous parcels or lots under single ownership up to 5 acres"; and made minor changes in style. Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

1999 Amendment: Chapter 584 in (1) near end of fourth sentence after "rate" substituted "of 25% of the change" for "of 2% of the total change" and at end inserted "from December 31, 1998, to the appropriate percentage of taxable market value for each class"; in (3) near beginning of first sentence substituted "January 1, 2001" for "January 1, 2007", at end of third sentence substituted "January 1, 2003, and each succeeding 6 years" for "January 1, 2010, and each succeeding 3 years", and inserted fourth and fifth sentences requiring phase in of valuation changes each year until next appraisal; inserted (4) outlining procedure when value of property

is equal to or less and equal to or greater than 75% of appraised value of improvements and prohibiting value with improvements from exceeding phased-in value of land; and inserted definitions of average value of improvements, improvements, and land. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 463 in (1), at end of first sentence, substituted "classes three, four, and ten" for "the state", inserted second sentence concerning annual revaluation, substituted third sentence concerning completion of revaluation of designated classes on December 31, 1996, for former sentence that read: "The department shall complete this revaluation program by December 31, 1996", deleted former fourth through sixth sentences that read: "A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all property in each county be revalued by December 31, 1996. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county", and inserted fourth sentence concerning phasein of change in valuation; inserted (2) concerning newly constructed, remodeled, or reclassified property; in (3), near beginning of first sentence, substituted "2007" for "1997" and at end substituted "classes three, four, and ten" for "the state at least every 3 years" and in third sentence, after "all", inserted "class three, four, and ten" and after "revalued" substituted "by January 1, 2010, and each succeeding" for "at least every"; and made minor changes in style. Amendment effective April 30, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 463, L. 1997, provided: "A statement of intent is required for this bill because 15-7-111 gives rulemaking authority to the department of revenue for phasing in newly constructed, remodeled, and reclassified property consistent with the phasing in of reappraised property. The legislature contemplates that the rules adopted by the department should address, at a minimum, the manner in which the reappraised portion of new, remodeled, or reclassified property will be determined and phased in."

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

1992 Special Session Amendment: Chapter 13, Sp. L. July 1992, deleted version that was to be effective July 1, 1993.

(Version effective January 1, 1993) Inserted (1) requiring revaluation of all taxable property by December 31, 1996, and requiring that Department furnish a copy of the plan to each county's Board of County Commissioners; in (2), at beginning, inserted "Beginning January 1, 1997"; and made minor changes in style. Amendment effective August 6, 1992.

1991 Amendment: (Temporary version) In (4)(a) inserted second sentence concerning residential improvements; inserted (4)(b) concerning reappraisal based upon sales assessment ratio study for tax years 1991 through 1993; in (8)(a), after "ratios to", inserted "within plus or minus 5% of"; and inserted (9) concerning public hearing in an area based on certain results of sales assessment ratio study. Amendment effective April 27, 1991.

(Version effective July 1, 1993) In (2)(b)(i) and (2)(b)(ii), after "performed", the Code Commissioner deleted "pursuant to subsection (4)(a)" because the amendment in sec. 8, Ch. 680, L. 1991, rendered the reference erroneous. This version was deleted by sec. 4, Ch. 13, Sp. L. July 1992.

(Version effective January 1, 1994, but the effective date was changed to January 1, 1993, by sec. 2, 3, and 4, Ch. 13, Sp. L. July 1992) In two places reduced time of revaluation from 5 years to 3 years; and deleted (2) through (8) that read: "(2) The new values determined during a revaluation cycle must be provided to the taxpayers at the end of the revaluation cycle but may not be placed on the tax rolls until 1 year following the completion of the revaluation cycle.

(3) A taxpayer shall appeal the new value in advance of its placement on the tax rolls by filing an appeal pursuant to 15-15-102 before the first Monday in June or 15 days after receiving notice of the new valuation amount, whichever is later, or be barred from appealing for untimeliness.

(4) For the taxable year beginning January 1, 1990, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential land and improvements, agricultural 1-acre homesites and improvements, and commercial land and

improvements. The sales assessment ratio based on property sales finalized and recorded by no later than November 1 must be used to determine appraisals for the immediately succeeding tax year.

(5) The study required in subsection (4) must be based on:

(a) commonly accepted statistical standards and methodology;

(b) a statistically valid sample of sales, using data from realty transfer certificates filed for up to 3 taxable years prior to the year the study is made, taking into account the dates of the included sales in the statistical analysis; and

(c) the assessments and sales for areas of the state that are economically, demographically, and geographically similar in order to determine the sales assessment ratios for a specific area.

(6) For purposes of conducting the study required by subsection (4), the department shall partition the state into as many as 100 areas for residential property and as many as 20 areas for commercial property. The areas must contain statistically sufficient numbers of sales and be as economically and demographically homogeneous as reasonably practicable.

(7) The department shall use the following procedure to validate sales information:

(a) Department staff who did not participate in the determination of appraised values are required to review the sales transactions evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale used in the study was a valid, arm's-length transaction. Only valid, arm's-length sales may be used in the sales assessment ratio study.

(b) The sales information entered in the computer-assisted appraisal system is considered confidential, as provided in 15-7-308. However, the department shall annually publish a report containing the results of all sales assessment ratio studies done in each of the areas described in subsection (6). The report containing the results of the study must be made available to the public by request or by general disclosure.

(c) The department shall exclude from the sales assessment ratio study any parcels in which the improvements have been remodeled, reconstructed, or expanded between the time of the assessment and the time of the sales.

(d) The department shall exclude sales assessment ratios of less than 50% or greater than 200%.

(8) (a) The department shall have equalized property values throughout the state and may not make further adjustments to values under this section when the assessments for each stratum within each area identified in subsection (6) are rescaled to bring all ratios to common value 1 and when the sample size produces a standard error of less than 5%.

(b) Under the method described in subsection (8)(a), taxable property in each area is considered revalued for each tax year, based on the results of the sales assessment ratio study and the adjustments required by that study.

(c) Assessments in an area are considered equalized under subsection (8)(a) if the ratio for the area is within plus or minus 5% of common value 1". Amendment effective January 1, 1994.

Applicability: Section 13(1), Ch. 680, L. 1991, provided: "[Section 2] [temporary version] applies retroactively, within the meaning of 1-2-109, to property tax year 1991 and is applicable to taxable years 1992 and 1993."

Section 13(2), Ch. 680, L. 1991, provided that this section (version effective January 1, 1994, now effective January 1, 1993, pursuant to sec. 2, 3, and 4, Ch. 13, Sp. L. July 1992) applies to all taxable years beginning after December 31, 1993. The applicability date was changed to taxable years beginning after December 31, 1992, by sec. 1, Ch. 13, Sp. L. July 1992.

Termination Date: Section 14, Ch. 680, L. 1991, provided that the amendments to this section made in sec. 2, Ch. 680, L. 1991, terminate December 31, 1993. The termination date was changed to December 31, 1992, by sec. 2, Ch. 13, Sp. L. July 1992. These amendments are reflected in the temporary version and the version effective July 1, 1993. The version effective July 1, 1993, was deleted by sec. 4, Ch. 13, Sp. L. July 1992.

1989 Amendment: At end of third sentence of (1) deleted "or that no less than 20% of the property in each county shall be revalued in each year"; substituted language in (4) relating to property to be studied for former language that read: "For the taxable year beginning January 1, 1988, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential real property and improvements, of all commercial and industrial real property and improvements, and of all other real property and improvements. The study must include such property as vacant land, agricultural improvements, and the 1-acre homesite beneath the agricultural residence"; in (5)(a) substituted "commonly accepted statistical standards and methodology" for former language that read: "the standards and methodology adopted by the international association of assessing officers in their publication "Standard on Assessment Ratio Studies""; deleted former (5)(b) that read: "(b) assessments of

the property described in subsection (4) as of January 1 of the year immediately preceding the taxable year for which the study is conducted"; in (5)(b) substituted "up to 3 taxable years prior to the year the study is made, taking into account the dates of the included sales in the statistical analysis" for "the taxable year immediately following the assessment date identified in subsection (5)(b)"; substituted language in (6) requiring the Department to designate residential property areas and commercial property areas for former language that statutorily designated sales assessment areas (see 1987 MCA for text); deleted former (7) that read: "(7) The department shall use the following procedures to resolve situations in similar areas of the state that have inadequate numbers of sales to conduct the statistically valid sample in a specific tax year:

(a) an extension of the time period from which sales are drawn and an adjustment of the sales price to acknowledge the different time period. At a minimum, the time adjustment must coincide with the consumer price index for that same time period.

(b) the use of fee appraisals in lieu of sales prices. The fee appraisal must be conducted by a certified appraiser who is not an employee of the department.

(c) the input of assessment ratio statistics developed from a model of the area. The information to be input into the study must be statistically valid and must be developed by a certified statistician who is not an employee of the department"; in (7)(a) substituted language relating to staff review of sales transactions for former language that read: "Department field staff are required to manually review each sales transaction evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale was a valid, arm's-length transaction"; in (7)(b) substituted language relating to confidentiality of sales information and reporting of sales assessment studies for former language that read: "The valid sales information must be transmitted to the department. The department staff shall enter the sales information on the computer-assisted appraisal system in order to make the sales assessment ratio study. The sales information contained on the computer-assisted appraisal system is considered confidential, as provided in 15-7-308"; at end of (7)(c) substituted "between the time of the assessment and the time of the sales" for "or that are wholly new construction after the assessment date identified in subsection (5)(b)"; in (8) substituted language relating to requirement of equalized property values and when further adjustments of values are prohibited for former language that read: "The department shall have equalized property values throughout the state when the following conditions are met:

(a) the overall assessment level for each stratum within each area identified in subsection (6) is within an interval of plus or minus 10% of the legal level of assessment, given an adequate sample size;

(b) coefficients of dispersion with respect to the weighted mean assessment ratio for residential properties located within each area identified in subsection (6) are equal to or less than 20%;

(c) coefficients of dispersion with respect to the weighted mean assessment ratio for income-producing properties located within each area identified in subsection (6) are equal to or less than 20%; and

(d) coefficients of dispersion with respect to the weighted mean assessment ratio for other types of real property and improvements located within each area identified in subsection (6) are equal to or less than 20%"; deleted former (10) that read: "(10) (a) When the overall assessment level of each stratum exceeds 10% of the legal level of assessment and when the coefficients of dispersion with respect to the weighted mean for each stratum exceed 20%, the department shall make percentage adjustments to the valuations of all the properties in a specific area stratum. The percentage adjustments must create compliance with subsection (9). The percentage adjustments must account for unique factors that affect values in the various areas.

(b) Under this method, all taxable property in each area is considered revalued for each tax year, based on the results of the sales assessment ratio study and any percentage adjustments required by that study"; and made minor changes in phraseology. Amendment effective April 28, 1989.

Effective Date — Applicability: Section 6, Ch. 636, L. 1989, provided: "[This act] is effective on passage and approval [approved April 28, 1989] and applies to taxable years beginning after December 31, 1989."

1987 Amendments: Chapter 596 inserted (2) requiring 1-year delay in placing new values on tax rolls; and inserted (3) relating to appeal of new values.

Chapter 613 in second and third sentences of (1), requiring periodic revaluation, substituted "reappraisal plan" for "plan of rotation" and in second sentence, after "department", deleted "fixing the order of revaluation of property in each county on the basis of the last revaluation of

taxable property in each county prior to July 1, 1974, in order to adjust the disparities therein between the counties"; and inserted (4) through (10) requiring a stratified sales assessment ratio study and setting forth the procedure (see Ch. 613, L. 1987, for full text). Amendment applicable to taxable years beginning after December 31, 1987.

Extension of Revaluation Cycle: Chapter 350, L. 1981, provided: "Section 1. Policy. It is the policy of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

Section 2. Purpose. (1) It is the purpose of this act to provide an additional 2 years for completion of the current revaluation cycle, implemented pursuant to 15-7-111 through 15-7-114, in order to permit the department of revenue to comply with the revaluation requirements of 15-7-111 through 15-7-114 in a manner that implements the policy provided for in section 1.

(2) This act serves to extend the current cycle only. It is intended that after the extended cycle, the department will implement the provisions of 15-7-111 through 15-7-114 and return to the 5-year cycle.

Section 3. Extension of current revaluation cycle. (1) Notwithstanding the provisions of 15-7-111 through 15-7-114, the current revaluation cycle, implementing 15-7-111, scheduled to end on December 31, 1983, and representing a 5-year period commencing January 1, 1979, is hereby extended for an additional 2 years, ending December 31, 1985. The new values determined during this period shall be placed on the tax rolls commencing January 1, 1986.

(2) It is not necessary for the department of revenue to commence another 5-year revaluation cycle pursuant to 15-7-111 until January 1, 1986.

(3) The extension provided for in subsection (1) does not affect the validity of any assessments made or to be made or any taxes levied or to be levied during the period January 1, 1979, to December 31, 1985."

Severability: Section 5, Ch. 294, L. 1975, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Administrative Rules

Title 42, chapter 18, ARM Montana appraisal plan.
Title 42, chapter 18, subchapter 1, ARM General provisions.
Title 42, chapter 18, subchapter 2, ARM Certification requirements.
Title 42, chapter 20, subchapter 1, ARM Valuation of real property.
ARM 42.20.107 Valuation methods for commercial properties.
ARM 42.20.108 Income approach.
ARM 42.20.109 Capitalization rates.
ARM 42.20.156 Agricultural and forest land use change criteria.
Title 42, chapter 20, subchapter 4, ARM Sales assessment ratio — real property values.
Title 42, chapter 20, subchapter 5, ARM Phasein valuation.
Title 42, chapter 20, subchapter 6, ARM Agricultural land.

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board, asking the District Court to determine whether the 2% phasein of changes in real property value in this section violated the state constitution or statutes. Although the appraised value of Roosevelt's property declined by $161,757 in 1997, under this section, he was given credit for only a $3,235 difference and was assessed taxes based on a value of $817,362 rather than the actual 1997 appraised value of $658,840. In District Court, Roosevelt raised numerous alleged statutory and constitutional violations, including equal protection and due process concerns. The District Court held this section unconstitutional on its face, in conflict with Art. VIII, sec. 3 and 7, Mont. Const., with the equal protection and due process clauses of both the state and federal constitutions, and with statutes pertaining to the valuation and assessment of real property. On appeal, the Supreme Court cited U.S. v. Raines, 362 US 17, 4 L Ed 2d 524, 80 S Ct 519 (1960), in reversing the holding that the statute was unconstitutional on its face because even though it imposed different tax burdens on various classes of taxpayers, the statute was neutral on its face. However, the court did not find it necessary to address all other issues raised or decided by the District Court beyond the equal protection question. The court first noted that the level of scrutiny applicable to this case did not rise to the level of strict scrutiny, which requires a compelling state interest for statutory

classifications that treat otherwise similarly situated persons differently and is reserved for situations when a statutory classification impermissibly interferes with the exercise of a fundamental right or operates to a peculiar disadvantage of a suspect class. Although a legitimate state interest exists in reducing reliance on property taxes and avoiding property tax increases, the method in this section, which taxed property owners, such as Roosevelt, based on 124% of market value while other taxpayers paid less than full market value, was not rationally related to a legitimate state interest, so the court declined to decide whether a higher level of scrutiny applied to classifications created for property tax assessment. Rather, the court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Taxpayer Action Precluded by Statute of Limitations — Running of Statute Not Tolled by Fiduciary Relationship With Department of Revenue — Knowledge of Accrual of Cause of Action Immaterial: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and refund of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in this section to be unconstitutional. As a consequence of payment of the taxes and the Supreme Court's opinion in Sheehy, the taxpayers alleged that they were entitled to a court-ordered reduction in certain real property appraisals as well as a partial refund of their 1989 through 1992 real property taxes. The Department moved to dismiss the suit on the grounds that each claim was barred by the statute of limitations and that the taxpayers failed to state a claim for which relief could be granted. The District Court dismissed the suit. The Supreme Court noted that the applicable statute of limitations in 15-1-406 requires that suit be commenced within 90 days of imposition of the tax and that it did not matter whether the 1991 version of the statute or the 1995 version of the statute applied to the taxpayers' case because they both contained a similar statute of limitations. The Supreme Court responded to the taxpayers' argument, that the running of the statute of limitations was tolled because the Department acted as a fiduciary in holding the taxpayers' claimed reimbursement, by distinguishing the cases from other jurisdictions cited by the taxpayers upon which the taxpayers based their argument. The Supreme Court also noted that under some statutes, such as 15-8-115, the Department is actually a taxpayer's adversary. The Supreme Court also pointed out that contrary to the taxpayers' assertions, whether the taxpayers had knowledge of the accrual of their cause of action is immaterial because under 27-2-102, the statute of limitations begins to run when a cause of action accrues and lack of knowledge of the time of accrual of the cause of action does not postpone the running of the period of limitation. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Former Statute Unconstitutional — Stratified Sales Assessment Ratio Violative of Equal Protection: After the Supreme Court's decision in Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533 (1990), the 1991 Legislature amended this section to require the Department of Revenue to use a stratified ratio sales study to adjust property values in a given district during an appraisal cycle (see 1991 Session Laws). The Legislature also provided for a right to appeal adjusted values and for shorter appraisal cycles. After the 1991 legislation became effective, Sheehy sued the Department of Revenue. The Supreme Court held the new law also to be unconstitutional in that the across-the-board 4% factor used to adjust property values in areas with widely disparate appraisals was as unconstitutional as the 30% factor struck down in Barron. The Supreme Court noted that the method may achieve uniformity between areas but not between individual properties where inequities already exist. Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181, 50 St. Rep. 1464 (1993). See also Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997), and Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999).

Stratified Sales Assessment Ratio — Unconstitutional: On September 11, 1990, the Montana Supreme Court held that the stratified sales assessment ratio study offends state constitutional principles. The order was issued with the reasons to be stated later. The application of the order was prospectively continued to December 31, 1990, to allow collection of 1990 taxes. On October 12, 1990, the court issued its written order explaining that the use of 1990 tax values derived from the stratified sales assessment ratio study and the subsequent application of a percentage factor to certain residential properties, which in 1989 were assessed or appraised at or above their true market values, resulted in unfair discrimination by requiring those property owners to bear a disproportionate share of the state tax burden in violation of the equal protection and due process requirements of both the U.S. and Montana Constitutions. The court further found that application of the ratio violated statutory appraisal provisions requiring general and uniform appraisal, assessment, and equalization of all taxable property in the state. Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533, 47 St. Rep. 1869 (1990), followed in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993), and followed, with regard to the unconstitutionality of a 2% phasein of changes in real property value (revised Ch. 584, L. 1999) on equal protection grounds, in Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999).

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Violation of Administrative Procedure Act: The Montana appraisal plan, adopted August 25, 1975, was void because it was never legally adopted in accordance with the Montana Administrative Procedure Act. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

Constitutionality: The Montana appraisal plan and its implementing legislation are constitutional. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

15-7-112. Equalization of valuations.

Compiler's Comments

Severability: Section 5, Ch. 294, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board, asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. Although the appraised value of Roosevelt's property declined by $161,757 in 1997, under 15-7-111, he was given credit for only a $3,235 difference and was assessed taxes based on a value of $817,362 rather than the actual 1997 appraised value of $658,840. In District Court, Roosevelt raised numerous alleged statutory and constitutional violations, including equal protection and due process concerns. The District Court held 15-7-111 unconstitutional on its face, in conflict with Art. VIII, sec. 3 and 7, Mont. Const., with the equal protection and due process clauses of both the state and federal constitutions, and with statutes pertaining to the valuation and assessment of real property. On appeal, the Supreme Court cited U.S. v. Raines, 362 US 17, 4 L Ed 2d 524, 80 S Ct 519 (1960), in reversing the holding that the statute was unconstitutional on its face because even though it imposed different tax burdens on various classes of taxpayers, the statute was neutral on its face. However, the court did not find it necessary to address all other issues raised or decided by the District Court beyond the equal protection question. The court first noted that the level of scrutiny applicable to this case did not rise to the level of strict scrutiny, which requires a compelling state interest for statutory classifications that treat otherwise similarly situated persons differently and is reserved for situations when a statutory classification impermissibly interferes with the exercise of a fundamental right or operates to a peculiar disadvantage of a suspect class. Although a legitimate state interest exists in reducing reliance on property taxes and avoiding property tax increases, the method in 15-7-111, which taxed property owners, such as Roosevelt, based on 124% of market value while other taxpayers paid less than full market value, was not rationally related to a legitimate state interest, so the court declined to decide whether a higher level of

scrutiny applied to classifications created for property tax assessment. Rather, the court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

"Method" Not Reference to Any Single Approach but Rather to Consistent Process for Determining Market Value: The District Court concluded that use of the word "method" in this section allowed the Department of Revenue to use only one approach when appraising property and estimating market value. The Supreme Court disagreed, holding that "method" does not refer to any single approach but rather refers to a consistent process for arriving at market value, the details of which may vary from place to place depending on available data. "Method" will necessarily include a number of different approaches, such as the market data approach, the income approach, the cost approach, or some combination of these approaches, depending on the market in the area where appraisals occur. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Use of More Than One Approach to Property Valuation — Market Data Approach: Section 15-8-111 defines market value. It is clear from the definition that when the Legislature defined market value as the price at which property would change hands in an arm's-length sale, it evidenced its intent that the market data approach to value, not just the cost approach, can and should be used by the Department of Revenue when it appraises and assesses property, depending upon the available market data. If the Legislature had intended that only one approach be used, 15-8-111 would be superfluous and the provisions of Title 15, ch. 7, parts 3 and 4, would be ineffective or wholly unnecessary. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), following DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228 (1993).

Use of Single Approach to Estimating Market Value Not Required: The constitutional framers did not intend for equalization to require the use of a single approach to estimating market value. Rather, the framers anticipated and intended that the Department of Revenue could use a number of different approaches, including the income approach and the market data approach. The Department's method of assessing property and estimating market value is by no means perfect, but the interdisciplinary method is a reasonable attempt to equalize appraisal of real property, comports with the most modern and accurate appraisal practices available, and meets the constitutional requirement for equalization of property values. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997). See also Ostergren v. Dept. of Revenue, 2004 MT 30, 319 M 405, 85 P3d 738 (2004).

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Constitutionality: The Montana appraisal plan and its implementing legislation are constitutional. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

Violation of Administrative Procedure Act: The Montana appraisal plan, adopted August 25, 1975, was void because it was never legally adopted in accordance with the Montana Administrative Procedure Act. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

15-7-113. Program exclusive.

Compiler's Comments

Severability: Section 5, Ch. 294, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Case Notes

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

15-7-114. Law supplemental.

Compiler's Comments

Severability: Section 5, Ch. 294, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Case Notes

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

15-7-134. Extension of reappraisal cycle for class three land.

Compiler's Comments

Effective Date: Section 8, Ch. 13, Sp. L. July 1992, provided that this section is effective on passage and approval. Approved August 6, 1992.

15-7-138. Notice of classification and appraisal to single address for owners of undivided interest.

Compiler's Comments

2003 Amendment: Chapter 315 inserted (1)(a)(ii) providing that for multiple undivided mining claim interests, upon request of all owners, the department shall send the notice and separate assessments to each owner; inserted (1)(a)(iii) providing that requests for separate assessment and notice are limited to mining claims as the multiple undivided interests existed on or prior to April 30, 2001, and that additional division of interests after that date may not result in additional separate assessments; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: Section 6, Ch. 444, L. 2001, provided that this section is effective on passage and approval. Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.19.601 Notification of classification and appraisal to owners of multiple undivided ownerships.

15-7-139. Requirements for entry on property by property valuation staff employed by department — authority to estimate value of property not entered — rules.

Compiler's Comments

2003 Amendment: Chapter 593 inserted (7)(b) authorizing a tax appeal board to adjust the estimated value of real or personal property when an appraisal is conducted by a certified appraiser; and made minor changes in style. Amendment effective May 9, 2003.

Notification of Appraisal and Audit — Termination: Section 3, Ch. 5, L. 2003, provided: "For property identified by the department of revenue as posted private land pursuant to 45-6-201, the department shall, not later than [60 days after the effective date of this act] [April 7, 2003], mail notice to the owner of the posted private land that property valuation staff employed by the department may enter the property to appraise or audit property for property tax purposes. The notice must include the provisions of [section 1(3) and (4)] [15-7-139(3) and (4)]." Section 3, Ch. 5, L. 2003, is effective February 6, 2003, and terminates September 1, 2003.

Effective Date: Section 6, Ch. 5, L. 2003, provided: "[This act] is effective on passage and approval." Approved February 6, 2003.

Administrative Rules

ARM 42.18.125 Extension of time for landowners to respond to access notices from Department.

ARM 42.18.127 Property tax fee appraisal requirements when taxpayer denies Department access to property to conduct appraisal or audit.

15-7-140. Notice appraisal and audit — statement of rights.

Compiler's Comments

Effective Date: Section 6, Ch. 5, L. 2003, provided: "[This act] is effective on passage and approval." Approved February 6, 2003.

Administrative Rules

ARM 42.18.125 Extension of time for landowners to respond to access notices from Department.

Part 2
Agricultural Appraisal

Part Compiler's Comments

Repeal of Rollback Tax — Oversight Committee Report: Although Ch. 201, L. 1981 (SB 183), repealing the rollback tax on agricultural land, was not introduced at the request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee), the committee report entitled "Montana's Greenbelt Law", Legislative Council, 1980, addresses the subject of the rollback tax.

Unpaid Rollback Taxes Discharged: Section 2, Ch. 201, L. 1981, provided: "All rollback taxes unpaid or paid under protest on the effective date of this act [March 31, 1981] that constitute a lien on real property in the state are discharged and stricken from the respective tax records."

Severability: Section 5, Ch. 201, L. 1981, was a severability section.

Section Not Codified: Section 84-437.17, R.C.M. 1947, which provided for refunding of late fees paid under the pre-1974 agricultural assessment statutes, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 7, Ch. 56, L. 1974.

Part Administrative Rules

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

Part Case Notes

Assessment of Agricultural Land: Under former law, a County Board of Equalization (duty now performed by Department of Revenue) properly assessed plaintiff's property on basis of "market value" rather than on basis of agricultural land, even though it was being used for agricultural purposes, where property was within commercial area and its value was much greater than that assigned to agricultural property. Mohland v. St. Bd. of Equalization, 155 M 49, 466 P2d 582 (1970), certiorari denied, 400 US 940, 27 L Ed 2d 244, 91 S Ct 232 (1970).

Part Law Review Articles

Land Use Planning and the Montana Legislature: An Overview for 1973, Lundberg, 35 Mont. L. Rev. 38 (1974).

The Family: How Are You Going to Keep Them Down on the Farm?, MacDonald, 35 Mont. L. Rev. 88 (1974).

Part Collateral References

Taxation *key* 346, 348.

84 C.J.S. Taxation §§506 through 523.

72 Am. Jur. 2d State and Local Taxation §§675, 677.

15-7-201. Legislative intent — value of agricultural property.

Compiler's Comments

2001 Amendment: Chapter 459 in (4)(c) in first clause after "rate and" inserted "unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule" and at end of first full sentence substituted "the next revaluation cycle" for "new agricultural land valuation schedules are adopted by the department, after considering the recommendations from the advisory committee as provided in subsection (7)"; in (5)(b) near middle substituted "which may include grazing fees, crop and livestock share arrangements, cost of production data" for "grazing fees, crop share arrangements" and at end substituted "using the best available data" for "as follows"; in (5)(b)(i) near beginning substituted

"and cost of production data" for "and grazing fees" and at end inserted "and other sources of publicly available information if considered appropriate by the advisory committee"; in (5)(b)(ii) near beginning after "Crop share" inserted "and livestock share" and near middle substituted "typical agricultural business practices" for "the rental value of the land"; in (5)(b)(iii) near middle of first sentence inserted "unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule" and in second sentence increased costs to $40 per acre from $30 per acre; in (5)(c) in second sentence at end substituted "animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a 1,000-pound cow with a calf or its equivalent" for "the average grazing fee for a 1,000-pound animal"; in (5)(d) at beginning of first sentence inserted "Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule" and at beginning of second sentence substituted "Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data" for "Commodity price data and grazing fees", near middle after "averaged" deleted "for the 7-year period", and near end substituted "yearly data" for "commodity prices or grazing fees"; in (7) at end of first sentence deleted "to compile and review the data required by subsections (4) and (5)"; inserted (7)(a) through (7)(e) concerning advisory committee compiling data, recommending adjustments to share percentages, recommending base periods, evaluating capitalization rate, and verifying income; in (7)(f) in first full sentence before "value" inserted "recommended"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: (Temporary version) Chapter 563 in (4), after "to take effect", deleted "on January 1, 1994, and, thereafter, on the effective date"; in (5)(b)(iii) inserted last clause of first sentence regarding base water costs, inserted second sentence regarding total allowable costs, and inserted last clause regarding labor and energy costs; and made minor changes in style. Amendment effective April 26, 1995.

(Version effective January 1, 1997, and applicable to 1997 and later land valuation schedules) In (4), after "to take effect", deleted "on January 1, 1994, and, thereafter" and before "date" deleted "effective"; in (4)(c) substituted "adopted by the department, after considering the recommendations from the advisory committee as provided in subsection (7)" for "computed as required by law"; in (5)(b)(iii) inserted last clause of first sentence regarding base water costs, inserted second sentence regarding total allowable costs, and inserted last clause regarding labor and energy costs; in (5)(b)(iii)(B), in four places, substituted reference to energy cost base year for "1992", in first sentence inserted last clause describing energy cost base year, and in second sentence substituted "of the year following the energy cost base year" for "1993"; and made minor changes in style. Amendment effective January 1, 1997.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Applicability: Section 6, Ch. 563, L. 1995, provided: "(1) [Sections 1 and 3] [15-7-201 (temporary version) and 15-7-221 (now repealed)] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

(2) [Section 2] [15-7-201 (version effective January 1, 1997)] applies to tax years beginning after December 31, 1996."

1993 Amendment: (Temporary version) Chapter 267 made minor changes in style.

(Version applicable to 1994 and later land valuation schedules) In (3), after "Within each class, land", substituted "must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield" for "shall be assessed at a value that is fairly based on its productive capacity"; in (4) substituted "January 1, 1994" for "the date that the revaluation cycle commencing January 2, 1986"; in (4)(b) substituted a provision that "I" is to be determined as provided in subsection (5) for a former formula for the determination (see 1991 MCA for the formula); at end of first sentence of (4)(c) substituted "and is equal to 6.4%" for "to be determined by the department as provided in subsection (9)" and inserted second sentence maintaining rate until new valuation schedules are computed; in (5) substituted provisions that net income must be determined separately in each land use based on production categories and on commodity price data, grazing fees, crop share arrangements, and water cost data for the base period, provisions for determining the cost of the items, and a provision establishing the base period used to determine net income for former (5) that read: "(5) Net income shall be:

(a) calculated for each year of a base period, which is the most recent 3-year period for which data are available, prior to a revaluation of property as provided in 15-7-111; and

(b) based on commodity price and production cost data for the base period from such sources as may be considered appropriate by the department, which sources shall include Montana state university"; in (6) substituted "The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5)" for a list of items (see 1991 MCA for text) that the Department had to compile data for; in (7), at beginning of first sentence, substituted the Governor for the Department as the appointing authority, before "review" inserted "compile and", and after "data" substituted "required by subsections (4) and (5)" for "prepared by Montana state university and advise the department on the implementation of subsections (2) through (6)", in second sentence, after "university", inserted "college of agriculture", inserted third sentence requiring the committee to recommend agricultural land valuation schedules to the Department, and inserted fourth sentence providing that the value of irrigated land may not be below the value the land would have if not irrigated; deleted (8) through (10) that related to separate net income determinations for certain lands and calculation of the capitalization rate and the effective tax rate (see 1991 MCA for text); and made minor changes in style. Amendment effective April 2, 1993.

Preamble: The preamble attached to Ch. 267, L. 1993, provided: "WHEREAS, the Montana Legislature adopted a plan in 1975 for cyclical reappraisal of nonagricultural land; and

WHEREAS, nonagricultural land has been through three reappraisal cycles since 1972, with the values of the third cycle becoming effective January 1, 1993; and

WHEREAS, agricultural land has not been reappraised since 1963 and the Montana Legislature has determined that reappraisal of agricultural land is necessary for the overall improvement of Montana's property tax system; and

WHEREAS, the Montana Legislature has traditionally kept the total taxable value of an entire class of property relatively constant between reappraisal cycles by adjusting tax rates; and

WHEREAS, the Montana Legislature desires to keep the total taxable value of agricultural land constant despite reappraisal; and

WHEREAS, the new method of determining productive capacity of various subclasses of agricultural land results in significant increases or decreases in individual reappraised values; and

WHEREAS, the Montana Legislature finds that it is equitable and desirable for the tax system as a whole that the increases and decreases in taxable value of agricultural land be phased in over the appraisal cycle; and

WHEREAS, the Montana Legislature considers it appropriate to provide for the reappraisal of agricultural land and to provide for a phasein of the changes in taxable values over the reappraisal cycle."

Severability: Section 11, Ch. 267, L. 1993, was a severability clause.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

1991 Amendments: Chapter 172 in (4) substituted "January 1, 1993" for "January 1, 1991" (rendered void by Ch. 680). Amendment effective March 26, 1991.

Chapter 680 in (4), after "effect on", deleted "January 1, 1991, or on" and after "15-7-111" inserted "and, thereafter, on the effective date when each revaluation cycle takes effect". Amendment effective April 27, 1991.

Termination Date Amended: Section 2, Ch. 172, L. 1991, amended the termination date enacted in sec. 10, Ch. 681, L. 1985, to provide that the law enacted by sec. 1, Ch. 681, terminates January 1, 1993. Amendment effective March 26, 1991.

Applicability Date Amended: Section 3, Ch. 172, L. 1991, amended the applicability date enacted in sec. 3, Ch. 705, L. 1985, to provide that the law enacted by sec. 1, Ch. 705, applies to revaluations taking effect January 1, 1993. Amendment effective March 26, 1991.

Retroactive Applicability: Section 5, Ch. 172, L. 1991, provided: "[Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Code Commissioner Explanation: Chapter 172, L. 1991, amended sec. 10, Ch. 681, L. 1985, to terminate the amendments to this section made by Ch. 681 on January 1, 1993. Chapters 680 and 783, L. 1991, amended sec. 10, Ch. 681, L. 1985, to terminate the amendments made by Ch. 681, L. 1985, on January 1, 1991, the date the amendments would have terminated pursuant to Ch. 681, L. 1985. Because the termination provisions conflict, the Code Commissioner has terminated the amendments at the earlier date of January 1, 1991.

1985 Amendments — Code Commissioner Explanation: Chapter 681 combined (2) and former (3); in second sentence of (2) at beginning inserted "Except as provided in subsections (3) and (4)",

after "each class" inserted "of agricultural land, such", and after "ability to produce" deleted "taking into consideration the classification system in existence on January 1, 1986; provided, however, the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs shall be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value such land would have if it were not irrigated"; and inserted (4) that reads: "(4) For the revaluation beginning January 1, 1986, the department of revenue shall continue to use the agricultural land valuation schedules in effect on January 12, 1984, except that irrigated land values shall be revised, taking noncapital water distribution costs into consideration. However, at no time may the value of irrigated land be below the value such land would have if it were not irrigated." Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Chapter 705 near end of (3) inserted "productive capacity" and deleted "ability to produce, taking into consideration the classification system in existence on January 1, 1986; provided, however, the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs shall be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value such land would have if it were not irrigated"; substituted "(4) In computing the agricultural land valuation schedules to take effect on January 1, 1991, or on the date that the revaluation cycle commencing January 2, 1986, takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined by the department using the formula I = (P - C) U where:

(i) I is the per-acre net income;

(ii) P is the per-unit price of the commodity being produced;

(iii) C is the per-unit production cost of the commodity being produced; and

(iv) U is the yield in units per acre; and

(c) R is the capitalization rate to be determined by the department as provided in subsection (9)" for "(4) Capital costs such as improved water distribution, fertilizer, and land shaping that increase productivity shall not be used in determining assessed values"; and inserted (5) through (10) that read: "(5) Net income shall be:

(a) calculated for each year of a base period, which is the most recent 3-year period for which data are available, prior to a revaluation of property as provided in 15-7-111; and

(b) based on commodity price and production cost data for the base period from such sources as may be considered appropriate by the department, which sources shall include Montana state university.

(6) To the degree available, the department shall compile:

(a) commodity price data reflecting the average prices received per unit of measure by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Commodity prices may include wheat, barley, alfalfa hay, grass hay, corn for grain, corn for silage, sugar beets, dry beans, potatoes, cattle, and sheep. Government payments may be considered. Typical rental arrangements may be considered.

(b) production cost data reflecting average costs per unit of measure paid by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Such production costs may include costs relating to irrigation, fertilization, fuel, seed, weed control, hired labor, management, insurance, repairs and maintenance, and miscellaneous items. Variations in specific production cost data, when affected by different levels of production, and typical rental arrangements may be considered.

(7) The department shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics to review the data prepared by Montana state university and advise the department on the implementation of subsections (2) through (6). The advisory committee shall include one member of the Montana state university [now Montana state university-Bozeman] staff.

(8) Net income shall be determined separately for lands in irrigated use, nonirrigated use, and grazing use and shall be calculated for each use and production level according to the provisions of subsections (4) through (7).

(9) The capitalization rate shall be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the federal land bank association of Spokane, Washington, plus the effective tax rate in Montana.

(10) The effective tax rate shall be calculated by the department for each year of the base period by dividing the total estimated tax due on agricultural land in the state by the total productive capacity value of agricultural land in the state." Amendment effective January 1, 1986.

Although the provisions of both Ch. 705 and Ch. 681 become effective January 1, 1986, the amendments in Ch. 681 are to be used in setting the agricultural land valuation schedules that are placed on the tax rolls in January of 1986 (see new (4) inserted by Ch. 681) while the amendments in Ch. 705 are effective January 1, 1986, in order to accumulate data under the capitalization of net income formula of Ch. 705 to determine the agricultural land valuation schedules to be placed on the tax rolls in January of 1991.

Effective Date — Applicability Date: Section 3, Ch. 705, L. 1985, provided: "This act is effective January 1, 1986, and applies to any revaluation of property as provided in 15-7-111 after January 1, 1986."

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Preamble: The preamble to Ch. 681, L. 1985, provided: "WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Interim Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands."

Statement of Intent: The statement of intent attached to Ch. 681, L. 1985 (SB 33), provided: "It is the intent of the legislature that the department of revenue use the administrative rules for timberland currently in place on the effective date of this act.

Furthermore, it is the intent of the legislature that the changes embodied in Senate Bill No. 33 would ensure that the taxable value of timber, as a class, will not increase in 1986 as a result of being placed in a separate class and having the tax rate calculated as described in Senate Bill No. 33.

Finally, it is the intent of the legislature that the department of revenue may not subsequently change the valuation method for timber until 1991 or the completion of the next reappraisal cycle as required by 15-7-111."

1983 Amendment: In (1), in two places before "properties" substituted "agricultural" for "farm"; after "capability of" substituted "agricultural land" for "farms"; inserted (2) through (4) that read: "(2) Agricultural land shall be classified according to its use, which classifications shall include but not be limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land shall be assessed at a value that is fairly based on its ability to produce, taking into consideration the classification system in existence on January 1, 1986; provided, however, the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs shall be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value such land would have if it were not irrigated.

(4) Capital costs such as improved water distribution, fertilizer, and land shaping that increase productivity shall not be used in determining assessed values." Amendment effective January 1, 1986.

Administrative Rules

ARM 42.18.115 2003 Agricultural/forest land and improvements reappraisal plan.
ARM 42.20.171 Land classification determination date for class three, four, and ten property.
Title 42, chapter 20, subchapter 6, ARM Agricultural land.
ARM 42.20.750 Valuation of one acre beneath improvements on forest land.

15-7-202. Eligibility of land for valuation as agricultural.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 376 in (1)(c)(ii) near middle after "other than" inserted "nonqualified agricultural"; in (4) near middle after "agricultural" inserted "land or nonqualified agricultural land", after "it" inserted "has" and deleted "is subdivided land with", and after "stated" inserted "covenants or other" and deleted former second sentence that read: "For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes"; in (6) in second sentence near middle after "made is" inserted "valued as provided in 15-6-133(1)(c) and is" and at end substituted "15-6-133(3)" for "15-6-133(1)(c)"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 543 inserted (1)(b)(iii) regarding requirements for taxation of certain parcels of land as agricultural land. Amendment effective January 1, 2006.

Applicability: Section 5, Ch. 376, L. 2005, provided: "[This act] applies to property tax years beginning after December 31, 2005."

Effective Date — Applicability: Section 2, Ch. 543, L. 2005, provided: "[This act] is effective January 1, 2006, and applies to tax years beginning after December 31, 2005."

1995 Amendments: Chapter 474 at beginning of (2) deleted "Except as provided in subsection (8)"; and deleted (8) that read: "(8) Subject to the provisions of subsections (1), (2)(a), and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class eleven property."

Chapter 485 inserted (1)(c)(ii) classifying as agricultural certain land devoted to residential use or that is used for agricultural buildings; and made minor changes in style. Amendment effective April 14, 1995.

Applicability: Section 2, Ch. 474, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

Section 6(1), Ch. 485, L. 1995, provided: "[Sections 1 through 3] [15-6-134, 15-7-202, and 15-7-206] apply to tax years beginning after December 31, 1995."

1993 Amendment: Chapter 627 near beginning of (1)(a), before "acres", substituted "160" for "20" and near end, before "commercial", inserted "residential"; inserted (1)(b) establishing criteria for parcels of land of 20 acres or more but less than 160 acres to be eligible for classification as agricultural land; inserted first two sentences of (6) requiring application before land less than 160 acres may be classified as agricultural; in (8) included subsection (1) in subsection references; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 5(2), Ch. 627, L. 1993, provided that this section applies to tax years beginning after December 31, 1993.

1991 Amendments: Chapter 590 in (4), in first sentence before "prohibiting", inserted "effectively" and inserted second sentence defining subdivided land as parcels larger than 20 acres and subdivided for commercial or residential purposes; and made minor changes in style. Amendment effective April 24, 1991.

Chapter 705 at beginning of (2) inserted exception clause; at end of (2)(a) substituted "agricultural products as defined in 15-1-101" for "livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber"; and inserted (8) classifying property upon which sod, ornamental, nursery, or horticultural crops are grown or produced, excluding improvements, as agricultural land. Amendment effective April 29, 1991.

Chapter 773 in (8), at end, pursuant to sec. 16, Ch. 773, L. 1991, a coordination instruction, substituted reference to class eleven property for reference to class fourteen property.

Retroactive Applicability: Section 2, Ch. 590, L. 1991, provided that this section applies to taxable years beginning after December 31, 1990.

Section 13(3), Ch. 680, L. 1991, provided that sec. 5, Ch. 680, L. 1991, applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 17(2), Ch. 783, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Termination Amended: Section 5, Ch. 680, L. 1991, and sec. 11, Ch. 783, L. 1991, amended sec. 10, Ch. 681, L. 1985, to remove the termination date of the amendments to this section contained in sec. 10, Ch. 681, L. 1985.

Effective Date — Retroactive Applicability: Section 3, Ch. 705, L. 1991, provided: "[This act] is effective on passage and approval [approved April 29, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1986 Amendment: Inserted (1) relating to parcels totaling 20 acres or more; in (2) near beginning, inserted "totaling less than 20 acres"; and in (3) substituted "subsections (1) and (2)" for "subsection (1)".

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

1985 Amendments: Chapter 681 deleted former (1)(a)(iii) that read: "it is used for growing timber, or"; and inserted (6) that read: "For the purposes of this part, growing timber is not an agricultural use." Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Chapter 699 at the beginning of (1), referring to certain land devoted to agricultural use, substituted "Contiguous or noncontiguous parcels of land under one ownership that are" for "Land which is"; substituted (1)(a) relating to $1500 in annual gross income for "the area of such land is not less than 5 contiguous acres when measured in accordance with provisions of 15-7-206, and it has been actively devoted to agriculture during the last growing season, and it continues to be actively devoted to agricultural use, which means:

(i) it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or

(ii) it is used for grazing; or

(iii) it is used for growing timber, or

(iv) it is in a cropland retirement program"; substituted (1)(b) that reads: "the parcels would have met the qualification set out in subsection (1)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice" for "it agriculturally produces for sale or home consumption the equivalent of 15% or more of the owners' annual gross income regardless of the number of contiguous acres in the ownership"; deleted former (1)(c) that read: "it is used to raise animals in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms"; inserted (2) relating to parcels in a platted subdivision; inserted (5) relating to continued valuation of land as agricultural; and made minor changes in phraseology.

Coordination of 1985 Amendment: Section 5, Ch. 699, L. 1985, provided: "In the event neither Senate Bill No. 48 nor House Bill No. 240 nor any other bill that separates timberland from agricultural land in class 3, as described in 15-6-133, is passed and approved, make the following amendment:

Section 1. [Amending 15-7-202.]

Following: subsection (1)(b)

Insert: "(c) the parcel contains over 15 contiguous acres under one ownership and is capable of producing timber of commercial quality that can be economically harvested in commercial quantity.""

Senate Bill No. 48 failed to pass the 49th Legislature; House Bill No. 240 was passed and approved and was enacted as Ch. 743, L. 1985, but did not separate timberland from agricultural land. Senate Bill No. 33 was passed and approved, becoming Ch. 681, L. 1985, and in sec. 2

separated timberland from agricultural land. Thus, the amendment to be made by the coordinating instruction is void.

Effective Date — Applicability: Section 6, Ch. 699, L. 1985, provided: "This act is effective on passage and approval and is applicable to taxable years beginning after December 31, 1985."

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Preamble: For preamble to Ch. 681, L. 1985, see Compiler's Comments to 15-7-201.

Statements of Intent: For statement of intent attached to Ch. 681, L. 1985, see Compiler's Comments to 15-7-201.

The statement of intent attached to Ch. 699, L. 1985, provided: "A statement of intent is attached to Senate Bill 431 to provide guidelines to the department of revenue in adopting rules under the extension of rulemaking authority granted by section 3 of the bill [an extension of rulemaking authority that was not codified] in order to implement certain provisions.

Section 1 amends 15-7-202 to define eligibility of land for valuation as agricultural because of difficulty in administering existing law. For that reason subsection (1) requires that the land produce and that the owner, or the owner's agent, employee, or lessee market stated threshold measurements of agricultural products or gross sales of products. It is the intent of the legislature that the department adopt rules that would provide for methods of determining whether these thresholds are met in instances where the land is primarily used to grow crops that are not marketed but consumed by livestock, poultry, or other animals in an agricultural operation."

Administrative Rules

ARM 42.20.156 Agricultural and forest land use change criteria.
ARM 42.20.171 Land classification determination date for class three, four, and ten property.
Title 42, chapter 20, subchapter 6, ARM Agricultural land.
ARM 42.20.615 Application for agricultural classification of land.
ARM 42.20.750 Valuation of one acre beneath improvements on forest land.

Attorney General's Opinions

Mere Filing of Subdivision Plat Does Not Defeat Agricultural Status: The filing of a subdivision plat does not, by that fact alone, foreclose the possibility that land within that subdivision may qualify as "agricultural" property rather than "residential" and thus lower the owner's tax liability. 36 A.G. Op. 51 (1976).

15-7-203. Agricultural uses only considered in valuation.

Administrative Rules

ARM 42.20.171 Land classification determination date for class three, four, and ten property.
ARM 42.20.620 Criteria for agricultural land valuation for land totaling less than 20 acres.
ARM 42.20.630 Production failures.
ARM 42.20.635 Marketing delay for economic advantage.
ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

15-7-206. Improvements on agricultural land.

Compiler's Comments

1995 Amendment: Chapter 485 inserted (2) valuing 1 acre of land beneath agricultural improvements at the class with the highest productive value and production capacity of agricultural land; and made minor changes in style. Amendment effective April 14, 1995.

Applicability: Section 6(1), Ch. 485, L. 1995, provided: "[Sections 1 through 3] [15-6-134, 15-7-202, and 15-7-206] apply to tax years beginning after December 31, 1995."

Administrative Rules

ARM 42.20.156 Agricultural and forest land use change criteria.
ARM 42.20.171 Land classification determination date for class three, four, and ten property.
ARM 42.20.610 Classification and appraisal of easements on agricultural land.
ARM 42.20.620 Criteria for agricultural land valuation for land totaling less than 20 acres.
ARM 42.20.630 Production failures.
ARM 42.20.635 Marketing delay for economic advantage.

ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

15-7-207. Continuance of valuation as agricultural land.

Compiler's Comments

1981 Amendment: Deleted the last sentence of the section, which read: "Liability to the rollback tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use under the conditions prescribed in this part."

Administrative Rules

ARM 42.20.156 Agricultural and forest land use change criteria.
ARM 42.20.171 Land classification determination date for class three, four, and ten property.
ARM 42.20.620 Criteria for agricultural land valuation for land totaling less than 20 acres.
ARM 42.20.630 Production failures.
ARM 42.20.635 Marketing delay for economic advantage.
ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

15-7-208. Reclassification by department.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 at beginning of first sentence, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1983 Amendment: In first sentence, after "owner" inserted "or any purchaser under contract for deed".

Administrative Rules

ARM 42.20.171 Land classification determination date for class three, four, and ten property.
ARM 42.20.620 Criteria for agricultural land valuation for land totaling less than 20 acres.
ARM 42.20.630 Production failures.
ARM 42.20.635 Marketing delay for economic advantage.
ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

15-7-209. Reclassification by owner — lien.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 at end of (1) and at beginning of (2) substituted "department" for "county assessor"; in (2), near end, substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1981 Amendments: Chapter 201, at the end of (1), deleted "and the county assessor shall cause the following statement to be recorded by the county clerk and recorder: "On the .... day of ...., 19.., this land became subject to the rollback tax imposed by 15-7-204"".

Chapter 585 added subsection (2) relating to lien releases.

Administrative Rules

ARM 42.20.171 Land classification determination date for class three, four, and ten property.
ARM 42.20.620 Criteria for agricultural land valuation for land totaling less than 20 acres.
ARM 42.20.630 Production failures.
ARM 42.20.635 Marketing delay for economic advantage.
ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

15-7-210. Tax on change of use of part of tract.

Compiler's Comments

1981 Amendment: Substituted "reclassification by the department" for "liability for the rollback tax applicable thereto".

Administrative Rules

ARM 42.20.156 Agricultural and forest land use change criteria.

ARM 42.20.171 Land classification determination date for class three, four, and ten property.
ARM 42.20.620 Criteria for agricultural land valuation for land totaling less than 20 acres.
ARM 42.20.630 Production failures.
ARM 42.20.635 Marketing delay for economic advantage.
ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

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Mere Filing of Subdivision Plat Does Not Defeat Agricultural Status: The filing of a subdivision plat does not, by that fact alone, foreclose the possibility that land within that subdivision may qualify as "agricultural" property rather than "residential" and thus lower the owner's tax liability. 36 A.G. Op. 51 (1976).

15-7-212. Tract crossing county line — whole.

Administrative Rules

ARM 42.20.171 Land classification determination date for class three, four, and ten property.
ARM 42.20.620 Criteria for agricultural land valuation for land totaling less than 20 acres.
ARM 42.20.630 Production failures.
ARM 42.20.635 Marketing delay for economic advantage.
ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

Part 3
Realty Transfer Act

Part Compiler's Comments

Severability: Section 11, Ch. 528, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Part Administrative Rules

Title 42, chapter 20, subchapter 2, ARM Realty transfer rules.

Part Case Notes

Use of More Than One Approach to Property Valuation — Market Data Approach: Section 15-8-111 defines market value. It is clear from the definition that when the Legislature defined market value as the price at which property would change hands in an arm's-length sale, it evidenced its intent that the market data approach to value, not just the cost approach, can and should be used by the Department of Revenue when it appraises and assesses property, depending upon the available market data. If the Legislature had intended that only one approach be used, 15-8-111 would be superfluous and the provisions of Title 15, ch. 7, parts 3 and 4, would be ineffective or wholly unnecessary. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), following DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228 (1993).

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Part Law Review Articles

Recent Developments in Montana Land Use Law, Goetz, 38 Mont. L. Rev. 97 (1977).

Part Collateral References

Sale price of real property as evidence in determining value for tax assessment purposes. 89 ALR 3d 1126.

15-7-302. Purpose.

Administrative Rules

ARM 42.20.201 Statement of intent as to purpose.

15-7-303. Definitions.

Compiler's Comments

1997 Amendment: Chapter 42 deleted definition of partial interest that read: ""Partial interest" means a percentage interest in property when less than 100%"; and made minor changes in style. Amendment effective March 12, 1997.

15-7-304. Report of transfers — change of ownership records.

Compiler's Comments

1995 Amendment: Chapter 532 in (2), in first sentence after "recorder", substituted "and the" for "or a" and inserted second through fourth sentences providing that when the grantor is not the person to whom the property is assessed, the Department may not substitute the grantee's name. Amendment effective April 21, 1995.

Effective Date — Applicability: Section 3, Ch. 532, L. 1995, provided: "[This act] is effective on passage and approval and applies to all transfers after [the effective date of this act]." Effective April 21, 1995.

1993 Special Session Amendment: Chapter 27 in (1), after "department", deleted "or its agent"; in (2), at beginning, deleted "No agent of" and at end substituted "the department as provided by rule" for "him"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.20.106 Definitions.
ARM 42.20.201 Intent.
ARM 42.20.202 Realty transfer certificate.
ARM 42.20.204 Change of assessment roll.
ARM 42.20.205 Accuracy of realty transfer certificate.

Case Notes

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

15-7-305. Realty transfer certificate required.

Compiler's Comments

2005 Amendment: Chapter 70 in (3)(b) in first sentence at end substituted "water right ownership update forms" for "and provide the forms required under 85-2-423 and this part" and inserted second sentence requiring form to be part of or attached to realty transfer certificate; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 15, Ch. 70, L. 2005, was a saving clause.

1997 Amendment: Chapter 167 in (3), at beginning, inserted exception clause and inserted second sentence requiring Departments and the Water Court to develop and provide necessary forms; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 5, Ch. 167, L. 1997, provided: "[This act] is effective January 1, 1998, and does not apply to deeds entering escrow before that date."

Administrative Rules

ARM 42.20.201 Intent.
ARM 42.20.202 Realty transfer certificate.
ARM 42.20.204 Change of assessment roll.

15-7-306. Rules.

Administrative Rules

ARM 42.20.106 Definitions.
Title 42, chapter 20, subchapter 2, ARM Realty transfer rules.

15-7-307. Certificate — exceptions.

Compiler's Comments

2003 Amendment: Chapter 114 in first sentence near beginning substituted "required" for "imposed"; in (4) at beginning inserted "a transfer by"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 532 in introductory clause, after "part", substituted "applies" for "shall not apply" and after "to" inserted "all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred." Amendment effective April 21, 1995.

Effective Date — Applicability: Section 3, Ch. 532, L. 1995, provided: "[This act] is effective on passage and approval and applies to all transfers after [the effective date of this act]." Effective April 21, 1995.

Termination Amendment: Section 5, Ch. 680, L. 1991, amended sec. 10, Ch. 681, L. 1985, to remove the termination of the amendments made to this section by Ch. 681, L. 1985.

Retroactive Applicability: Section 13(3), Ch. 680, L. 1991, provided that sec. 5, Ch. 680, L. 1991, applies retroactively to taxable years beginning after December 31, 1990.

1985 Amendment: Inserted (3) relating to timberland used for producing timber. Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Preamble: For preamble to Ch. 681, L. 1985, see Compiler's Comments to 15-7-201.

Statement of Intent: For statement of intent attached to Ch. 681, L. 1985 (SB 33), see Compiler's Comments to 15-7-201.

Administrative Rules

Title 42, chapter 20, subchapter 2, ARM Realty transfer rules.
ARM 42.20.201 Intent.
ARM 42.20.202 Realty transfer certificate.
ARM 42.20.203 Exemptions from disclosing sale price.
ARM 42.20.204 Change of assessment roll.

15-7-308. Disclosure of information restricted — water right ownership update form exception.

Compiler's Comments

2005 Amendment: Chapter 70 in (2) in first sentence near middle substituted "water right ownership update form" for "water right transfer certificate". Amendment effective March 24, 2005.

Saving Clause: Section 15, Ch. 70, L. 2005, was a saving clause.

1997 Amendment: Chapter 167 in (1), at beginning, inserted exception clause; and inserted (2) regarding confidentiality provisions. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 5, Ch. 167, L. 1997, provided: "[This act] is effective January 1, 1998, and does not apply to deeds entering escrow before that date."

1993 Special Session Amendment: Chapter 27 after "clerk and recorder" deleted "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.20.201 Intent.

Case Notes

Taxpayer to Be Given Access to Realty Transfer Certificates Used in Assessing Taxpayer's Property: DeVoe appealed the assessed value established by the Department of Revenue for his apartment complex. The Department stated that it had based the valuation on the transfer of comparable properties but argued that the realty transfer certificates (RTCs) pertaining to those properties were confidential and not subject to discovery by DeVoe. The Supreme Court, relying on O'Neill v. Dept. of Revenue, 227 M 226, 739 P3d 456 (1987), held that fairness and procedural due process require that when market value is established based on comparable sales, the RTCs

of those transactions should be made available to the protesting taxpayer. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Limited Disclosure of Realty Transfer Certificate Information: The language of this section protects the confidentiality of a realty transfer certificate (RTC) when the demand for individual privacy exceeds the merits of public disclosure. However, when limited disclosure of relevant RTC information is crucial to a fair and informed decision by a tax appeal board or court, such disclosure outweighs individual privacy. Therefore, in contested tax proceedings, relevant information from an RTC must be disclosed to the taxpayer party, tax boards, and reviewing courts. During pendency of the proceedings, RTC information will not be available to the public, and after the proceedings any portion of the record containing disclosed RTC information must be sealed. Under this holding, a taxpayer may apply to the District Court for a subpoena to compel the Department of Revenue to release relevant RTC information. The subpoena must identify the specific information requested with as much precision as possible. Issuance and scope of the subpoena lies within the discretion of the District Court. O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456, 44 St. Rep. 1037 (1987).

Law Review Articles

A Growing Awareness of Privacy in America, Towe, 37 Mont. L. Rev. 39 (1976).

Part 4
Appraisal of Residential Property in Areas of Changing Use

Part Case Notes

Use of More Than One Approach to Property Valuation — Market Data Approach: Section 15-8-111 defines market value. It is clear from the definition that when the Legislature defined market value as the price at which property would change hands in an arm's-length sale, it evidenced its intent that the market data approach to value, not just the cost approach, can and should be used by the Department of Revenue when it appraises and assesses property, depending upon the available market data. If the Legislature had intended that only one approach be used, 15-8-111 would be superfluous and the provisions of Title 15, ch. 7, parts 3 and 4, would be ineffective or wholly unnecessary. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), following DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228 (1993).

Part Collateral References

Taxation *key* 346, 348.

84 C.J.S. Taxation §§506 through 523.

72 Am. Jur. 2d State and Local Taxation §677.

15-7-402. Application for residential appraisal of certain land and improvements.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), after "department", deleted "or its agents"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-7-403. Rollback tax — computation.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Special Session Amendment: Chapter 27 in (2), at beginning, substituted "department" for "department's agent". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

CHAPTER 8
ASSESSMENT PROCEDURE

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Case Notes

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648.

Chapter Attorney General's Opinions

Supplemental Assessments Against Banks — Confidentiality: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301. 35 A.G. Op. 59 (1974).

Chapter Law Review Articles

Real Property Tax Assessment in Montana, Sullivan, 34 Mont. L. Rev. 300 (1973).

Multiple Taxation: The Supreme Court Lets Down the Bars, 1 Mont. L. Rev. 89 (1940).

Chapter Collateral References

Standing of one taxpayer to complain of underassessment or nonassessment of property of another. 9 ALR 4th 428.

Separate assessment and taxation of air rights. 56 ALR 3d 1300.

Civil liability of tax assessor to taxpayer for excessive or improper assessment of real property. 82 ALR 2d 1148.

Who may complain of underassessment or nonassessment of property for taxation. 5 ALR 2d 576.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Permissibility of action against a class of defendants under Rule 23(b)(2) of Federal Rules of Civil Procedure. 85 ALR Fed. 263, §4.

Montana's Property Taxes: Assessment and Classification, 1975-76 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Compiler's Comments

County Assessors to Become Employees: Sections 158 through 164, Ch. 27, Sp. L. November 1993, provided: "Section 158. **Assessors qualifying as employees.** (1) A person serving as a county assessor on January 1, 1994, may qualify to become an employee of the department of revenue upon satisfying the following conditions:

(a) The assessor shall notify the department in a written statement received by January 4, 1994, of the assessor's intention to become an employee.

(b) The assessor shall resign from that office effective no later than January 24, 1994.

(2) This section does not apply to a person who is an assessor because the office of assessor was consolidated with another county office prior to [the effective date of this section] [effective December 27, 1993].

Section 159. **Classification and salary for qualifying assessor.** (1) The position for which a qualifying county assessor is employed as provided in [section 158] [not codified] must be classified in accordance with the classification standards for state employees.

(2) The initial salary for qualifying assessors is determined as follows:

(a) If an assessor's salary as established by resolution of the board of county commissioners for fiscal year 1994 is greater than the market salary under 2-18-312 for the grade of the new position, the initial salary is the same as the amount set by the resolution of the board of county commissioners.

(b) If an assessor's salary as established by the board of county commissioners for fiscal year 1994 is less than the applicable entry-level salary under 2-18-312, the initial salary is the entry-level salary for the grade of the new position.

(3) If, after initial employment, a qualifying assessor is transferred to a different position because of a disciplinary action against the assessor, the assessor's salary must be determined according to the rules and policies governing employee disciplinary actions.

(4) If, after initial employment, a qualifying assessor voluntarily seeks and obtains a transfer to a different employment position, the person's salary must be based upon the grade classification of that new position without regard to this section.

Section 160. **Benefits for qualifying assessors.** (1) In addition to other benefits provided by law, county assessors qualifying for employment with the department of revenue under [section 158] [not codified] are entitled to the following benefits:

(a) credit for time served as an assessor for completing new employee probationary requirements and for determining years of service for annual vacation leave entitlements;

(b) an initial allowance of annual leave of 40 hours. Annual leave taken must first be credited against this initial allowance. Cash compensation is not allowed under 2-18-617 for any portion of this initial allowance that is unused at termination of employment.

(c) an initial allowance of sick leave of 40 hours. Sick leave taken must first be credited against this initial allowance. A lump-sum payment is not allowed under 2-18-618 for any portion of this initial allowance that remains at termination of employment.

(2) All uninterrupted time served as an assessor is considered as state service for the purposes of 2-18-304.

Section 161. **Required employment — department excused from hiring practices.** (1) The department of revenue shall employ:

(a) any assessor who qualifies under [section 158] [not codified] to become an employee of the department; and

(b) deputy assessors appointed before November 12, 1993, with continuous service through January 4, 1994, who by that date make a written request for employment.

(2) The department is exempt from compliance with any statute, rule, or policy that requires competitive, formal hiring practices in employing qualifying assessors. Hiring preferences and the provisions of Title 2, chapter 18, part 12, do not apply to the hiring of eligible former assessors.

(3) Deputy assessors who become employees of the department are considered employees transferring between agencies of the same jurisdiction for the purposes of 2-18-617 and 2-18-618.

Section 162. **Department contract for county assessor.** (1) The department of revenue may, with the consent of the assessor, contract with the county for the assessor to perform assessment work as assigned by the department. Under this contract, the department shall reimburse the county for one-half of the wages and benefits of the assessor. An assessor performing work under this contract is not considered to be an employee of the department for any purpose. However, the department may pay the assessor's salary and benefits and be reimbursed by the county for the county's share of the salary and benefits.

(2) As a condition for the continuation of a contract under this section, the contract must provide that the assessor meet the qualification and certification standards required for department assessment personnel who perform comparable duties.

Section 163. **Consolidation of office of county assessor — special procedure — transfer of records.** (1) The board of county commissioners may consolidate the office of county assessor with another county office. For a consolidation under this section, the notice of hearing need only be published once, notwithstanding the provisions of 7-1-2121. The publication may not be less than 3 days prior to the date of the hearing. In all other respects, the notice must be published in accordance with 7-4-2307.

(2) If the assessor becomes an employee of the department of revenue as provided in [section 161] [not codified], the order of the county commissioners combining the offices under this section must be made and entered no later than January 14, 1994. After January 14, 1994, the office of the county assessor may be consolidated pursuant to Title 7, chapter 4, part 23.

(3) Notwithstanding the provisions of 7-4-2311, when an order is made under subsection (2) to consolidate the office of assessor with another office, the outgoing assessor shall deliver and transfer to the department all of the books, files, papers, documents, maps, plats, and records of the office. The department shall maintain necessary records and documents within the county for public access during normal business hours, unless the department needs the records and documents for appraisal purposes. The records and documents may be made available from county officials.

Section 164. **State not obliged to reimburse county for assessor salary.** Except for contracts under [section 162] [not codified] between the department of revenue and a county regarding its county assessor, the department may not pay or reimburse a county for any part of the salary or benefits earned by an assessor or deputy assessor after January 14, 1994." Effective December 27, 1993.

Severability: Section 172, Ch. 27, Sp. L. November 1993, was a severability clause.

Part Case Notes

Supervisory Role of Department of Revenue Over County Assessor's Employees — No Duty Owed to Assessor: Geiger sued the Department of Revenue, alleging that the Department was negligent in its management of the Dawson County Assessor's Office. The District Court granted the Department's motion for a directed verdict. The Supreme Court affirmed the District Court decision, holding that the Department had no duty to Geiger from which negligence could arise. The actions taken by the Department in reducing the number of employees in the Assessor's Office, supervising employees in the Office, withdrawing the delegation to the Assessor to hire and fire state employees, and issuing an audit report examining deficiencies in the Assessor's Office were all done pursuant to the statutory authority of the Department, which it carried out in a nonnegligent fashion. Geiger v. Dept. of Revenue, 260 M 294, 858 P2d 1250, 50 St. Rep. 1050 (1993).

15-8-101. Department responsibilities.

Compiler's Comments

Subsection Not Codified: Subsection (3) of section 84-402, R.C.M. 1947, which dealt with the salaries of County Assessors and Deputy County Assessors, was not codified in the MCA because it is redundant with 7-4-2503. This clause has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 405, L. 1973, as amended by sec. 49, Ch. 566, L. 1977.

Case Notes

Equalization of the Assessment of Properties: Prior to the amendment of this section in 1973, the State Board of Equalization (duties now performed by Department of Revenue) had the power and the duty to equalize the assessment of properties at a percentage of their market value. State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Mandamus: A county may be compelled by a Writ of Mandate to comply with a directive of the State Board of Equalization (duties now performed by Department of Revenue), under the wording of this section prior to the 1973 amendment, although nine other counties have not yet followed the Board's directive. State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Attorney General's Opinions

Revenue Department Not Zoning Authority — Designation of Property for Assessment Purposes Only: The Department of Revenue is not a bona fide zoning authority that may designate an area as commercial for outdoor advertising purposes. A property designation made by the Department applies to tax assessment classifications only and may not be extended to zoning restrictions. 42 A.G. Op. 43 (1987).

Establishment and Elimination of Deputy Position in County Office — Authority Resident With County: As between the state and county governments, the authority to establish a deputy position and the commensurate authority to eliminate a deputy position in the office of the county reside with county government. 42 A.G. Op. 23 (1987).

Collateral References

Taxation *key* 320.

84 C.J.S. Taxation §§455 through 476.

72 Am. Jur. 2d State and Local Taxation §§644 through 648.

15-8-102. County to furnish office space — allowable charge.

Compiler's Comments

1999 Amendment: Chapter 586 in first and third sentences after "courthouse" inserted "or other county building"; in first sentence after "department's" deleted "assessment and appraisal"; inserted second sentence limiting rate charged department to rate charged state agencies for space in state buildings; and inserted fourth sentence defining county building. Amendment effective October 1, 1999.

1993 Special Session Amendment: Chapter 27 deleted (1) that read: "(1) The county assessors of the various counties of the state are agents of the department of revenue for the purpose of locating and providing the department a description of all taxable property within the county, together with other pertinent information, and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment rolls. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection"; deleted (3) that read: "(3) The department must provide maps for the use of its agents, showing the private lands owned or claimed in the county and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge and must be paid from the state general fund"; substituted "department's assessment and appraisal staff" for "county assessor, his deputies and staff, and the state appraiser and staff"; deleted former last sentence that read: "Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department"; and made minor changes in style. Amendment effective January 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 27, Sp. L. November 1993, provided: "With the adoption of the 1972 Montana constitution, the state assumed responsibility for the appraisal, assessment, and valuation of property for property tax administration. Although the state was granted this new responsibility and authority by the constitution, county assessors were retained by local governments to assist the state in the assessment function, acting as agents of the department of revenue. Through the implementation and use of electronic data processing and other technological advances, many of the assessment functions previously performed by county assessors have changed dramatically.

Recognizing the need to make state and local government more responsive and efficient, it is the intent of the legislature that all appraisal and assessment duties relating to property taxation be assigned to the department of revenue. This action transfers from county assessors to the department the responsibility and authority to perform any assessment functions.

Acknowledging the talents and skills of county assessors, it is the intent of the legislature that current county assessors may choose to become employees of the department of revenue and that their respective counties may consolidate the office of county assessor with another county office.

If the current county assessor does not choose to become a state employee and the county chooses to retain the separate office of county assessor, the department of revenue shall, with the consent of the county assessor, contract with the county for the county assessor to perform specific duties as assigned by the department. If under this agreement the county assessor produces satisfactory work quality and output for the department, the department may continue the contract as long as the person currently serving as county assessor retains the position. The department may also contract for any successor county assessor in counties that retain the separate office of county assessor to perform duties assigned by the department.

It is further the intent of the legislature that all present deputy county assessors become employees of the department of revenue, with the same preferences and benefits as other state employees.

To allow for the efficient administration of the property tax appraisal and assessment, it is the intent of the legislature that the department of revenue use other efficiency measures, such as creating regional county appraisal and assessment offices, adjusting office hours of department field offices, and restructuring the organizational structure of the property assessment division.

The legislature grants to the department of revenue general rulemaking authority for the accomplishment of these administrative changes."

Office Hours: Section 166, Ch. 27, Sp. L. November 1993, provided: "Notwithstanding the provisions of 2-16-117, the department of revenue may determine by rule the office hours for property appraisal and assessment field offices located in the various counties. This section does not apply to any other offices of the department." Effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

County Assessor as Agent of Department of Revenue: Section 7-4-2110 grants to the Board of County Commissioners supervisory control of County Assessors "under such limitations and restrictions as are prescribed by law". This section is such a limitation and removes supervision of all internal operations of the County Assessor's office from the County Commissioners and places it with the Department of Revenue. (See 1993 special session amendment.) Cantwell v. Geiger, 228 M 330, 742 P2d 468, 44 St. Rep. 1574 (1987).

Attorney General's Opinions

Departmental Responsibility for Operation of County Assessor's Office — Exceptions: The Department of Revenue is responsible for the internal operation of a County Assessor's office, including employment practices, except with regard to County Assessors and their deputies, who serve at the instance of the electorate or appointing power, as determined statutorily. (See 1993 special session amendment.) 42 A.G. Op. 52 (1988).

Establishment and Elimination of Deputy Position in County Office — Authority Resident With County: As between the state and county governments, the authority to establish a deputy position and the commensurate authority to eliminate a deputy position in the office of the county reside with county government. 42 A.G. Op. 23 (1987).

Office Space for Department of Revenue — County to Pay if Reasonably Available: The County Commissioners are required to pay for office space for the Department of Revenue if space is reasonably available in the county courthouse or other government buildings. If such space is not reasonably available and must be contracted for, the Department of Revenue must pay the cost. 38 A.G. Op. 84 (1980).

County Assessor — Status Under Self-Government Charter: A self-government unit does not have the authority to enact any ordinance inconsistent with state law regarding the functions of the office of County Assessor. 37 A.G. Op. 68 (1977).

Salaries of Assessors — Deputy Assessors — Staff: The terms of employment of Assessors and Deputy Assessors are regulated by the Department of Revenue, and the Assessor receives as salary the sum provided by statute for the County Clerk and Recorder. Deputy Assessors receive salaries equivalent to that of the Deputy Clerk and Recorder. Staff salaries are regulated by the Department. (See 1993 special session amendment.) 36 A.G. Op. 68 (1976).

Collateral References

Taxation *key* 314.

84 C.J.S. Taxation §§455 through 476.

72 Am. Jur. 2d State and Local Taxation §§644 through 648.

15-8-104. Department audit and review of taxable value — costs paid by department.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), after "proceeds of mines", deleted "and oil and gas wells". Amendment effective March 12, 1997.

1993 Special Session Amendment: Chapter 27 in (2), in first sentence, substituted "may conduct reviews" for "shall conduct audits" and in last sentence substituted "review" for "audit" and "may be directed" for "shall be primarily directed"; in (3), after "audit", inserted "or review"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1985 Amendment: Inserted (2) relating to audits of commercial personal property; and in (3) substituted "any audit performed under subsection (1) or (2)" for "the audit". Amendment effective January 1, 1986.

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1981 Amendment: In (1), deleted "business inventories" after "gas wells"; and deleted subsections (2) and (3) relating to business inventories.

Administrative Rules

ARM 42.21.159 Property audits and reviews.

ARM 42.21.160 Definitions.

15-8-111. Assessment — market value standard — exceptions.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 379 inserted (3)(c) pertaining to the establishment of condominium property value by the department; inserted (4) establishing when the department shall use comparable sales, capitalization-of-net-income, or construction-cost method in valuing condominium property; and made minor changes in style. Amendment effective April 25, 2005.

Chapter 532 in (6)(d) at end after "under" substituted "15-6-222" for "15-6-201(1)(z) and (1)(aa)". Amendment effective October 1, 2005.

Chapter 584 in (6)(d) at end after "15-6-201" substituted "(1)(bb) and (1)(cc)" for "(1)(z) and (1)(aa)". Amendment effective May 6, 2005. The amendment by Ch. 532 rendered this amendment void.

Retroactive Applicability: Section 5, Ch. 379, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004."

Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2000 Amendment: Chapter 11 in (6)(d) deleted reference to 15-6-201(1)(bb). Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

1999 Amendments — Composite Section: Chapter 531 in (6) near beginning inserted "and 15-6-145"; and inserted (6)(f) pertaining to railroad transportation properties. Amendment effective April 30, 1999.

Chapter 584 in (6) inserted references to 15-6-134 and 15-6-143; inserted (6)(d) providing that properties in 15-6-134 under class four will be assessed at percentage of market value minus exempt portion; and made minor changes in style. Amendment effective May 10, 1999.

Chapter 589 inserted (2)(c) concerning determination of market value using capitalization of net income and comparable sales and construction costs; and made minor changes in style. Amendment effective October 1, 1999.

Retroactive Applicability: Section 7, Ch. 531, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Applicability: Section 2, Ch. 589, L. 1999, provided that this section applies on and after January 1, 2000, to tax years beginning after December 31, 1999.

1997 Amendments: Chapter 299 in (3)(a) substituted "average wholesale value category as shown in the Guides 2000, Northwest Region Official Guide" for "loan value as shown in the Official Guide, Tractor and Farm Equipment" and after "published by" substituted "the North American equipment dealers association" for "the national farm and power equipment dealers association" and inserted second sentence requiring the Department to use comparable publication or wholesale value category if guide or category unavailable; and made minor changes in style. Amendment effective April 17, 1997.

Chapter 496 in (1)(c), in first sentence near beginning after "the market value of", substituted "special mobile equipment and" for "all motor trucks", near middle, after "and machinery", deleted "and vehicles of all kinds", and near end, after "manuals or the value", deleted "of the vehicle"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Retroactive Applicability: Section 2, Ch. 299, L. 1997, provided: "[This act] [15-8-111] is effective on passage and approval [approved April 17, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 397 at end of (6)(a) inserted "or 15-23-518"; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Special Session Amendment: Chapter 27 in (2)(c), after "kinds", deleted "including but not limited to boats and all watercraft"; in introductory clause of (3), after "department", deleted "or its agents"; deleted former (6)(d) that read: "Beginning January 1, 1990, and ending December 31, 1993, properties in 15-6-143, under class ten, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland"; in (6)(d), at beginning, deleted "Beginning January 1, 1994"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 506 in (6)(a), at end, inserted "or 15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 695 at end of (6)(a) inserted reference to 15-23-516. Amendment effective April 27, 1991.

Chapter 783 at beginning of (6)(d) inserted "Beginning January 1, 1990, and ending December 31, 1993"; and inserted (6)(e) concerning assessing at 100% of the forest productivity value for forest land under class thirteen (now class ten, pursuant to sec. 16, Ch. 773, L. 1991, a coordination instruction) property. Amendment effective July 1, 1991.

Termination Amendment: Section 5, Ch. 680, L. 1991, amended sec. 10, Ch. 681, L. 1985, to remove the termination of the amendments made to this section by Ch. 681, L. 1985.

Retroactive Applicability: Section 13(3), Ch. 680, L. 1991, provided that sec. 5, Ch. 680, L. 1991, applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

Coordination Instruction: Section 16(1), Ch. 773, L. 1991, provided: "If House Bill No. 340 is passed by the 52nd legislature and approved by the governor, then the code commissioner is instructed, at the time of codification of that enactment, to change references in that enactment from class thirteen property to class ten property." House Bill No. 340 was approved May 17, 1991, as Ch. 783, L. 1991. Therefore, the Code Commissioner has changed references to the respective tax classes where they appear in this section in accordance with the coordination instruction.

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] found that the forest productivity method of

taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee].

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Assessment on Privately Owned Timberland — Collection — Disposition: Section 13, Ch. 783, L. 1991, provided: "(1) An assessment of 10 cents per acre or portion of an acre is imposed on all privately owned timberland for tax years 1991 through 1993. The assessment is imposed on the owner of the land as of January 1 of each year.

(2) This assessment is done on November 30 of each year and must be paid with the property tax due as provided in 15-16-101.

(3) (a) By September 1 of each year, the department of revenue shall provide county treasurers with a list showing:

(i) all owners of private timberland in the county as of January 1 of that year; and

(ii) the number of acres of timberland owned by each as of January 1 of that year.

(b) The county treasurer shall send each listed owner a bill for the assessment imposed in subsection (1) with the property tax notice required in 15-16-101.

(4) The county treasurer shall collect the assessment imposed in subsection (1) and remit collections to the state treasurer by December 20 of each year.

(5) The state treasurer shall deposit all collections from the assessment imposed in subsection (1) in the general fund." Section 17(2), Ch. 783, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990. Section 19, Ch. 783, L. 1991, provided that this section terminates January 1, 1994.

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

Applicability: Section 17(1), Ch. 783, L. 1991, provided that the amendment to this section applies to taxable years beginning after December 31, 1993.

Termination: Section 19, Ch. 783, L. 1991, provided that 15-8-111(6)(d) terminates January 1, 1994.

1989 Amendment: At end of (6)(a) inserted reference to 15-23-515. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1987 Amendments: Chapter 370 near middle of (1), requiring assessment at full market value, changed "(5)" to "(6)" (deleted by Ch. 618).

Chapter 453 in (2)(c), relating to certain book values, near middle of first sentence before "boats", deleted "aircraft and". Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 593 inserted (2)(b) relating to construction cost reductions. Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 618 in (1), after "except as", inserted "otherwise" and at end, after "provided", deleted "in subsection (5) of this section and in 15-7-111 through 15-7-114"; at end of (3), relating to market value exceptions, after "property" deleted "in 15-6-134 through 15-6-140 and 15-6-145 through 15-6-149"; inserted (3)(c) that reads: "as otherwise authorized in Title 15 and Title 61"; in (5), relating to percentage of market or assessed value, after "property", deleted "in classes four through eleven and fifteen through nineteen", after "market" inserted "or assessed", and at end, after "property" deleted "in 15-6-134 through 15-6-141 and 15-6-145 through 15-6-149"; and deleted former (8) that read: "(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property."

1987 Statement of Intent: The statement of intent attached to Ch. 593, L. 1987, read: "It is the intent of this legislation to embody into statute the current practice of the department of revenue in determining depreciation, including functional obsolescence and economic obsolescence. This bill is not intended to change the current practice of the department of revenue."

June 1986 Amendments — Composite Section: This section was amended by Ch. 34 and Ch. 35, Sp. L. June 1986, and a composite section was prepared by the Code Commissioner. Chapter 34 created a new class eighteen property and Ch. 35 created a new class nineteen property. Both chapters included citations to these new classes.

Chapter 34 in (3) and (5) substituted "15-6-148" for "15-6-147"; and in (5) substituted "eighteen" for "seventeen".

Chapter 35 in (3) and (5) substituted "15-6-149" for "15-6-147"; and in (5) substituted "nineteen" for "seventeen".

The Code Commissioner has codified the references from Ch. 35 because they are inclusive of the references made by Ch. 34.

Applicability: Section 6, Ch. 34, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

Section 10, Ch. 35, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

Preamble: The preamble to Ch. 34, Sp. L. June 1986, provided: "WHEREAS, in 1978 mining claims were taxed at "the price paid to the United States . . ."; and

WHEREAS, in 1979 Montana law was changed to tax mining claims as any other property; and

WHEREAS, in 1985 Montana law was further changed to require proof of $1,500 in agricultural income before a parcel of property could be classified as agricultural; and

WHEREAS, most mining claims are in mountainous, remote terrain that is unfit for agriculture; and

WHEREAS, owners of mining claims are receiving assessment notices increasing the valuation of their property as much as 600%; and

WHEREAS, mining claims were valued at a minimal amount under the philosophy that once they began producing, the owner would pay proceeds taxes; and

WHEREAS, the current revaluation will discourage production because owners will not be able to pay the taxes.

THEREFORE, the Legislature of the State of Montana finds it appropriate to create a separate class of property for mining claims and to tax them at a different tax rate."

March 1986 Amendment: In (3) and (5) substituted "and 15-6-145 through 15-6-147" for "15-6-145, and 15-6-146"; and in (5) substituted "and fifteen through seventeen" for "fifteen, and sixteen".

1985 Amendments: Chapter 463 in (2)(b) at beginning, inserted exception clause; inserted (3)(a) and (3)(b) relating to agricultural implements and machinery; and renumbered former last sentence of subsection (3) as subsection (4).

Chapter 516 in (2)(b) near beginning, after "limited to", deleted "motorcycles". Amendment effective January 1, 1986 (sec. 50, Ch. 516, L. 1985).

Chapter 681 inserted (6)(d) relating to timberland; and in (8), after "three" inserted "and thirteen" and after "15-6-133" inserted "and 15-6-143". Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Chapter 743 in (3) inserted "15-6-145, and 15-6-146"; and in (5) inserted reference to classes fifteen and sixteen and inserted "15-6-145, and 15-6-146". Amendment effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

1985 Statement of Intent: The statement of intent attached to Ch. 681, L. 1985 (SB 33), provided: "It is the intent of the legislature that the department of revenue use the administrative rules for timberland currently in place on the effective date of this act.

Furthermore, it is the intent of the legislature that the changes embodied in Senate Bill No. 33 would ensure that the taxable value of timber, as a class, will not increase in 1986 as a result of being placed in a separate class and having the tax rate calculated as described in Senate Bill No. 33.

Finally, it is the intent of the legislature that the department of revenue may not subsequently change the valuation method for timber until 1991 or the completion of the next reappraisal cycle as required by 15-7-111."

Interim Study Committee Bill — 1985: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee]. See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Valuation in Montana", Montana Legislative Council, December 1984.

Preambles: The preamble to Ch. 463, L. 1985, which amended 15-8-111, provided: "WHEREAS, the appraisal and assessment of agricultural implements and machinery could be accomplished most efficiently and equitably by the use of the official guide, tractor and farm equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

WHEREAS, the most accurate reflection of market value of agricultural implements and machinery listed by the above official guide is that of loan value as compared to wholesale value in other national guides."

The preamble to Ch. 681, L. 1985, provided: "WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands."

The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1983 Amendment: Deleted references to subsections of 15-6-131 in (3), (4), (5), (5)(a), and (7).

1981 Amendments: Chapter 575 substituted "classes four through eleven" for "classes four through ten" in (4); deleted "[and 15-6-121]" at the end of (4); in (7), deleted "[and 15-6-120]" after "15-6-133".

Chapter 578 added (2)(b) that reads: "The market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists."

1981 Statement of Intent: A statement of intent was attached to Senate Bill No. 126 requiring the Department of Revenue to adopt certain national appraisal guides for vehicles and equipment. See Ch. 578, L. 1981, for text of the statement of intent.

Coordination: This section was amended twice in 1977, once by Ch. 498 (HB 198) and once by Ch. 566 (HB 70). Section 15 of Ch. 498 provided for coordination in the event that HB 198 and HB 70 passed. Since both bills became law, sec. 15 of Ch. 498 controlled and the amendment to this section by Ch. 498 was not effective.

Administrative Rules

ARM 42.4.1601 Corporation — new and expanded industry credit — definitions.

ARM 42.20.301 through 42.20.307 Classification of nonproductive patented mining claims.

ARM 42.20.454 Consideration of sales price as indication of market value.

ARM 42.20.455 Consideration of independent appraisals as indication of market value.

ARM 42.20.655 Valuation of one acre beneath improvements on agricultural land and nonqualified agricultural land.

ARM 42.20.750 Valuation of one acre beneath improvements on forest land.

Title 42, chapter 21, subchapter 1, ARM Market value of personal property.

ARM 42.22.111 Valuation method.

ARM 42.22.1301 through 42.22.1312 Valuation and assessment of industrial property.

ARM 42.22.1313 Assessment of grain, seed, and fertilizer storage facilities.

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board, asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. Although the appraised value of Roosevelt's property declined by $161,757 in 1997, under 15-7-111, he was given credit for only a $3,235 difference and was assessed taxes based on a value of $817,362 rather than the actual 1997 appraised value of $658,840. In District Court, Roosevelt raised numerous alleged statutory and constitutional violations, including equal protection and due process concerns. The District Court held 15-7-111 unconstitutional on its face, in conflict with Art. VIII, sec. 3 and 7, Mont. Const., with the equal protection and due process clauses of both the state and federal constitutions, and with statutes pertaining to the valuation and assessment of real property. On appeal, the Supreme Court cited U.S. v. Raines, 362 US 17, 4 L Ed 2d 524, 80 S Ct 519 (1960), in reversing the holding that the statute was unconstitutional on its face because even though it imposed different tax burdens on various classes of taxpayers, the statute was neutral on its face. However, the court did not find it necessary to address all other issues raised or decided by the District Court beyond the equal protection question. The court first noted that the level of scrutiny applicable to this case did not rise to the level of strict scrutiny, which requires a compelling state interest for statutory

classifications that treat otherwise similarly situated persons differently and is reserved for situations when a statutory classification impermissibly interferes with the exercise of a fundamental right or operates to a peculiar disadvantage of a suspect class. Although a legitimate state interest exists in reducing reliance on property taxes and avoiding property tax increases, the method in 15-7-111, which taxed property owners, such as Roosevelt, based on 124% of market value while other taxpayers paid less than full market value, was not rationally related to a legitimate state interest, so the court declined to decide whether a higher level of scrutiny applied to classifications created for property tax assessment. Rather, the court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Use of More Than One Approach to Property Valuation — Market Data Approach: This section defines market value. It is clear from the definition that when the Legislature defined market value as the price at which property would change hands in an arm's-length sale, it evidenced its intent that the market data approach to value, not just the cost approach, can and should be used by the Department of Revenue when it appraises and assesses property, depending upon the available market data. If the Legislature had intended that only one approach be used, this section would be superfluous and the provisions of Title 15, ch. 7, parts 3 and 4, would be ineffective or wholly unnecessary. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), following DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228 (1993).

Construction Costs Alone Not Enough to Establish Market Value: DeVoe appealed the Department of Revenue's valuation of his apartment complex. The Department based its valuation on the construction cost of building a similar complex and argued that the construction cost was equal to market value upon which a 100% assessment was required by law. The Supreme Court, partially overruling NW. Land v. St. Tax Appeal Bd., 203 M 313, 661 P2d 44 (1983), held that market value depends on the price that a willing buyer would pay a willing seller and is affected by the prevailing market and economic conditions and therefore construction costs alone would not necessarily reflect market value for assessment purposes. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Taxpayer to Be Given Access to Realty Transfer Certificates Used in Assessing Taxpayer's Property: DeVoe appealed the assessed value established by the Department of Revenue for his apartment complex. The Department stated that it had based the valuation on the transfer of comparable properties but argued that the realty transfer certificates (RTCs) pertaining to those properties were confidential and not subject to discovery by DeVoe. The Supreme Court, relying on O'Neill v. Dept. of Revenue, 227 M 226, 739 P3d 456 (1987), held that fairness and procedural due process require that when market value is established based on comparable sales, the RTCs of those transactions should be made available to the protesting taxpayer. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Department of Revenue to Assess Heavy Equipment at One Hundred Percent of Market Value: The Department of Revenue directed county tax assessors to change their method of appraising the value of equipment. The change in method would have resulted in substantial loss of revenue to counties and would have been based on appraisals of heavy equipment at less than 100% of market value. The Supreme Court held that the administrative rule adopted by the Department was in conflict with the statutory requirement that heavy equipment be assessed at 100% of market value and further held that even if there was a "reasonable necessity" for the rule, the Department had failed to demonstrate the need for the rule change in its notice of proposed rulemaking. Rosebud County v. Dept. of Revenue, 257 M 306, 849 P2d 177, 50 St. Rep. 281 (1993).

Failure to Consider Effect of Zoning Ordinance on Market Value: The State Tax Appeal Board erred in failing to consider the effect, if any, of a zoning ordinance on market value and in failing

to make findings on this issue. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

Valuation of Construction Work in Progress Outside Traditional Indicators — No Abuse of Discretion: To determine the value of Puget Sound Power and Light Company (Puget), the Department of Revenue added 40% of the cost indicator, 50% of the income indicator, and 10% of the stock and debt indicator to arrive at an assessed value. The Department then added the market value of Puget's construction work in progress (CWIP) to calculate total value, and the aggregate figure was then multiplied by an agreed percentage to determine the value of Puget's property in Montana. The District Court concluded the Department abused its discretion by failing to integrate the value of CWIP into the three unit value indicators and that the separate treatment for CWIP was erroneous. The Supreme Court found that under ARM 42.22.111, the Department had explicit authority to combine the unit and summation methods of valuation, noting that credible testimony indicated that capitalization of CWIP was too speculative to render an accurate figure for use in the income indicator and that valuation outside the three indicators was a better way to approximate market value. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Determining Property Value — Function of Administrative Body: In considering the decision of the State Tax Appeal Board relating to the method of determining the taxable valuation of the respondents' golf course, the District Court overstepped its bounds when it usurped the function of the administrative body and determined the value of the property. Dept. of Revenue v. Grouse Mtn. Dev., 218 M 353, 707 P2d 1113, 42 St. Rep. 1642 (1985), followed in Ostergren v. Dept. of Revenue, 2004 MT 30, 319 M 405, 85 P3d 738 (2004).

Public Use Restriction: In determining a property's market value under this section, the State Tax Appeal Board must use a method of valuation that takes into consideration a public use restriction. A public use restriction is a burden on the property that must be considered in setting a value. Dept. of Revenue v. Grouse Mtn. Dev., 218 M 353, 707 P2d 1113, 42 St. Rep. 1642 (1985).

Taxation Standards — Uniformity Versus True Value: Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. Therefore, unequal appraisals may be reduced even though they result in an assessment at true market value or 100% of market value as required by 15-8-111. Reduction is required where it is satisfactorily shown that under the system as applied, it is impossible to meet both the true value and equality standards. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Value — Determined by Unitary Assessment: A measure of value of utility system property must include consideration of the use to which the property is put and the income from Montana contributed to the entire utility system. Dept. of Revenue v. Pac. Power & Light Co., 171 M 334, 558 P2d 454 (1976).

Compliance With Statute: This section is complied with so long as the same type of property bears the same proportion of tax base. State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Assessment of Pipelines Under Cash Value Standard: Under the "cash value" standard of this section prior to its amendment in 1973, the State Board of Equalization (duties now performed by Department of Revenue) did not act arbitrarily or capriciously in assessing pipeline at 50% of the current replacement cost, even though there was an increase in the assessed value of the property over the preceding year. Treasure St. Pipe Line Co. v. Toole County, 136 M 108, 345 P2d 162 (1959).

Construction of Statute: This section is not affected by 15-23-301 through 15-23-303, and is to be considered in connection with them. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Value and Full Cash Value: All taxable property must be assessed at its full cash value, the terms "value" and "full cash value" being defined as "the amount at which property would be taken in payment of a just debt due from a solvent creditor". Wells Fargo & Co. v. Harrington, 54 M 235, 169 P 463 (1917).

Assessment of Real Estate Under Cash Value Standard: Under the "cash value" standard of this section prior to its amendment in 1973, the difficulty which may have confronted the Assessor in ascertaining the full cash value of an interest in real estate reserved by the grantor in himself in a deed conveying the land should not have been taken into account in determining whether such interest was subject to taxation. N. Pac. Ry. v. Mjelde, 48 M 287, 137 P 386 (1913).

Collateral References

Taxation *key* 346 through 351.

84 C.J.S. Taxation §478, et seq.

72 Am. Jur. 2d State and Local Taxation §§667 through 693.

Requirement of full-value real property taxation assessments. 42 ALR 4th 676.

Sale price of real property as evidence in determining value for tax assessment purposes. 89 ALR 3d 1126.

Method of calculating value of stock of goods or the like for purposes of tangible personal property tax. 66 ALR 2d 833.

Who may complain of underassessment or nonassessment of property for taxation. 5 ALR 2d 576.

Price paid or received by taxpayer for property as evidence of value for tax purposes. 160 ALR 684.

Power of Board of Tax Review to receive evidence as to assessable value without notice to taxpayer. 113 ALR 990.

15-8-112. Assessments to be made on classification and appraisal.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (2) substituted "apportion the assessments to" for "transmit such determination and assignment to its agents in"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1986 Temporary Amendment — Not Codified: Section 2, Ch. 29, Sp. L. June 1986, amended 15-8-112 by inserting an exception clause referencing section 1 of the bill that only applied to the 1986 tax year. Section 1 and the amendment in section 2 were not codified because of their temporary nature.

1986 Assessment Review Procedure: Sections 1, 4, and 5 of Ch. 29, Sp. L. June 1986, provided a special procedure for review of 1986 assessments. Section 1 provided for review in the aggregate, by the county tax appeal boards, of assessments that exceeded the 1985 assessment by 180% or more. Section 4 provided for renotification to taxpayers whose 1986 assessment on class four property increased as a result of reappraisal of class four property by 180% or more when compared with 1985. Section 5 extended the application deadline for reduction in 1986 valuations to August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever was later.

Section Not Codified: Section 84-41-100, R.C.M. 1947, which provided that tax deeds may not be held invalid by reason of the prior failure of the County Commissioners to provide for the classification of the lands in the county as required by former law and which also validated tax deeds issued prior to July 1, 1941, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 61, L. 1941, as amended by sec. 10, Ch. 126, L. 1977.

Collateral References

Taxation *key* 450.

84 C.J.S. Taxation §§491, 492.

15-8-113. Appeal from percentage assignment.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 after "department" deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Collateral References

Taxation *key* 451 through 500.

84 C.J.S. Taxation §530.

72 Am. Jur. 2d State and Local Taxation §§694 through 699.

15-8-115. Department to defend property tax appeals — costs and judgments.

Compiler's Comments

1999 Amendment: Chapter 85 at beginning of (1) inserted exception clause; near middle of (3) substituted "in which taxes are paid" for "and those funds"; and made minor changes in style. Amendment effective March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1993 Special Session Amendment: Chapter 27 in (1), at beginning after "department", deleted "or its designee" and at end substituted "person designated to receive service for the department" for "local county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1983 Amendment: Near beginning of (1), substituted "designee" for "agent".

Case Notes

Taxpayer Action Precluded by Statute of Limitations — Running of Statute Not Tolled by Fiduciary Relationship With Department of Revenue — Knowledge of Accrual of Cause of Action Immaterial: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and refund of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. As a consequence of payment of the taxes and the Supreme Court's opinion in Sheehy, the taxpayers alleged that they were entitled to a court-ordered reduction in certain real property appraisals as well as a partial refund of their 1989 through 1992 real property taxes. The Department moved to dismiss the suit on the grounds that each claim was barred by the statute of limitations and that the taxpayers failed to state a claim for which relief could be granted. The District Court dismissed the suit. The Supreme Court noted that the applicable statute of limitations in 15-1-406 requires that suit be commenced within 90 days of imposition of the tax and that it did not matter whether the 1991 version of the statute or the 1995 version of the statute applied to the taxpayers' case because they both contained a similar statute of limitations. The Supreme Court responded to the taxpayers' argument, that the running of the statute of limitations was tolled because the Department acted as a fiduciary in holding the taxpayers' claimed reimbursement, by distinguishing the cases from other jurisdictions cited by the taxpayers upon which the taxpayers based their argument. The Supreme Court also noted that under some statutes, such as this section, the Department is actually a taxpayer's adversary. The Supreme Court also pointed out that contrary to the taxpayers' assertions, whether the taxpayers had knowledge of the accrual of their cause of action is immaterial because under 27-2-102, the statute of limitations begins to run when a cause of action accrues and lack of knowledge of the time of accrual of the cause of action does not postpone the running of the period of limitation. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

No Bad Faith When State Required to Defend: The plaintiffs argued that they were entitled to attorney fees because the state's defense in a tax assessment case was frivolous or made in bad faith. The Supreme Court ruled that the state had a statutory duty to defend against all claims that a tax assessment was erroneous and that therefore the state's action could not be frivolous or in bad faith. The court also pointed out that the plaintiffs had not met the other requirement for obtaining attorney fees because the state had won the case. Kruse v. Cascade County, 244 M 126, 796 P2d 568, 47 St. Rep. 1445 (1990).

Part 2
When Property Is Assessed

Part Compiler's Comments

Section Not Codified: Section 84-5201.2, R.C.M. 1947, which is a short title that applies to several sections in this part, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 507, L. 1975.

Part Collateral References

Taxation *key* 318.

84 C.J.S. Taxation §481.

72 Am. Jur. 2d State and Local Taxation §635.

Situs of tangible personal property for purposes of property taxation. 2 ALR 4th 432.

Property destined for removal from state as subject to taxation therein. 11 ALR 2d 938.

Duty to administer. State Tax Practice and Procedure, Shanahan. Tax for the General Practitioner, State Bar Legal Education Institute (December 1985).

15-8-201. General assessment day.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (5)(e) after "property defined" deleted "in 61-1-104" and after "equipment" inserted "in 61-1-101". Amendment effective January 1, 2006.

Chapter 596 in (5)(c) at end inserted "snowmobiles, and off-highway vehicles"; in (5)(e) at end substituted "decal" for "plate"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 34 in (1) near beginning after "January 1 and the" substituted "first Monday of August" for "second Monday of July". Amendment effective February 18, 2003.

Retroactive Applicability: Section 9(1), Ch. 34, L. 2003, provided: "[Section 2] [15-8-201] applies retroactively, within the meaning of 1-2-109, to the general assessment day for calendar year 2003".

Section 9(4), Ch. 34, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified."

1999 Amendment: Chapter 583 deleted former (6) that read: "(6) Credits must be assessed as provided in 15-1-101(1)(f)." Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1997 Amendments: Chapter 200 in (5)(f), after "mobile homes", inserted "and manufactured homes" and after "dealer" deleted "of mobile homes". Amendment effective January 1, 1998.

Chapter 414 inserted (2)(b) requiring the new owner to be assessed, except in the case of land splits, if provisions of 15-7-304 are met and transfer certificate is received and processed; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 496 in (5)(a), at end, deleted "that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date"; and made minor changes in style. Amendment effective January 1, 1998.

Applicability: Section 6, Ch. 414, L. 1997, provided: "[This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997."

Effective Date — Rulemaking: Section 7, Ch. 414, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998."

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1993 Special Session Amendment: Chapter 27 in (1), in two places after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Inserted (2)(g) providing that assessment procedure does not apply to property subject to the provisions of 15-16-203; and made minor change in style.

Applicability: Section 4, Ch. 570, L. 1991, provided: "[This act] applies after December 31, 1991."

1987 Amendments: Chapter 370 in (3), describing how credits must be assessed, changed "15-1-101(1)(d)" to "15-1-101(1)(f)".

Chapter 611 in (2)(b) substituted "motor homes, travel trailers, and campers" for former (2)(c) that read: "(c) motor homes and travel trailers subject to a fee in lieu of property tax" and deleted former (2)(b) and (2)(d) that read: "(b) automobiles and trucks having a rated capacity of three-quarters of a ton or less" and "(d) motorcycles and quadricycles".

Chapter 649 inserted (2)(c) relating to watercraft. Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

1985 Amendments: Chapter 20 in (2)(f) substituted "61-1-104" for "61-1-104(2)".

Chapter 516 inserted (2)(d) relating to motorcycles and quadricycles. Amendment effective January 1, 1986.

1981 Amendment: Added subsection (2)(b) relating to light vehicles.

Administrative Rules

ARM 42.21.162 Personal property taxation dates.

Case Notes

Assessment Notices Sent After Second Monday in July Not Invalid: Reversing its contrary decision in Butte Country Club v. St., 186 M 424, 608 P2d 111 (1980), the Supreme Court held that this section does not render assessments for which notices and levies were sent out on or after the second Monday in July (see 2003 amendment changing date to first Monday of August) invalid to the extent that taxes were increased by those assessments. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), distinguishing Canbra Foods Ltd. v. Dept. of Revenue, 278 M 368, 925 P2d 855 (1996).

Delinquent Tax Sale: The assessment and sale of property for delinquent taxes is a proceeding in invitum; the purchaser at such sale buys at his peril, and the rule of caveat emptor applies. Quirin v. Weinberg, 252 M 386, 830 P2d 537, 49 St. Rep. 331 (1992); Larson v. Peppard, 38 M 128, 99 P 136 (1909); Birney v. Warren, 28 M 64, 72 P 293 (1903).

Late Assessment:

Under 15-8-601, the Department of Revenue may assess in a later year property which it failed to assess or which had been omitted from taxation in previous years, despite the requirement of 15-8-201 that all property must be assessed by the second Monday in July (see 2003 amendment changing date to first Monday of August) of each year. The court distinguished Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), in which it held invalid a revised assessment for the year in question, when the revised assessment was issued after the second Monday in July (see 2003 amendment changing date to first Monday of August). OEA Research, Inc. v. McGee, 217 M 321, 704 P2d 1042, 42 St. Rep. 1219 (1985).

Assessments made after the second Monday in July (see 2003 amendment changing date to first Monday of August) are invalid. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Appeal to Local Board Exclusive Remedy — Late Assessment Precluding Hearing: The Montana Legislature determined that the County Tax Appeal Board provides the review procedure at the local government unit level mandated by Art. VIII, sec. 7, Mont. Const. An appeal and review before the local Board is a condition precedent to a State Tax Appeal Board review. Except in cases where fraud or the adoption of a fundamentally wrong principle of assessment is shown, an appeal to the local Board is the exclusive remedy granted the taxpayer. If a taxpayer is denied a hearing before the local Board because of a late assessment, the assessment is invalid because it denies the taxpayer a constitutional right to a hearing before the local Board. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), followed in Boehm v. Nelson, 229 M 452, 747 P2d 213, 44 St. Rep. 2127 (1987), and overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish & Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Deadline for Assessment: The County Commissioners have a clear legal duty under 7-4-2504 to compute the taxable valuation of a county prior to the first day of July, even though the second Monday in July (see 2003 amendment changing date to first Monday of August) is the deadline for reporting their computations to the Department of Revenue. Brown v. Bd. of County Comm'rs, 165 M 391, 529 P2d 358 (1974).

Time of Assessment: The "assessing" of property is done after situs is acquired. Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Situs of Property:

Prior to the amendment of this section, the first Monday in March was significant to determine and fix the situs and ownership of property for tax purposes. Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Prior to the amendment of this section, in order for personal property to acquire a situs for the purpose of taxation, it must have been within the state and subject to its jurisdiction at noon on the first Monday of March. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Limitation of Action: Irrigation district's purported special assessments for 1921 through 1926 and the collection of water district charges due thereunder in 1949 was barred by the provisions of 85-7-2106. Vail v. Custer County, 132 M 205, 315 P2d 993 (1957).

Individual Assessment:

Only individual assessment by individual ownership will satisfy this section. Vail v. Custer County, 132 M 205, 315 P2d 998 (1957).

When irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under 15-18-202 (now repealed). Vail v. Custer County, 132 M 205, 315 P2d 993 (1957).

Federal Government Immune When Holding Equitable Title — Right to Recover Taxes Paid: When the United States entered into an enforceable option contract for the purchase of land in April, 1938, and in June it exercised the option, took possession, and made extensive improvements, the formal deed not being delivered until November, 1939, it paid the taxes for the year 1939 under protest, under a clause that it might do so, deducted them from the purchase price, and assigned its claim to recover them back to the vendor. In vendor's action to recover the taxes, the government, being holder of the equitable title, was owner for purposes of taxation, immune for the year in question, and plaintiff assignee was entitled to recover taxes paid. Calvin v. Custer County, 111 M 162, 107 P2d 134 (1940).

Meaning of "Assess": When the Legislature has clearly adopted a definition of a word used in a statute at variance with that found in dictionaries and court decisions, the Supreme Court will follow the definition as found in the statute. Under this rule the word "assess" as used in this section had the same meaning as in section 2002.1, R.C.M. 1935, now repealed. State ex rel. St. Bd. of Equalization v. Jacobson, 107 M 461, 86 P2d 9 (1938).

Tax Not Escapable by End-of-Year Trade-in: Contention that under this act tax is escapable by making a practice of trading in or selling motor vehicle on December 31st each year is fallacious since the dealer or purchaser would have to pay the tax; in such case the burden of paying the tax is merely shifted. (Decided prior to implementation of light vehicle fee system; see Title 61, ch. 3, part 5.) Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Property in Interstate Commerce Not Taxable: Personal property being transported in interstate commerce is beyond the reach of state taxation, even though its owner resides within the state seeking to make a levy thereon. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Misnomer:

The fact that real property, title to which was claimed by adverse possession, had been at all times assessed to the record owner, the taxes, however, being paid by the adverse claimant during the entire 10-year period, did not affect the right of the latter in view of this section, declaring that a mistake in the name of the owner does not render the assessment invalid, and 15-8-308, to the effect that no assessment or collection of taxes is illegal on account of informality. Anderson v. Mace, 99 M 421, 45 P2d 771 (1935).

The provisions of this section and 15-8-501 are mandatory, and with the qualifications in the sections require personal property to be assessed in the name of the real owner, if known; if not known, then to "unknown owners". A misnomer of the owner of personal property assessed as the property of a particular person vitiates the assessment and renders a sale thereunder void. Birney v. Warren, 28 M 64, 72 P 293 (1903). See also Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

The listing of land in the name of a person other than the owner is not an irregularity or informality which, of itself, does not avoid the assessment or render the tax illegal or unauthorized, and affords no ground for restraining the collection by sale of the property itself of the taxes due thereon. Cobban v. Hinds, 23 M 338, 59 P 1 (1899).

Mining Rights: Where an assessor listed for taxation lands with the reservation of minerals, mining rights, etc., to the grantee for the full cash value, and at the same time assessed the grantor's reservations at a certain amount per acre, it was deemed to be a case of double taxation. The grantor was in no position to complain of the double assessment, however, as the only person who could do so was the one who was made to bear more than his proportion of the burden of taxation. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

Capital Stock of Corporation: The authorized capital stock of a corporation engaged solely in a general real estate business, and which does not own any of its capital stock, was not taxable as such, against the corporation. Butte Land & Inv. Co. v. Sheehan, 44 M 371, 120 P 241 (1911).

Attorney General's Opinions

Computing Salaries of County Officers: The "taxable value" of property within a county to be used in computing county officers' salaries for the 1977-78 fiscal year is the taxable value determined under assessment procedures in 15-8-201, 15-8-202, and 15-8-203 (repealed, 1979) for the current 1977-78 fiscal year. In the event a county is unable to fix the salary on or before July 1, county officials are entitled to salary increases retroactive to that date. 37 A.G. Op. 101 (1977).

Assessment of Airplane — Where Assessable: A county may not assess an aircraft owned by a Montana resident but located in Montana for not more than 30 days in a taxable year. 30 A.G. Op. 20 (1963).

15-8-202. Motor vehicle assessment by department of justice.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (1)(a) near end substituted "61-3-321 and" for "61-3-560 through"; in (1)(b) before "vehicle" inserted "motor"; in (1)(c) near middle substituted "registration fee" for "fee in lieu of tax" and substituted "61-3-321" for "61-3-528"; in (1)(d) near beginning after "fees" deleted "or fees in lieu of tax"; in (2) in first sentence in two places after "fee" deleted "in lieu of tax" (amendment rendered void by Ch. 596 amendment); and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1)(b) near end after "vehicles" deleted "subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation"; in (1)(d) at end substituted "to whom the vehicle is registered" for "who owned or claimed the motor vehicles or in whose possession or control the motor vehicle was on the anniversary registration date"; deleted former (2) through (4) that read: "(2) A tax or fee in lieu of tax may not be assessed or imposed against motor vehicles subject to taxation or to a fee in lieu of tax that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation or a fee in lieu of tax that are brought into the state after January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1"; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted (1)(a) concerning registration fee for light vehicles; at beginning of (1)(b) inserted clause concerning local option vehicle tax; in (1)(d) near beginning inserted "registration fees"; in definition of purchasers at end deleted "except as otherwise provided by 61-3-502"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendment: Chapter 85 inserted (5) concerning motor vehicle tax appeals; and made minor changes in style. Amendment effective March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 496 in (1) substituted current text regarding assessment and the fee in lieu of tax for former provision that read: "The department shall, in each year, ascertain and assess all motor vehicles, other than motor homes, travel trailers, and campers or mobile homes, in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles as provided by law, subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles must be made in accordance with 61-3-503. The motor vehicles must be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date, whichever is applicable"; in (2), in three places, inserted reference to fee in lieu of tax and in first sentence inserted "or imposed"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1993 Special Session Amendment: Chapter 27 in (1), near beginning after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (1), after "vehicles", substituted "other than motor homes, travel trailers, and campers" for "other than automobiles, trucks having a rated capacity of three-quarters of a ton or less, motorcycles, quadricycles, motor homes, travel trailers", near end of first sentence, after "those vehicles", inserted "as provided by law", and in second sentence, after "vehicle", substituted "must be made in accordance with 61-3-503" for "will be made using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide".

1985 Amendments: Chapter 433 at end deleted former (2) that read: "In all cases where taxes or a fee in lieu of tax were required to be paid, the applicant for registration or reregistration of a motor vehicle, other than a mobile home, is not relieved of the duty of paying taxes or the fee in lieu of tax if the taxes or fees have not been paid by a prior applicant or owner"; and renumbered (1)(a) through (1)(d) as (1) through (4). Amendment effective April 11, 1985, and applicable to vehicles registered or reregistered after December 31, 1984.

Chapter 516 in (1)(a) near middle of first sentence after "ton or less", inserted "motorcycles, quadricycles". Amendment effective January 1, 1986.

1981 Amendments: Chapter 262 in (1) inserted "The assessment for all motor vehicles will be made using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automotive Dealers Association Official Used Car Guide."

Chapter 614 inserted "automobiles, trucks having a rated capacity of three-quarters of a ton or less," after "ascertain and assess all motor vehicles other than" near the beginning of (1); and inserted "subject to taxation" after "motor vehicles" twice in (1)(b).

Effect of Recodification on Case Notes: In recodification, section 84-406, R.C.M. 1947, was split into three sections: 15-8-201, 15-8-202, and 15-8-203 (since repealed). For more case notes that may have application to this section, refer to case notes under 15-8-201.

Case Notes

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish & Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Time of Assessment: The "assessing" of property is done after situs is acquired. Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Situs of Property:

Prior to the amendment of this section, the first Monday in March was significant to determine and fix the situs and ownership of property for tax purposes. Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Prior to the amendment of this section, in order for personal property to acquire a situs for the purpose of taxation, it must have been within the state and subject to its jurisdiction at noon on the first Monday of March. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Individual Assessment: Only individual assessment by individual ownership will satisfy this section. Vail v. Custer County, 132 M 205, 315 P2d 993 (1957).

Meaning of "Assess": When the Legislature has clearly adopted a definition of a word used in a statute at variance with that found in dictionaries and court decisions, the Supreme Court will follow the definition as found in the statute. Under this rule the word "assess" as used in this section had the same meaning as in section 2002.1, R.C.M. 1935, now repealed. State ex rel. St. Bd. of Equalization v. Jacobson, 107 M 461, 86 P2d 9 (1938).

Application to Cars Held in Stock by Dealer on Tax Day: Chapter 72, L. 1937, amending this section, cannot be construed that a dealer must pay taxes on all cars held in stock on January 1 before he can sell any of them, or that a purchaser of such car must pay all taxes assessed to the dealer and covering other cars before he may obtain license plates. He must pay the tax applicable to his own car, based, under former law, on 33 ⅓% of the valuation at which the car was assessed against the dealer. State ex rel. Sadler v. Evans, 106 M 286, 77 P2d 394 (1938).

Payment of Delinquent Taxes Not Prerequisite to Registration of Motor Vehicle: Under this section, as amended by section 9, Ch. 72, L. 1937, the owner of a motor vehicle was not required

to pay delinquent taxes previously assessed as a condition precedent to securing license plates, when such taxes were not a lien upon realty. State ex rel. Kleve v. Fischl, 106 M 282, 77 P2d 392 (1938).

Constitutionality: Assertion that Legislature, in amending this section by enacting Ch. 72, L. 1937, and making special provision for taxing automobiles included in class two of section 84-301, R.C.M. 1947 (now repealed), among other property without first amending such section, unlawfully discriminated against motor vehicles, was not well made since the Legislature may properly go even to the extent of placing identical articles in the hands of different owners, different uses resulting in different productivity. Chapter 72, L. 1937, did not violate Art. XII, sec. 11, or Art. III, sec. 27, 1889 Mont. Const. (now Art. II, sec. 17, 1972 Mont. Const.). Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Tax Not Escapable by End-of-Year Trade-in: Contention that under this act tax is escapable by making a practice of trading in or selling motor vehicle on December 31st each year is fallacious since the dealer or purchaser would have to pay the tax; in such case the burden of paying the tax is merely shifted. Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Property in Interstate Commerce Not Taxable: Personal property being transported in interstate commerce is beyond the reach of state taxation, even though its owner resides within the state seeking to make a levy thereon. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Attorney General's Opinions

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

Motor Vehicle Taxation Situs: The proper situs for taxation of a motor vehicle is that school district wherein the owner makes his permanent residence at the time of registration. 37 A.G. Op. 139 (1978), overruling 32 A.G. Op. 15 (1968) and 37 A.G. Op. 108 (1978).

Computing Salaries of County Officers: The "taxable value" of property within a county to be used in computing county officers' salaries for the 1977-78 fiscal year is the taxable value determined under assessment procedures in 15-8-201, 15-8-202, and 15-8-203 (repealed, 1979) for the current 1977-78 fiscal year. In the event a county is unable to fix the salary on or before July 1, county officials are entitled to salary increases retroactive to that date. 37 A.G. Op. 101 (1977).

Assessment of Airplane — Where Assessable: A county may not assess an aircraft owned by a Montana resident but located in Montana for not more than 30 days in a taxable year. 30 A.G. Op. (1963).

Collateral References

Motor Vehicle Fee System, 1977-78 Interim Report, Montana Legislative Council.

Uniform Fee Taxation and Anniversary Date Registration of Motor Vehicles, 1974 Interim Report, Montana Legislative Council.

15-8-204. Supplemental assessment.

Compiler's Comments

2003 Amendment: Chapter 34 near beginning after "after the" substituted "first Monday of August" for "second Monday of July"; and made minor changes in style. Amendment effective February 18, 2003.

Retroactive Applicability: Section 9(4), Ch. 34, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified."

Case Notes

Application: This section applies to property that was not, but should have been, assessed as of the first Monday of March of the current year, not to property that was not in the state on that date. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Collateral References

Taxation *key* 362, 406.

15-8-205. Initial assessment of class four trailer, manufactured home, and mobile home property — when.

Compiler's Comments

1997 Amendment: Chapter 200 after "trailer" inserted "manufactured home". Amendment effective January 1, 1998.

1993 Special Session Amendment: Chapter 27 at beginning substituted "department" for "county assessor". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Substituted reference to class four trailer and mobile home property for reference to class twelve property. Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

Part 3
How Property Is Assessed

Part Collateral References

Taxation *key* 328 through 335.5.

84 C.J.S. Taxation §§483 through 492, 535 through 545.

72 Am. Jur. 2d State and Local Taxation §649.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-8-301. Statement — what to contain.

Compiler's Comments

1999 Amendment: Chapter 285 in (2) inserted second and third sentences providing limited reporting requirements for exempt business equipment and requiring department to adopt related rules. Amendment effective April 11, 1999.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 347 inserted (2) regarding a statement for reporting business equipment and personal business property.

1993 Special Session Amendment: Chapter 27 in introductory clause of (1), after "department", substituted "may" for "or its agent must"; in (1)(e) substituted "improvements, and personal property" for "in parcels or subdivisions not exceeding 640 acres each and the sections and fractional sections of all tracts of land containing more than 640 acres which have been sectionized by the United States government; improvements and personal property; all taxable state, county, city, or other municipal or public bonds and the taxable bonds of any person, firm, or corporation and deposits of money, gold dust, or other valuables and the names of the persons with whom such deposits are made and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby"; deleted former (1)(f) that read: "(f) all solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member or due or owing to any corporation of which he is president, secretary, cashier, or managing agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: Near middle of (1)(e), requiring exact land descriptions, after "improvements and personal property" deleted "including all vessels, steamers, and other watercraft". Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

Administrative Rules

ARM 42.21.158 Property reporting requirements.

Case Notes

Control Sufficient for Taxation of Personal Property (Cattle): When a feedlot owner exercised control but not ownership over cattle, taxes on the cattle assessed against the feedlot owner were valid. Possessory control of property was held sufficient to authorize its assessment to the possessor or keeper of it. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

Taxes on Cattle as Personal Property: Unpaid taxes previously and properly assessed on cattle under the control of a cattle feedlot owner could not be assessed against a new owner of the feedlot. Such taxes are taxes on personal property. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish & Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Deduction of Debts: This section, prior to amendment, authorized any taxpayer to deduct or have deducted from his credits all debts then owing by him; but it did not authorize the deduction of debts from money on hand, and if it attempted to do so would clearly violate the provisions of the Constitution. Clark v. Maher, 34 M 391, 87 P 272 (1906).

Section Applicable to Corporations and Natural Persons: The provisions of this section are general and applicable alike to all taxpayers, whether natural persons or corporations. Clark v. Maher, 34 M 391, 87 P 272 (1906); Daly Bank & Trust Co. v. Bd. of County Comm'rs, 33 M 101, 81 P 950 (1905).

Constitutionality: The purpose of this section being merely to ascertain the just amount and value of property subject to taxation, in conformity with Art. XII, sec. 1, 1889 Mont. Const. (see Art. VIII, sec. 1 and 3, 1972 Mont. Const.), does not have the effect of exempting from taxation property other than that enumerated in Art. XII, sec. 2, 1889 Mont. Const., and it is therefore constitutional. Daly Bank & Trust Co. v. Bd. of County Comm'rs, 33 M 101, 81 P 950 (1905).

Agent of a Company: It was the duty of a County Assessor (see 1993 special session amendment) to require from the agent of a company to be assessed a verified list of its property in his county on the first Monday of March, which list, among other things, must have shown the particular property belonging to the company, and the county in which it was situated, or in which it was liable to taxation. Flowerree Cattle Co. v. Lewis & Clark County, 33 M 32, 81 P 398 (1905).

Increase in Assessment: An increase in an assessment in obedience to a void order of the Board of Equalization (duty now performed by Department of Revenue) could not be sustained under this section or 15-8-308. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903), distinguished in Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903).

15-8-303. Statement to be completed and returned to department.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 at beginning of first sentence deleted "agent of the" and substituted "may deliver the statement specified in 15-8-301 to the person owning taxable property" for "may fill out the statement at the time he presents it or he may deliver it to the person"; in second sentence substituted "department shall notify" for "agent must either in person or by mail deliver to" and at end substituted "department" for "agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.21.158 Property reporting time frames.

15-8-304. Enforcement powers of department.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 deleted (3) that read: "(3) In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken or the statement discloses property in any county other than that in which it is made, the department must, in the respective case, file the affidavit or statement in its office and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Providing Incorrect Statement: When plaintiff had not refused to furnish a statement of his taxable property but had furnished an incorrect one, the assessor was without power to make the

arbitrary assessment provided for in 15-8-305 (now repealed), but the assessor should have proceeded to ascertain the facts under the powers granted him by this section, by citing plaintiff to appear before him and answer as to his property. Story v. Dixson, 64 M 206, 208 P 592 (1922).

Collateral References

Taxation *key* 319.

84 C.J.S. Taxation §487.

72 Am. Jur. 2d State and Local Taxation §652.

15-8-306. Property concealed or misrepresented.

Collateral References

Taxation *key* 353.

84 C.J.S. Taxation §528.

When Statute of Limitation commences to run against action to recover taxes on property withheld or omitted from tax list. 131 ALR 822.

15-8-307. Land assessment.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), at beginning, inserted exception clause; inserted (2) relating to assessment of multiple parcels; in (3), throughout subsection, deleted references to columns and lines, at beginning, after "department", deleted "or its agent" and substituted "itemize in the property tax record" for "set aside one line in the assessment book for", and near middle substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Failure to Provide Co-Owner Notice of Issuance of Tax Deed — No County Jurisdiction to Issue Tax Deed: Kneedler was owner of a one-half undivided interest in a parcel of property. The co-owners failed to pay their portion of the property taxes, so the county sent them a notice of tax delinquency, but the notice was not sent to Kneedler. A tax sale was held, and the county purchased the tax lien against the co-owners, but the county's tax sale certificate was never assigned. Taxes on the property remained delinquent, so the County Commission directed that a tax deed be issued to the county for the co-owners' one-half interest in the property. Notice of the impending tax deed was sent to the co-owners, but not to Kneedler. Following sale of the county's interest to another party, Kneedler filed an action challenging the validity of the county's tax deed for failure to provide Kneedler with proper notice pursuant to 15-18-212. The District Court found that Kneedler lacked standing because she did not qualify as an interested party or as a current occupant of the property and granted summary judgment to the county, dismissing Kneedler's complaint with prejudice. Applying Dudley v. Higgins, 141 M 140, 375 P2d 689 (1962), the Supreme Court held that Kneedler was an interested party with the right to redeem property subject to a tax lien, even though the individual property interests were assessed separately for tax purposes. Further, nothing in the statutes permits or authorizes a county to tax an undivided interest in a jointly owned piece of property separately from the interests of the other cotenants because under this section, the general rule is that land be assessed in parcels. This form of assessment infringes upon the rights normally afforded to tenants of jointly owned property, including the cotenants' right to pay taxes before they become delinquent. Thus, the District Court erred in granting summary judgment to the county because as co-owner, Kneedler was entitled to notice of the issuance of the tax deed and Kneedler's right of redemption continued indefinitely until proper notice was given. Failure to provide notice deprived the county of jurisdiction to issue a tax deed and rendered the tax deed void. Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163, 56 St. Rep. 334 (1999). See also Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28 (1998).

Collateral References

Taxation *key* 421.

84 C.J.S. Taxation §§610 through 615.

15-8-308. Assessment not illegal for informality or delay.

Case Notes

Late Assessment Invalid: An assessment made after the second Monday in July violates 15-8-201 and is therefore invalid. This section does not allow late assessments. Butte Country

Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Misnomer:

The fact that real property, title to which was claimed by adverse possession, had been at all times assessed to the record owner, the taxes, however, being paid by the adverse claimant during the entire 10-year period, did not affect the right of the latter in view of 15-8-201, declaring that a mistake in the name of the owner does not render the assessment invalid, and this section, to the effect that no assessment or collection of taxes is illegal on account of informality. Anderson v. Mace, 99 M 421, 45 P2d 771 (1935).

The listing of land in the name of a person other than the owner is but an irregularity or informality which, of itself, does not avoid the assessment or render the tax illegal or unauthorized. Cobban v. Hinds, 23 M 338, 59 P 1 (1899).

Sale of Personal Property — Omission of Notice: When no legal notice of tax sale of personal property was given, the sale was void. True, this section says "No assessment or act relating to assessment or collection of taxes is illegal on account of informality"; however, this departure from legal requirement is not an informality. It is a matter of substance and is vital. Perham v. Putnam, 82 M 349, 267 P 305 (1928).

Increase in Assessment Under Void Order: An increase in an assessment in obedience to a void order of the Board of Equalization (duty now performed by Department of Revenue) could not be sustained under this section or 15-8-301. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903), distinguished in Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903).

Collateral References

Taxation *key* 318, 319, 440.

84 C.J.S. Taxation §§472, 478, 481.

15-8-309. Violation and penalty.

Compiler's Comments

1999 Amendment: Chapter 427 substituted "A person who fails for any reason to file or return the statement required by 15-8-301 must be assessed a $25 penalty. The department shall deposit the penalty to the credit of the state general fund" for "Every person who refuses to furnish the statement hereinbefore required or to make and subscribe such affidavit respecting his name and place of residence or to appear and testify when requested so to do by the department, as above provided, for each and every refusal and as often as the same is repeated forfeits to the people of the state the sum of $100 to be recovered by action brought in the name of the state in any city or justice's court"; deleted former (2) that read: "(2) All moneys recovered under the provisions of this section, except moneys paid to a justice's court, must be paid into the treasury of the county in which the property is located"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1987 Amendment: Near beginning of (2), after "section", inserted "except moneys paid to a justice's court".

Collateral References

72 Am. Jur. 2d State and Local Taxation §650.

Part 4
Where Property Is Assessed

Part Collateral References

Taxation *key* 322.

84 C.J.S. Taxation §394, et seq.

71 Am. Jur. 2d State and Local Taxation §§648 through 670.

Business situs of intangibles held in trust in state other than beneficiaries domicile. 59 ALR 3d 837.

15-8-401. Consigned property.

Collateral References

Taxation *key* 85.

84 C.J.S. Taxation §§144, 407, 416, 421.

71 Am. Jur. 2d State and Local Taxation §686.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase. 4 ALR 2d 244.

15-8-402. Property of person.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in two places substituted "person" for "firm and corporation"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.21.161 Personal property taxable situs.

Case Notes

Intangible Personal Property: Personal property, particularly that of an intangible character such as credits represented by notes and mortgages, has its situs only at the domicile of the owner for purposes of taxation. Monidah Trust v. Sheehan, 45 M 424, 123 P 692 (1912); Holland v. Bd. of Comm'rs, 15 M 460, 39 P 575 (1895); Gallatin County v. Beattie, 3 M 173 (1878).

Application of Section: The provisions of this section apply equally to all kinds of property. Coburn Cattle Co. v. Small, 35 M 288, 88 P 953 (1907); Flowerree Cattle Co. v. Lewis & Clark County, 33 M 32, 81 P 398 (1905).

Attorney General's Opinions

Personal Property of Partnership or Corporation — Tax Situs: Personal property of a partnership or corporation acquires its tax situs primarily by the location of the property. If the current location is temporary or transitory, the tax situs becomes the principal place of business of the organization. 41 A.G. Op. 46 (1986).

Collateral References

Taxation *key* 276, 418.

84 C.J.S. Taxation §394, et seq.

71 Am. Jur. 2d State and Local Taxation §§679 through 681, 691.

15-8-404. Property of particular types of firms.

Compiler's Comments

1999 Amendment: Chapter 583 in first sentence in (3) after "property" deleted "and franchises"; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1987 Amendment: In (2), after "stage companies", deleted "steamboats, vessels, and other watercraft". Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

Administrative Rules

ARM 42.21.161 Personal property taxable situs.

Case Notes

Property of Express Company: All of the tangible property of an express company is liable to taxation. Wells Fargo & Co. v. Harrington, 54 M 235, 169 P 463 (1917).

Water Right: A water right (which was taxable under former law) owned by a water company was properly assessed in a school district where its place of business and principal works were located, and into the limits of which water was conveyed by pipelines for distribution to the inhabitants. Helena Water Works Co. v. Settles, 37 M 237, 95 P 838 (1908).

Attorney General's Opinions

Personal Property of Partnership or Corporation — Tax Situs: Personal property of a partnership or corporation acquires its tax situs primarily by the location of the property. If the current location is temporary or transitory, the tax situs becomes the principal place of business of the organization. 41 A.G. Op. 46 (1986).

Collateral References

Taxation *key* 67, 260, 262, 263, 276.

84 C.J.S. Taxation §§76, 404, 412, 417, 419 through 422.

71 Am. Jur. 2d State and Local Taxation §§693 through 695.

15-8-405. Street railroads, bridges, and ferries.

Compiler's Comments

1999 Amendment: Chapter 583 after "ferries" deleted "and their franchises"; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Case Notes

Assessable Property — Prior Classification: Under this section, the constituent parts of a street railway track are personal property and taxable as such under sections 84-301 and 84-302, R.C.M. 1947 (now repealed), falling within class seven at 40% of its true and full value as property not included in the preceding six classes. Butte Elec. Ry. v. Brett, 80 M 12, 257 P 478 (1927).

Distinction Between "Street Railroad" and "Railroad": The frequent use of the prefix "street" in statutes similar to this section and 15-8-406 indicates the intention of the Legislature to maintain the distinction between "railroads" and "street railroads", and suggests that in construing enactments touching railroads they should not be held to apply to street railroads unless the intention that they shall so apply is apparent. Helena Light & Ry. v. Helena, 47 M 18, 130 P 446 (1913).

Collateral References

Taxation *key* 260, 276, 284.

84 C.J.S. Taxation §§304, 316, 341 through 343.

15-8-406. Assessment of public utilities in one county.

Compiler's Comments

1999 Amendment: Chapter 583 in two places in first sentence after "county" deleted references to their franchises; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Case Notes

Telegraph Line Used by Railroad: So much of a telegraph line used exclusively for railroad purposes, extending along a right-of-way across the state, as is within any given county, is assessable by the Assessor of that county, and not by the State Board of Equalization (duty now performed by Department of Revenue) as part of the "roadway". N. Pac. Ry. v. Brogan, 52 M 461, 158 P 820 (1916), distinguished in Chicago, Milwaukee, & St. Paul Ry. v. Murray, 55 M 162, 174 P 704 (1918) and St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Collateral References

Taxation *key* 276, 284.

84 C.J.S. Taxation §§416, 420, 422.

71 Am. Jur. 2d State and Local Taxation §695.

15-8-407. Railroads.

Compiler's Comments

1999 Amendment: Chapter 583 at beginning after "The" deleted "franchise" and at end inserted reference to Title 15, chapter 23, part 2; deleted former (2) that read: "(2) Other

franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business"; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Case Notes

Equipment of Cars: Cooking utensils forming a necessary and usual equipment of cars used for boarding railway construction crews are part of its rolling stock and as such subject to assessment for taxation. Great N. Ry. v. Flathead County, 61 M 263, 202 P 198 (1921).

Snowsheds Part of Roadbed: Snowsheds constructed of reinforced concrete and steel, with timber roofs, the walls of which on the mountainside of the track were embedded in the ground 4 feet or more, the outer walls consisting of a series of piers grounded in holes from a foot to 12 feet deep, were part of defendant railway company's roadbed, and as such assessable, under Art. XII, sec. 16, 1889 Mont. Const., by the State Board of Equalization (duty now performed by Department of Revenue) and not by the County Assessor. Great N. Ry. v. Flathead County, 61 M 263, 202 P 198 (1921).

Telegraph Line: So much of a telegraph line used exclusively for railroad purposes, and extending along the right-of-way across the state, as is within any given county, is assessable by its Assessor, and not by the State Board of Equalization (duty now performed by Department of Revenue) as part of the "roadway". N. Pac. Ry. v. Brogan, 52 M 461, 158 P 820 (1916), distinguished in Chicago, Milwaukee, & St. Paul Ry. v. Murray, 55 M 162, 174 P 704 (1918), and St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Collateral References

Taxation *key* 317, 389 through 393.

84 C.J.S. Taxation §§416, 420, 570.

71 Am. Jur. 2d State and Local Taxation §692.

What property is within provision with relation to local taxation of certain railroad property under statute or constitution providing for assessment or taxation of railroad property by state commission or board. 80 ALR 252.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-8-408. Personal property.

Compiler's Comments

1989 Amendment: Substituted language (see 1989 Session Law for text) for former section that read: "Personal property which was in the state and subject to taxation on January 1 of any year shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed, or possessed by the person owning, claiming, or possessing it on January 1 or not; provided that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes."

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

Administrative Rules

ARM 42.21.161 Personal property taxable situs.

Attorney General's Opinions

Personal Property of Individual — Tax Situs: Absent specific statutory direction, personal property owned by an individual acquires its tax situs by reference to the residence of its owner. 41 A.G. Op. 46 (1986). (See 1989 amendment.)

Personal Property of Partnership or Corporation — Tax Situs: Personal property of a partnership or corporation acquires its tax situs primarily by the location of the property. If the current location is temporary or transitory, the tax situs becomes the principal place of business of the organization. 41 A.G. Op. 46 (1986).

Collateral References
Taxation *key* 342.
84 C.J.S. Taxation §§397 through 401, 404.
71 Am. Jur. 2d State and Local Taxation §§655 through 703.

15-8-409. Property not otherwise specified.

Administrative Rules
ARM 42.21.161 Personal property taxable situs.

Collateral References
Taxation *key* 255, 260.
84 C.J.S. Taxation §§394 through 400.
71 Am. Jur. 2d State and Local Taxation §§648 through 654.

Part 5
To Whom Property Is Assessed

Part Collateral References
Taxation *key* 320.
84 C.J.S. Taxation §§407 through 411.
72 Am. Jur. 2d State and Local Taxation §§659 through 666.
Conflict of laws as to taxation of partnership property. 29 ALR 2d 312.
Inclusion of investments in stock of other corporations in fixing base for taxation of corporations as double taxation. 11 ALR 2d 323.

15-8-501. Assessment of unknown or absent owners.

Case Notes
Abandoned Property: The owner of personal property (a traction engine), which had been left standing on open ground near a town for more than a year, apparently not in the care or custody of anyone, and bearing the impress of abandoned property, was in no position to complain that it had been assessed to "unknown owners" and sold for delinquent taxes, when he had done nothing in the way of notifying the Assessor that it was his property nor made an effort to pay or offer to pay the taxes. Averill Mach. Co. v. Freebury Bros., 59 M 594, 198 P 130 (1921).

Collateral References
84 C.J.S. Taxation §585.

15-8-502. Representative status to be designated.

Collateral References
Taxation *key* 414, 416.
84 C.J.S. Taxation §583.

15-8-503. Undistributed property of deceased persons.

Case Notes
Purpose: An assessment to the estate of a deceased person is tantamount to an assessment to his heirs, guardians of his heirs, executors of his will, or administrators of his estate, as the case may be, if they have actual notice of it, since the purpose of this section is to assure that notice to some interested person shall be given and to provide that payment, when made, shall bind all parties in interest. Hill v. Lewis & Clark County, 54 M 479, 171 P 929 (1918).

Collateral References
Taxation *key* 84, 345.
84 C.J.S. Taxation §§143, 408.
72 Am. Jur. 2d State and Local Taxation §666.

15-8-504. Property and money in litigation.

Collateral References
Taxation *key* 87.
84 C.J.S. Taxation §145.

15-8-511. Undivided interest in common elements of condominium project — definition.

Compiler's Comments

2005 Amendment: Chapter 379 in (2) substituted definition of common elements for former language that read: "Unless otherwise agreed by all the unit owners, for purposes of assessment common elements include:

(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety and normally in common use." Amendment effective April 25, 2005.

Retroactive Applicability: Section 5, Ch. 379, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004."

Applicability: Section 7, Ch. 452, L. 1985, provided for applicability to tax years beginning after December 31, 1985.

Administrative Rules

ARM 42.20.105 Condominiums.

15-8-512. Common elements serving residential or commercial development.

Compiler's Comments

2005 Amendment: Chapter 379 in (1) in second sentence substituted "The value of common elements must be allocated to each lot owner pursuant to 15-8-111" for former language that read: "Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in 15-8-511, but not for park areas that serve the lots." Amendment effective April 25, 2005.

Retroactive Applicability: Section 5, Ch. 379, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004."

Applicability: Section 7, Ch. 452, L. 1985, provided for applicability to tax years beginning after December 31, 1985.

Part 6
Assessment Revision

15-8-601. Assessment revision — conference for review.

Compiler's Comments

1997 Amendment: Chapter 36 in (3)(a), near end of second sentence after "within", substituted "30 days" for "15 days"; in (3)(c), near middle of second sentence after "department", inserted "or a taxpayer who does not request a conference" and at end substituted "within 30 days of receipt of the revised assessment or the department's assessment made pursuant to the conference" for "at its next meeting"; and made minor changes in style. Amendment effective February 24, 1997.

Retroactive Applicability: Section 3, Ch. 36, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1997."

1993 Special Session Amendment: Chapter 27 in (2) substituted "department proposes to revise the statement" for "department or its agent proposes to increase the valuation of locally assessed property above the value"; in (3)(a), after "department", deleted "or its agent" and at end substituted "within 15 days" for "not less than 15 or more than 30 days"; in (3)(b) and (3)(c), before "review", inserted "revision"; in (4) substituted "shall" for "must record in a book to be kept

for that purpose all changes, corrections, and orders made by it and must direct its agent to" and substituted "in the property tax record" for "upon the assessment book"; deleted (5) that read: "(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendments: Chapter 37 at beginning of (1)(a) inserted exception clause; and inserted (1)(b) regarding issuance of revised assessment of property subject to assessment under Title 15, ch. 23. Amendment effective February 19, 1991.

Chapter 811 in (2) inserted last sentence relating to review under 15-1-211; in (3)(a), at beginning of second sentence, inserted "If the property is locally assessed"; and in (3)(c), in second sentence after "department", deleted "may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed".

Effective Date — Retroactive Applicability: Section 2, Ch. 37, L. 1991, provided: "[This act] is effective on passage and approval [approved February 19, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Case Notes

Specific Provisions Concerning Mine Net Proceeds Taxes Supersedes General Ownership Provision of Tax Law: The respondent owned a limestone quarry and for 3 years filed returns showing a negative value for its mine net proceeds tax. The Department of Revenue subsequently audited the respondent's books and revised its assessment based on arriving at a higher figure than the respondent had reported. The respondent argued that under the provisions of this section, it was not liable for the revised assessment because it no longer owned the quarry. The Supreme Court stated that the respondent's argument would lead to an absurd result in that a mine owner could report a zero value for its mine net proceeds, sell its property, and be exempt from taxation following an audit of the true result. The court held that the specific provisions of the statutes relating to mine net proceeds taxes must supersede any repugnancy in the ownership provisions of this section. Dept. of Revenue v. Kaiser Cement Corp., 245 M 502, 803 P2d 1061, 47 St. Rep. 2221 (1990).

Erroneous Assessment of Unimproved Property: The plaintiffs argued that the additional taxes they had been required to pay constituted an illegal retroactive application of taxes. The Supreme Court affirmed the lower court's finding that the evidence showed that no new tax had been levied. The additional amount charged the plaintiffs was the result of an erroneous assessment. Kruse v. Cascade County, 244 M 126, 796 P2d 568, 47 St. Rep. 1445 (1990).

Applicability of Ten-Year Statute of Limitations to Pre-1983 Mines Net Proceeds Tax: Prior to 1983, the limitations period for assessment revisions of property taxes, including the mines net proceeds tax, was 10 years as set in this section. Because this specific statute of limitations was governing, the general 2-year limitations period prescribed in 27-2-211 did not apply to these particular taxes. W.R. Grace & Co. v. Dept. of Revenue, 238 M 439, 779 P2d 470, 46 St. Rep. 1399 (1989), distinguishing Caterpillar Tractor Co. v. Dept. of Revenue, 194 M 537, 633 P2d 618, 38 St. Rep. 1245 (1981).

Late Assessment: Under 15-8-601, the Department of Revenue may assess in a later year property which it failed to assess or which had been omitted from taxation in previous years, despite the requirement of 15-8-201 that all property must be assessed by the second Monday in July of each year. The court distinguished Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), in which it held invalid a revised assessment for the year in question, when the revised assessment was issued after the second Monday in July. OEA Research, Inc. v. McGee, 217 M 321, 704 P2d 1042, 42 St. Rep. 1219 (1985).

No Authority for Department of Revenue to Refund Taxes: This section neither confers a power nor imposes a duty on the Department of Revenue to provide for the refund of taxes. The Supreme Court held it is erroneous to infer that because this section allows the Department to increase assessments and collect additional taxes that it must also allow the Department to decrease an assessment and refund taxes. Section 15-1-402, providing for payment of taxes

under protest and subsequent refund by the County Treasurer if the taxpayer prevails in a suit, is the express remedy provided the taxpayer. Eagle Communications, Inc. v. County Treasurer, 211 M 195, 685 P2d 912, 41 St. Rep. 1303 (1984).

"Erroneous Assessment" Construed: Missoula County miscalculated the market value on plaintiff's property for property tax purposes during a reappraisal in 1978. The error was discovered in 1980, and the county and the Department of Revenue sent plaintiff a supplemental tax bill. Plaintiff paid the taxes under protest. The erroneous assessment was caused by a clerical error. The District Court granted plaintiff summary judgment because the procedures of 15-8-601 were not followed. On appeal, defendants admitted that the taxes should be refunded at the time, but they argued that they were not precluded from further action because of the 10-year time period allowed under this section. Plaintiff contended that the error was an "erroneous appraisal" rather than an "erroneous assessment" and therefore 15-8-601 did not apply. The Supreme Court held that a clerical error falls under the plain language of "erroneous assessment". The court further held that regardless of the term used, because the error was a clerical error made while assessing the taxable value of the property, it was an "erroneous assessment" under 15-8-601. The Department is not precluded from following the proper procedures of 15-8-601 at this time. Evans Prod. Co. v. Missoula County, 201 M 337, 654 P2d 523, 39 St. Rep. 2149 (1982).

Failure to Assess Not Deannexation: The town of Melstone was incorporated in 1913. Prior to 1976, the County Assessor included only the area marked off in lots and blocks as being in the city. In 1976 the mistake was discovered and the County Commissioners rectified the situation by raising the rates of the area inside the original town plat but not previously taxed at city rates. The Balock's paid this increased tax under protest and initiated a suit in District Court for a refund. The Supreme Court found that Montana's annexation and deannexation statutes provide the method for including or excluding property into or from cities and towns. This method is exclusive, and the common-law doctrine of acquiescence will not allow the exclusion of property since the boundaries of Melstone are clear. Balock v. Melstone, 186 M 303, 607 P2d 545 (1980).

Constitutionality of Amendment: Chapter 3, L. 1923, which empowered the State Board of Equalization (duty now performed by Department of Revenue) by this section to assess property that theretofore escaped taxation, provided the assessment be made within 3 years after the end of the calendar year in which the same should have been assessed, was not open to the objection that it was retroactive in its operation. Butte & Superior Min. Co. v. McIntyre, 71 M 254, 229 P 730 (1924).

Undistributed Estate of Decedent: Under the similar provisions of 84-440, R.C.M. 1947 (now repealed), when after the assessment roll had passed out of the Assessor's hands and the County Board of Equalization (duty now performed by Department of Revenue) had adjourned, that officer discovered, listed for assessment, and assessed under the authority of this section, personal property belonging to the undistributed estate of a deceased person, the fact that the executors in charge of it were thus deprived of a right to appeal to the Board of Equalization (duty now performed by Department of Revenue) did not invalidate the additional assessment, since the property was taxable, and appeal to the Board is available, not to him who has concealed property, but who has delivered to the Assessor a sworn statement of all his taxable property. Hill v. Lewis & Clark County, 54 M 479, 171 P 929 (1918).

Changes in Assessments: Changes in assessments by the Board of County Commissioners, sitting as a Board of Equalization, must be noted by the Clerk and entered on the book in the proper places. State ex rel. Fadness v. Eie, 53 M 138, 162 P 164 (1916).

Relief From Illegal Taxes: Under section 84-609, R.C.M. 1947 (now repealed), which empowered a Board of County Commissioners to direct the Assessor to make corrections and additions to assessments, the right of the owner of property to obtain relief from illegal taxes by injunction was not in anywise affected by his failure, after notice from the Board, to make timely objection. Barnard Realty Co. v. Butte, 50 M 159, 145 P 946 (1915).

Ten-Day Notice Jurisdictional: Under section 84-609, R.C.M. 1947 (now repealed), which empowered a Board of County Commissioners to direct the Assessor to make corrections and additions to assessments, the notice of 10 days, required to be given a taxpayer, was jurisdictional. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903), distinguished in Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903); Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905). See also Anaconda Copper Min. Co. v. Ravalli County, 56 M 530, 186 P 332 (1919); W. Ranches v. Custer County, 89 F 577 (9th Cir. 1898).

Failure to Give Notice Not Waived by Appearance: Under section 84-609, R.C.M. 1947 (now repealed), which empowered a Board of County Commissioners to direct the Assessor to make

corrections and additions to assessments, failure by the County Board of Equalization (duty now performed by Department of Revenue) to give a taxpayer the 10-days' notice of an increase in his assessment, was not waived by his voluntary appearance before the Board, after the raise had been made, for the purpose of seeking a reduction of the assessment. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903), distinguished in Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903); Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905). See Anaconda Copper Min. Co. v. Ravalli County, 56 M 530, 186 P 332 (1919).

Attorney General's Opinions

Procedure for Revision of Erroneous Tax Assessments: This section sets forth the procedure for revising erroneous tax assessments. 42 A.G. Op. 27 (1987).

Legality of Independent Payment Procedure — Mine Proceeds Taxes — Revised Assessments: It is legal to allow the establishment of a payment procedure independent of the statutory scheme by a settlement agreement compromising alleged tax obligations under the mines net proceeds and metal mines gross proceeds taxes by authority in 15-8-601 to make revised assessments of taxable property which has escaped or been omitted from taxation or has been erroneously assessed. 41 A.G. Op. 67 (1986).

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

Collateral References

Taxation *key* 359.
84 C.J.S. Taxation §§657 through 664.
72 Am. Jur. 2d State and Local Taxation §§726 through 734.

Part 7
Assessment and Map Books

Part Collateral References

Taxation *key* 408 through 446.
84 C.J.S. Taxation §§580 through 600.
72 Am. Jur. 2d State and Local Taxation §§653 through 658.

15-8-701. Property tax record — definition — listing property in.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (2) substituted "department proposes to revise the statement" for "department or its agent proposes to increase the valuation of locally assessed property above the value"; in (3)(a), after "department", deleted "or its agent" and at end substituted "within 15 days" for "not less than 15 or more than 30 days"; in (3)(b) and (3)(c), before "review", inserted "revision"; in (4) substituted "shall" for "must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to" and substituted "in the property tax record" for "upon the assessment book"; deleted (5) that read: "(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1985 Amendment: Inserted definition of assessment book.

Case Notes

Appropriate Headings: Under this section prior to amendment, a County Assessor was required to list all property in his county in an assessment book under appropriate headings. State ex rel. Fadness v. Eie, 53 M 138, 162 P 164 (1916).

Assessment Book to Show Location of Property: Under section 84-502, R.C.M. 1947 (now repealed), the assessment book must have been kept so that it would appear therefrom what property was within the limits of cities or towns and what was elsewhere. State ex rel. Butte v. Weston, 29 M 125, 74 P 415 (1903).

Collateral References

Taxation *key* 408 through 425.
84 C.J.S. Taxation §§580 through 589, 608 through 618.
72 Am. Jur. 2d State and Local Taxation §§653 through 658.

15-8-702. Persons desiring to be listed.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 366 deleted (2) that provided: "(2) When the owner of one or more parcels of real property conveys a portion of his interests to a buyer in a recorded transaction, the buyer may require the county treasurer to accept payment from the buyer on such portion of the taxes already levied against such property as may then be due and payable. The department of revenue or its agent shall cooperate with and assist the buyer and the county treasurer in keeping necessary records of the separation or division of a parcel or parcels listed together on the assessment lists"; and made minor changes in style.

Case Notes

Burden to Advise of Current Address: The burden is on the taxpayer to keep the taxing authorities informed of his interest in land and current address, and the applicant for a tax deed was not required to search beyond tax records in giving notice of his application therefor. Madden v. Zimmerman, 166 M 285, 532 P2d 414 (1975).

Request to Have Name Added in Assessment Book: When property is assessed in the name of a certain person and another, claiming it, desires to be assessed therefor, he may under this section have his name inserted in the assessment book with that of the former, and his request in that behalf should be sent to the County Assessor and not to the County Treasurer. (See 1993 special session amendment.) Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Reservation of Mining Rights: When lands were sold with reservations in the grantor of minerals, mining rights, etc., the grantor was entitled as of right under this section to have its name inserted upon the assessment roll with each of its grantees, and to have the reservation in every instance assessed to it and not to its grantee upon proper request. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

Collateral References

Taxation *key* 438.

84 C.J.S. Taxation §§457 through 461, 507.

15-8-704. Map book.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 substituted "maps showing public and private land for each county and shall designate" for "a plat of the various blocks within any incorporated city or town in a map book and mark thereon in each subdivision the name of"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Collateral References

Taxation *key* 410.

84 C.J.S. Taxation §581.

15-8-707. Correction of defects in property tax record.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1) substituted "the property tax record may only be corrected by the department" for "form in the assessment book may be corrected by the:

(a) department of revenue or its agent; or

(b) county assessor or county treasurer with verification from the department"; in (2) substituted "with a taxing jurisdiction within the county, the county attorney must be notified of the correction" for "the consent of the county attorney must be obtained before any correction may be made"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1985 Amendment: In (1) substituted "the assessment book" for "any original or duplicate assessment book".

15-8-708. Omissions in delinquent lists — correction by publication.

Collateral References

Taxation *key* 630.

85 C.J.S. Taxation §1130, et seq.

15-8-709. Statement of changes to be sent to county clerk and recorder.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 before "of the county" substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Collateral References

Taxation *key* 449.

15-8-710. Property tax record prima facie evidence.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near beginning substituted "property tax record" for "assessment book" and after "certified by" substituted "county treasurer" for "county clerk and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1985 Amendment: At beginning of section after "The assessment book", deleted "duplicate assessment book".

Collateral References

Taxation *key* 644.

84 C.J.S. Taxation §§606, 607; 85 C.J.S. Taxation §§1149 through 1151.

15-8-711. List of owners of multiple, undivided interests in parcel of land to county treasurer.

Compiler's Comments

Effective Date: Section 6, Ch. 444, L. 2001, provided that this section is effective on passage and approval. Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

CHAPTER 9
EQUALIZATION

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Case Notes

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to

assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648.

Chapter Attorney General's Opinions

Supplemental Assessments Against Banks — Confidentiality: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301. 35 A.G. Op. 59 (1974).

Chapter Law Review Articles

Real Property Tax Assessment in Montana, 34 Mont. L. Rev. 300 (1973).

Chapter Collateral References

Taxation *key* 446.5 through 450.

84 C.J.S. Taxation §621, et seq.

72 Am. Jur. 2d State and Local Taxation §§726, 735, 736.

Real estate tax equalization, reassessment, or revaluation program commenced, but not completed within the year, as violative of constitutional provision requiring equal and uniform taxation. 76 ALR 2d 1077.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 1
General Provisions

15-9-101. Department to equalize valuations — hearing.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), after "taxpayers", deleted "supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents"; in (3), near beginning after "hearing", deleted "of the application" and after "evidence" deleted "in relation to the subject pending"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board, asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. The Supreme Court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Failure to Consider Effect of Zoning Ordinance on Market Value: The State Tax Appeal Board erred in failing to consider the effect, if any, of a zoning ordinance on market value and in failing to make findings on this issue. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

Power to Uniformly Lower Appraisals of a Type of Property to Equalize Appraisals — "34% Cases": Due to the use of different appraisal manuals for residential property and commercial improvements to real property, the two types of property being in the same tax class, equivalent values were not always placed upon similar properties. The Department of Revenue determined

that the commercial valuations averaged 12% higher than the residential valuations and ordered each county assessor to reduce all commercial valuations by 12%. The Department properly assumed the responsibility of solving the problem and in equalizing the valuations in the manner it did was acting under its constitutional mandate and authority to equalize values of taxable property. The 12% reduction did not constitute a reappraisal. The power and duty to equalize included the power to alter appraised values set at the beginning of an appraisal cycle. Hanley v. Dept. of Revenue, 207 M 302, 673 P2d 1257, 40 St. Rep. 2054 (1983).

Taxation Standards — Uniformity Versus True Value: Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. Therefore, unequal appraisals may be reduced even though they result in an assessment at true market value or 100% of market value as required by 15-8-111. Reduction is required where it is satisfactorily shown that under the system as applied, it is impossible to meet both the true value and equality standards. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Determination of Accounting Method: This section taken together with Art. VIII, sec. 3, Mont. Const., allows the Department of Revenue to determine the method of valuation that shall be used for tax assessment purposes. Mont. Nat'l Bank of Roundup v. Dept. of Revenue, 167 M 429, 539 P2d 722 (1975).

Hearing Procedure: When the State Board of Equalization (duty now performed by Department of Revenue) held "show cause hearings" to afford opportunity to protest Board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses or hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. St. Bd. of Equalization v. Kovich, 142 M 201, 383 P2d 818 (1963).

Intervention of Court: Court may not intervene when action of Board is not arbitrary, fraudulent, or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Writ of Prohibition: Action of District Court in issuing Writ of Prohibition against State Board of Equalization (duty now performed by Department of Revenue) was premature where it prohibited the Board from proceeding further under this section and prevented the Board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Collateral References

Taxation *key* 450.

84 C.J.S. Taxation §639, et seq.

72 Am. Jur. 2d State and Local Taxation §§726, 735, 736.

15-9-103. Department to use records in equalizing.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 after "clerk" inserted "and recorder", after "county and" substituted "shall enter in the property tax record" for "may require entry upon the assessment book of", and deleted second sentence that read: "Any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

CHAPTER 10
PROPERTY TAX LEVIES

Chapter Collateral References

Taxation *key* 295 through 308, 427 through 446.

84 C.J.S. Taxation §423, et seq.

72 Am. Jur. 2d State and Local Taxation §§629 through 643.

Part 1
Statewide Levies

Part Case Notes

Basis for Tax: The sum of the corrected assessments of the several counties, with the additions made by the State Board of Equalization (now Department of Revenue), is the basis for taxation for state purposes at the rate fixed biennially by the Legislature. State ex rel. Fadness v. Eie, 53 M 138, 162 P 164 (1916).

Part Collateral References

Taxation *key* 295 through 308.
84 C.J.S. Taxation §423, et seq.
72 Am. Jur. 2d State and Local Taxation §§629 through 643.

15-10-107. Tax levy for university system.

Compiler's Comments

1999 Amendment — Code Commissioner Correction: Section 166, Ch. 584, L. 1999, inserted reference to 15-10-420. To preserve the integrity of the amendment, the code commissioner at beginning reinstated the phrase "Subject to the provisions of". Amendment effective May 10, 1999.

Effective Date: Section 4, Ch. 408, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 21, 1999.

Retroactive Applicability: Section 5, Ch. 408, L. 1999, provided: "[Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Termination: Section 6, Ch. 408, L. 1999, provided: "[Section 1] terminates January 1, 2009."

Case Notes

Former Statute Not Self-Executing: Under former law, when the Legislature failed to make tax levy for support of university system in 1975 and 1976 as authorized by a former statute and the referendum held under the former statute, there was no levy and appropriation of money from fund was invalid. Connick v. Judge, 167 M 357, 538 P2d 1024 (1975).

Part 2
Statement of Levies

Part Compiler's Comments

Section Not Codified: Section 84-7201, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 286, L. 1974.

Part Law Review Articles

Recent Developments—Legislation, 36 Mont. L. Rev. 155 (1975).

Part Collateral References

Taxation *key* 301 through 305.
84 C.J.S. Taxation §§443, 444.
72 Am. Jur. 2d State and Local Taxation §638.

15-10-201. Tax levies to be made in mills and tenths and hundredths of mills.

Collateral References

Taxation *key* 301.
84 C.J.S. Taxation §434, et seq.

15-10-202. Certification of taxable values.

Compiler's Comments

2003 Amendment: Chapter 34 in (1) near beginning of first sentence after "by the" substituted "first Monday in August" for "second Monday in July" and inserted third sentence requiring the department to provide, upon request, an estimate of the total taxable value within the jurisdiction of the taxing authority by the second Monday in July. Amendment effective February 18, 2003.

Retroactive Applicability: Section 9(4), Ch. 34, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified."

2001 Amendments — Composite Section: Chapter 26 in first sentence before "taxable" inserted "total" and at end of second sentence after "total" substituted "taxable value of newly

taxable property, as described in 15-10-420(3)" for "assessed value of all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record. Exclusive of new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record". Amendment effective July 1, 2001.

Chapter 419 at beginning of first sentence of (1) inserted "Subject to subsections (2) and (3)", at end of second sentence substituted "taxable value of newly taxable property, as described in 15-10-420(3)" for "assessed value of all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record", and deleted former third and fourth sentences that read: "Exclusive of new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record"; inserted (2) concerning centrally assessed property; inserted (3) concerning class thirteen property; and made minor changes in style. Amendment effective April 28, 2001. Subsection (3) terminates January 1, 2002.

Recalculation of Mill Levies: Section 5, Ch. 419, L. 2001, provided: "Certain governmental entities to recalculate mill levy. (1) (a) If the taxable value of all property, exclusive of the recertified value of newly taxable property as determined under 15-10-202(3), is more than 101% of the total taxable value of all property originally certified, exclusive of newly taxable property, by the department in tax year 2000 to the governmental entity authorized to impose mills, the governmental entity shall recalculate the mill levy under 15-10-420(1) for tax year 2000. The governmental entity shall not recalculate taxes for tax year 2000.

(b) The governmental entity shall then multiply the total taxable value in tax year 2000 by the mill levy determined under subsection (1)(a). The governmental entity shall use that amount as the amount of property tax that was actually generated in tax year 2000.

(2) For the purpose of 15-10-420(1), the amount of property tax actually generated in tax year 2000 as determined in subsection (1)(b) is the amount that must be used by the governmental entity for imposing mills in tax year 2001." Effective April 28, 2001, and terminates January 1, 2002.

Retroactive Applicability: Section 8, Ch. 419, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1993 Special Session Amendment: Chapter 27 at beginning substituted "By the second Monday in July" for "At the time that the assessment roll is prepared and published", in four places, after "department", deleted "or its agent", and in four places substituted references to property tax record for references to assessment roll; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1989 Amendment: Throughout section inserted reference to Department's agent. Amendment effective February 13, 1989.

Retroactive Applicability: Section 6, Ch. 9, L. 1989, provided that this amendment applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

1986 Amendment: In third sentence after "deletions", deleted "and the taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year if the taxable value of such property remaining under protest exceeds 5% of that taxing jurisdiction's taxable valuation, and if requested to do so by the county commissioners"; and deleted former (2) that read: "The county commissioners shall inform the department of revenue in writing by July 15 as to whether the county wishes to exclude protested values from the tax base for the purpose of calculating certified mill levies. The decision of the county commissioners shall apply to all taxing jurisdictions within the county."

Interim Committee Bill: Chapter 26, Sp. L. July 1986, was introduced by request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See committee report entitled "Property Tax Delinquencies, Tax Sales, and Tax Deeds", Montana Legislative Council, December 1986.

1985 Amendment: In third sentence, after "deletions", inserted "and the taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year if the taxable value of such property remaining under protest exceeds 5% of that taxing jurisdiction's taxable valuation, and if requested to do so by the county commissioners"; and inserted (2) (for text, see 1986 amendment note).

15-10-203. Increase of tax revenue — advertisement of intention and public hearing required.

Compiler's Comments

2001 Amendment: Chapter 354 in (2) at end of fourth sentence substituted "7-1-4127" for "7-1-4128". Amendment effective October 1, 2001.

1995 Amendment: Chapter 430 near beginning of (1), after "ad valorem tax revenue", substituted "in excess of the property tax revenue of the previous fiscal year" for "in excess of the property tax revenue it received the previous fiscal year"; and made minor changes in style. Amendment effective April 13, 1995.

1993 Special Session Amendment: Chapter 27 near end of first sentence, after "first time on the", substituted "property tax record" for "assessment roll"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: In (1) in first sentence before "taxing authority", inserted "local", after "ad valorem tax revenue" inserted "in excess of the property tax revenue it received the previous fiscal year", and at end, after "unless it", substituted remainder of subsection relating to adoption of resolution to budget additional property tax revenue for "gives notice of its intention to do so at the same time and in the same manner that it gives notice of its hearing on its preliminary or proposed budget for the forthcoming fiscal year"; and inserted (2) relating to advertisement of intent to budget increase in property tax revenue. Amendment effective May 23, 1991.

1987 Amendment: Near end of sentence, after "preliminary", inserted "or proposed".

15-10-206. Notification of decisions of tax appeal boards.

Compiler's Comments

2001 Amendments — Composite Section: Chapters 26 and 419 deleted former second sentence that read: "An increase in the taxing authority's millage above the millage certified by the department or adopted by resolution or ordinance of the governing body of the taxing authority that is required solely by a reduction of the property tax record by the state or county tax appeal board may be adopted without further notice." Amendments effective July 1, 2001, and April 28, 2001, respectively.

Retroactive Applicability: Section 8, Ch. 419, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1993 Special Session Amendment: Chapter 27 in two places, after "department", deleted "or its agent" and in two places substituted "property tax record" for "assessment roll"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1989 Amendment: In two places inserted reference to Department's agent. Amendment effective February 13, 1989.

Retroactive Applicability: Section 6, Ch. 9, L. 1989, provided that this amendment applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

Part 3
Entry of Taxes

Part Collateral References

Taxation *key* 408 through 446.

84 C.J.S. Taxation §§590 through 598.

72 Am. Jur. 2d State and Local Taxation §§653 through 658.

15-10-305. Clerk and recorder to report mill levy — department to compute and enter taxes.

Compiler's Comments

1997 Amendment: Chapter 414 in (1)(a), in second sentence at beginning, inserted exception clause; inserted (1)(b) concerning taxation resulting from land split; and made minor changes in style. Amendment effective January 1, 1998.

Applicability: Section 6, Ch. 414, L. 1997, provided: "[This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997."

Effective Date — Rulemaking: Section 7, Ch. 414, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998."

1993 Special Session Amendment: Chapter 27 substituted present text concerning notification of mill levy for each taxing jurisdiction, computation of taxes, and notification of taxes, fees, and assessments to be levied for former text that read: "The department of revenue or its agent must then compute and enter in a separate money column in the assessment book the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated and foot up the columns showing the total amount of such taxes and the columns of total value of property in the county and shall attach thereto his affidavit, by him subscribed as follows and shall on or before the second Monday of October deliver the completed assessment book to the county clerk and recorder:

"I, ..., an agent of the department of revenue, do swear that I have reckoned the respective sums due as taxes and have added up the columns of valuations, taxes, and acreage as required by law, and the assessment book to which this affidavit is affixed is full, true, and correct and made in the manner prescribed by law."" Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Payment of Taxes Not Yet Due Not Required to Sustain Adverse Possession Claim: Pursuant to 70-19-411, a party claiming adverse possession must occupy the property continuously for 5 years and must have paid all legally levied and assessed taxes on the property. Parker received notice for property taxes due on October 31, 1997, but the taxes were not paid. The 5-year period of adverse possession commenced when Parker received the defective tax deeds on November 24, 1992, so the 5-year adverse possession period would have expired on November 24, 1997. The District Court held that because the 1997 taxes were assessed prior to November 24, 1997, and were unpaid, Parker's claim for adverse possession failed. Parker maintained that the adverse possession language in 70-19-411 should be interpreted in combination with the statutory provisions for levy, notice, and payment of taxes in the tax code in Title 15. The Supreme Court agreed. Pursuant to this section, real estate taxes are levied and assessed on the second Monday in October, while 15-16-102 provides that one-half of each year's property taxes is payable on or before November 30 and the other one-half is payable on or before May 31 of the following year. Therefore, although the 1997 taxes were levied prior to the expiration of the 5-year adverse possession period on November 25, 1997, the taxes were not delinquent until November 30, 1997, 1 week after the adverse possession period ended. The Supreme Court concluded that 70-19-411 does not require the payment of taxes that are not yet due in order to sustain a claim of adverse possession. Thus, the District Court erred in concluding that Parker did not meet the requirements of 70-19-411, and the decision was reversed. Tungsten Holdings, Inc. v. Parker, 2001 MT 117, 305 M 329, 27 P3d 429 (2001).

Statute of Limitations to Run From Date Tax Notice Sent: In defining when actual "imposition" of taxes occurs for purposes of establishing the 90-day period within which a declaratory judgment action must be brought under 15-1-406, the Supreme Court held that imposition of taxes occurs on the date actual notice of taxes due is sent pursuant to 15-16-101 rather than the date the taxes are entered on the assessment book pursuant to this section. Holly Sugar Corp. v. Dept. of Revenue, 252 M 407, 830 P2d 76, 49 St. Rep. 299 (1992).

Completion of Assessment Book:

After the necessary changes have been made and the assessments equalized, it is the duty of the Clerk to calculate and extend to the proper column the amount due from each taxpayer for the year, at the combined rates fixed by the County Board and the Legislature. State ex rel. Fadness v. Eie, 53 M 138, 162 P 164 (1916).

When the necessary corrections and additions have been made to it under the direction of the State and County Board of Equalization (now Department of Revenue), the Clerk must complete the assessment book (see 1993 special session amendment) by extending the tax so that the amount to be paid by each taxpayer for the year will be made to appear. State ex rel. Butte v. Weston, 29 M 125, 74 P 415 (1903).

Collateral References

Taxation *key* 427 through 430.
84 C.J.S. Taxation §§590, 591.
72 Am. Jur. 2d State and Local Taxation §653.

15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions.

Compiler's Comments

1981 Amendment: Inserted "or for any change in an existing jurisdiction".

Part 4
Limitation on Property Taxes

Part Compiler's Comments

Initiative 105: On November 4, 1986, the voters approved Initiative 105 to limit certain property taxes to 1986 levels. The text of the initiative reads as follows:

"SECTION 1: Declaration of policy.

(1) The State of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of classes three, four, six, nine, twelve, and fourteen property, as those classes are defined in Title 15, ch. 6, part 1.

(2) The legislature's failure to give local governments and local school districts the flexibility to develop alternative sources of revenue will only lead to increases in the tax burden on the already overburdened property taxpayer.

(3) The legislature is the appropriate forum to make the difficult and complex decisions to develop:

(a) a tax system that is fair to property taxpayers; and

(b) a method of providing adequate funding for local government and education.

(4) The legislature has failed in its responsibility to taxpayers, education, and local government, to relieve the tax burden on property classes three, four, six, nine, twelve, and fourteen.

(5) The people of the State of Montana declare it is the policy of the State of Montana that no further property tax increases be imposed on property classes three, four, six, nine, twelve, and fourteen.

SECTION 2: Property tax limited to 1986 levels.

(1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139 [now repealed], 15-6-142 [now repealed], and 15-6-144 [now repealed] may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) the limitation contained in subsection (1) does not apply to levies for rural improvement districts. Title 7, ch. 12, part 21; special improvement districts, Title 7, ch. 12, part 41; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) is subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill.

SECTION 3: Contingent effective date.

(1) Except as provided in subsection (2), this act is effective July 1, 1987, and applies to taxable year 1987.

(2) This act will not become effective if, prior to July 1, 1987, an act is passed and approved that:

(a) states that it is being enacted in response to this initiative;

(b) reduces property tax on a statewide basis on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139 [now repealed], 15-6-142 [now repealed], and 15-6-144 [now repealed]; and

(c) establishes alternative revenue sources to replace revenue lost to local governments, school districts, the university system, and other property taxing jurisdictions as a result of the reduced property taxes."

Part Attorney General's Opinions

Formation of Multijurisdictional Library Service Districts — Statutory Requirements — Equalization of Tax Burden Among Users: A city and a county may form a multijurisdictional library service district if they meet the statutory requirements of Title 7, ch. 11, part 11, and this part and if any existing contract for providing library services involving residents of one or more of the participating jurisdictions has expired. A multijurisdictional service district may not be formed for the sole purpose of equalizing the tax burden among those currently using the service; however, one increased service of the district may be to equalize the tax burden among users as long as the district provides services in the manner required by 7-11-1101. 46 A.G. Op. 23 (1996), distinguishing 44 A.G. Op. 11 (1991).

Tax Freeze Limitations Applicable to Pre-1986 Library Services: A county that offered library services prior to 1986 may not form a new taxing unit to avoid the limitations on property taxes imposed under Initiative Measure No. 105 by establishing a public library pursuant to 22-1-303 or by forming a multijurisdictional service district to provide library services pursuant to 7-11-1105. 46 A.G. Op. 19 (1996).

Approval of Informed Voters Sufficient to Allow Levy of Taxes in Excess of Statutory Limit: The two conditions for overriding Initiative Measure No. 105 pursuant to 15-10-412 (now repealed) are: (1) that the governing body of the taxing unit passes a resolution containing seven specified findings, estimates, summaries, and statements; and (2) that following the resolution, the voters in the taxing unit approve the increase in tax liability. A particular type or level of financial emergency is not a condition of the statute. It is up to the voters to decide if the taxing unit's financial emergency is severe enough to warrant the remedy of suspending property tax limitations. Therefore, the approval of voters in a rural fire district, following a resolution of its board of directors, is sufficient to allow the Board of County Commissioners to continue to levy taxes in excess of the limitations of Initiative Measure No. 105 in following years, without subsequent voter approval each year thereafter, if the voters have been informed of the amount and duration of the increase in tax liability. 45 A.G. Op. 29 (1994).

Consolidation of Rural Fire Districts — Mill Levy Limitations Inapplicable to New Trustee-Operated District: Consolidation of two existing rural fire districts creates a new rural fire district for purposes of determining mill levy limitations. Consistent with 42 A.G. Op. 109 (1988), a new rural fire district established after tax year 1986 and managed by a board of trustees rather than a Board of County Commissioners is not subject to the property tax limitations in Title 15, ch. 10, part 4. 44 A.G. Op. 16 (1991).

Water and Sewer District Levies for Repayment of Loan Obligation as Property Taxes: Assessments levied by a water and sewer district pursuant to 7-13-2302 for the purpose of repaying a general loan obligation are considered property taxes under this part. Therefore, the property tax limitations of part 4 apply, even if the district has never previously exercised its levy authority under 7-13-2302. 43 A.G. Op. 46 (1989).

Conservation Assessments Subject to Property Tax Limitations: Regular and special assessments by conservation districts are subject to the property tax limitations in this part. 42 A.G. Op. 73 (1988).

Property Tax Freeze and Additional Local Funds for Workers' Compensation — Both Applicable to Local Governments: Local governments must meet the requirements of both Ch. 664, L. 1987, requiring additional local funding for the workers' compensation fund, and Ch. 654, L. 1987, implementing the property tax freeze. The additional funding requirement did not constitute an implied repeal of the property tax freeze. 42 A.G. Op. 30 (1987).

Limitation of Local Government Power to Modify Property Tax Freeze — No Voter-Sanctioned Increases: Neither local governments with self-government powers nor local governments with general government powers have the power to act so as to modify Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987). When a taxing unit purports to increase the amount of an individual taxpayer's property tax for tax years commencing after December 31, 1986, other than as specifically allowed under Senate Bill No. 71, such action is void even if the increase was sanctioned by voter approval. 42 A.G. Op. 21 (1987).

Local Government Budget and Election Procedure Laws Not Altered: Nothing in the language or legislative history of Initiative No. 105 or Senate Bill No. 71 (Ch. 654, L. 1987) indicates any intent to alter the existing legal authority and duties of taxing jurisdiction officials to administer the finances of those jurisdictions. Further, nothing in 15-10-412 (now repealed) reflects an

intent to establish any standards for the special elections described therein other than those established by existing state law. 42 A.G. Op. 21 (1987).

15-10-401. Declaration of policy.

Compiler's Comments

1999 Amendment: Chapter 584 in (2) substituted "15-10-420" for "15-10-412". Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 463 in (1) substituted "all classes of property described" for "classes three, four, six, nine, twelve, and fourteen property, as those classes are defined"; deleted former (2) through (4) that read: "(2) The legislature's failure to give local governments and local school districts the flexibility to develop alternative sources of revenue will only lead to increases in the tax burden on the already overburdened property taxpayer.

(3) The legislature is the appropriate forum to make the difficult and complex decisions to develop:

(a) a tax system that is fair to property taxpayers; and

(b) a method of providing adequate funding for local government and education.

(4) The legislature has failed in its responsibility to taxpayers, education, and local government to relieve the tax burden on property classes three, four, six, nine, twelve, and fourteen"; in (2), at beginning of first sentence, inserted exception clause and at end deleted "classes three, four, six, nine, twelve, and fourteen" and inserted second sentence concerning alternatives to market value; and made minor changes in style. Amendment effective April 30, 1997.

Effective Date — Retroactive Applicability Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board, asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. The Supreme Court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Attorney General's Opinions

Procedures Required in Imposing Additional Levies to Meet Poor Fund Shortfall: Although 15-10-401, 15-10-402, 15-10-411 (now repealed), and 15-10-412 (now repealed) substantially limit the authority of taxing units to increase a property taxpayer's liability over his 1986 obligation, an additional levy increasing property taxes over 1986 levels may be made if either the poor fund liability has been reduced to a judgment against the county or the County Commissioners have passed a resolution pursuant to 15-10-412 (now repealed). Passage of such a resolution must be followed by a special or general election in which the issue of increased property tax liability is presented to the voters for authorization. 42 A.G. Op. 113 (1988). See also 42 A.G. Op. 118 (1988).

15-10-402. Property tax limited to 1996 levels.

Compiler's Comments

1999 Amendment: Chapter 584 substituted "15-10-420" for "15-10-412". Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 463 in exception clause substituted "15-10-412" for "subsections (2) and (3)"; near middle substituted "Title 15, chapter 6, part 1" for "15-6-133, 15-6-134, and 15-6-136" and at end substituted "tax year 1996" for "taxable year 1986"; and deleted (2) through (4) that read: "(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; elementary and high school districts, Title 20; juvenile detention programs authorized under 7-6-502; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill." Amendment effective April 30, 1997.

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

1993 Amendment: Chapter 267 in (1) deleted reference to 15-6-144; and made minor changes in style. Amendment effective April 2, 1993.

Severability: Section 11, Ch. 267, L. 1993, was a severability clause.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

1991 Amendments: Chapter 745 in (2) inserted exception for levies for juvenile detention programs. Amendment effective July 1, 1991.

Chapter 773 in (1), after "15-6-136", deleted "15-6-142". Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773, L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1989 Special Session Amendments: Chapter 10 in (1) deleted reference to 15-6-139. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

Chapter 11 in (2) inserted "elementary and high school districts, Title 20". Amendment effective July 1, 1990.

Contingent Effective Date of Initiative: Section 3, Initiative No. 105, approved November 4, 1986, provided: "(1) Except as provided in subsection (2), this act is effective July 1, 1987, and applies to taxable year 1987.

(2) This act will not become effective if, prior to July 1, 1987, an act is passed and approved that:

(a) states that it is being enacted in response to this initiative;

(b) reduces property tax on a statewide basis on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139 [now repealed], 15-6-142 [now repealed], and 15-6-144 [now repealed]; and

(c) establishes alternative revenue sources to replace revenue lost to local governments, school districts, the university system, and other property taxing jurisdictions as a result of the reduced property taxes."

Attorney General's Opinions

Mill Increase for County Roads and Bridges Not Exception to I.M. No. 105 Tax Freeze: The 1989 increase in allowable mills for county road construction, maintenance, or improvement, as set out in 7-14-2501, and for county bridge construction, maintenance, and repair, as set out in 7-14-2502, was not an exception to the I.M. No. 105 property tax freeze established in this section, but rather was intended to be implemented by a reduction of millage in other areas of the county budget. 43 A.G. Op. 74 (1990).

Poor Fund Increase, General Fund Decrease Allowable — Total Tax Liability Not to Be Increased: A county, when budgeting for the next fiscal year, may decrease the levy for the county general fund and increase the levy for the county poor fund as long as the resultant total tax liability for individual property in the county is not increased above 1986 levels. 42 A.G. Op. 118 (1988).

Procedures Required in Imposing Additional Levies to Meet Poor Fund Shortfall: Although 15-10-401, 15-10-402, 15-10-411 (now repealed), and 15-10-412 (now repealed) substantially limit the authority of taxing units to increase a property taxpayer's liability over his 1986 obligation, an additional levy increasing property taxes over 1986 levels may be made if either the poor fund liability has been reduced to a judgment against the county or the County Commissioners have passed a resolution pursuant to 15-10-412 (now repealed). Passage of such a resolution must be followed by a special or general election in which the issue of increased property tax liability is presented to the voters for authorization. 42 A.G. Op. 113 (1988). See also 42 A.G. Op. 118 (1988).

Property in More Than One Taxing Jurisdiction: Provisions of Title 15, ch. 10, part 4, limit the amount of taxes that may be assessed on property in each taxing unit or jurisdiction. A property may be included in several taxing units or jurisdictions, and the amount taxed by one taxing unit or jurisdiction has no legal effect on the amount taxed by another. 42 A.G. Op. 80 (1988).

Property Tax Freeze Inapplicable to Certain Special Districts: Because the overall structure of Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987) manifests a general intent to regulate only increases in the amount of an individual's property tax derived from application of mill levy and assessed valuation factors, special districts whose assessments and tax levies are based on the value of services actually rendered to a particular piece of property are taxing units excluded from coverage under the property tax freeze. 42 A.G. Op. 21 (1987).

Taxes Levied for 1986 Less Than Permissible — No Increase Allowed: Without compliance with the procedure provided in 15-10-412 (now repealed), the property tax amount, even though abnormally low in 1986, may not be increased. A taxing unit may not increase a taxpayer's property tax liability even though the taxes actually levied for the 1986 tax year were less than permissible under voter-approved mill levy amounts. (See 2001 amendment to 15-10-420.) 42 A.G. Op. 21 (1987).

Taxing Unit Duties Not Impliedly Repealed: Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987) do not impliedly repeal statutes that mandate performance of certain duties by a taxing unit; therefore, local officials may necessarily have to reduce discretionary projects in order to fund statutorily required duties. 42 A.G. Op. 21 (1987).

15-10-406. Limitation of applicability.

Compiler's Comments

Applicability: Section 4, Ch. 474, L. 1991, provided: "[This act] applies to taxable year 1992, beginning January 1, 1992, and to all taxable years thereafter."

15-10-420. Procedure for calculating levy.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 376 in (4)(c) near end before "land" substituted "nonqualified agricultural" for "nonagricultural". Amendment effective October 1, 2005.

Chapter 545 inserted (3)(b) regarding newly taxable property; inserted (4)(b) regarding reporting of increment value as newly taxable property; deleted former (4)(c) that read: "(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001"; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 5, Ch. 376, L. 2005, provided: "[This act] applies to property tax years beginning after December 31, 2005."

2003 Amendments — Composite Section: Chapter 115 in (9)(a)(i) inserted reference to 7-6-4015. Amendment effective October 1, 2003.

Chapter 476 inserted (10) providing that a governmental entity may levy mills for airport support even though it has not imposed a levy for the airport in either of the previous 2 years; and made minor changes in style. Amendment effective April 24, 2003.

2001 Amendments — Composite Section: Chapter 191 in (5)(a) near middle after "collected on light vehicles" substituted "61-3-560 through 61-3-562" for "61-3-561" and at end after "and

distributed under" substituted "61-3-509(1)(b)" for "61-3-509(2)"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 220 at beginning of (5) inserted "Subject to subsection (8)" and at end substituted "school district levies established in Title 20" for "school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5)"; and made minor changes in style. Amendment effective April 11, 2001.

Chapter 361 inserted (1)(b) concerning imposing less than maximum levy and carryforward of levy authority; in (2), (5), (6), and (7) substituted reference to subsection (1)(a) for reference to subsection (1); and made minor changes in style. Amendment effective October 1, 2001.

Chapter 511 inserted (5)(b) exempting increases in local government's property tax levy for the employer's premium contributions for group health insurance benefits from the mill levy calculation limitation; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 571 in (8) in first sentence at end substituted "53-2-322" (now repealed) for "53-2-813". Amendment effective July 1, 2001.

Chapter 574 in (1)(a) at beginning of first sentence inserted "Subject to the provisions of this section" and at end substituted "plus one-half of the average rate of inflation for the prior 3 years" for "even if that levy is greater than the levy established by law" and near end of second sentence after "less the" inserted "current year's" and at end inserted "plus one-half of the average rate of inflation for the prior 3 years"; inserted (1)(b) concerning carryforward of levy authority; inserted (1)(c) concerning inflation calculation; in (2) after "voters" inserted "as provided in 15-10-425"; deleted former (3)(e) that read: "(e) reclassification of property"; deleted former (3)(g) that read: "(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements"; inserted (4) concerning newly taxable property; at end of (5)(a) inserted "or 20-6-413" (amendment rendered void by Ch. 220); deleted former (5)(a) that read: "(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2)"; deleted former (6) that read: "(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements"; inserted (7) concerning increase in mills to offset decrease in reimbursements; in (8) near beginning of first sentence after "calculate" inserted "on a statewide basis" and at end deleted reference to 53-2-813 and inserted third and fourth sentences concerning calculation in whole mills; inserted (9) concerning levies not subject to subsection (1) and not included in amount assessed in a subsequent year; and made minor changes in style. Amendment effective July 1, 2001.

The amendments to this section in sec. 4, Ch. 419, L. 2001, were rendered void by sec. 255(11), Ch. 574, L. 2001, a coordination section.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

2000 Amendment: Section 16(1), Ch. 11, inserted (5)(a) concerning registration fees on light vehicles; in (6) inserted second sentence concerning motor vehicle disposition as an increased statutory reimbursement; and made minor changes in style. Amendment effective January 1, 2001.

The amendments to this section made by sec. 6, Ch. 11, Sp. L. May 2000, were rendered void by sec. 16(1), Ch. 11, Sp. L. May 2000, a coordination instruction.

2000 Amendment: Chapter 11 inserted second sentence in (6) providing that motor vehicle disposition under 61-3-509(2) is an increased statutory reimbursement. Amendment effective May 25, 2000, and terminates January 1, 2001, if Ch. 515, L. 1999, is approved by the electorate on November 7, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Losses in Revenue: Section 12, Ch. 11, Sp. L. May 2000, amended sec. 167, Ch. 584, L. 1999, as follows: "Section 167. Reimbursement to counties, cities, towns, and consolidated city-county

governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to ~~[section 1 of Senate Bill No. 79]~~ 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to ~~current~~ the prior ~~year~~ year's mill levies. Except as provided in ~~subsections~~ subsection (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, ~~shall~~ must be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in ~~[section 1]~~ 15-10-420, is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)."

Calculating Levy: Section 165, Ch. 584, L. 1999, provided: "Extension of 1999 deadlines relating to property taxation. As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 56th legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1999, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Revenue Losses: Section 167, Ch. 584, L. 1999, provided: "Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to [section 1 of Senate Bill No. 79] [15-10-107], 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to current year mill levies. Except as provided in subsections (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, shall be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in [section 1] [15-10-420], is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)." Effective May 10, 1999, and terminates December 31, 2001.

Local Government and Court Funding and Structure Committee: Section 168, Ch. 584, L. 1999, provided: "Local government and court funding and structure committees — membership — purpose. (1) There is an interim local government funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees; and

(c) the following members appointed by the governor:

(i) two representatives of counties;

(ii) two representatives of cities and towns;

(iii) one county treasurer; and

(iv) one member from the state executive branch of government.

(2) The names of the committee members must be certified to the department of administration by July 1, 1999.

(3) There is an interim court funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees;

(c) one member appointed by the chief justice of the Montana supreme court; and

(d) the following members appointed by the governor:

(i) one member representing cities and towns;

(ii) one member representing counties;

(iii) one member representing the Montana judges association;

(iv) one member representing the Montana magistrates association; and

(v) one clerk of court.

(4) The names of the committee members must be certified to the department of administration by July 1, 1999.

(5) (a) The members of each committee shall select a presiding officer and may appoint other officers as considered necessary.

(b) The committees may adopt rules of procedure for conducting meetings.

(c) The presiding officer of each committee shall schedule meetings and shall direct the staff of the department of administration to give notice of the time and place of meetings to the committee members and to the public.

(6) (a) The purpose of the committees is to conduct a study of funding local government, including the courts, to ascertain the best method of allocating current and future resources, while providing a complementary funding relationship between local government and state government. This complementary funding relationship must provide stable and reliable revenue streams to local governments, including the courts. The study must explore regional concepts, as well as further lifting of local government revenue restrictions and de-earmarking of revenue to local governments. The complementary funding relationship must meet the criteria set forth in the following vision statement, adopted by the local government funding and school finance visioning group:

"We are dedicated to partnerships among the state, counties, cities, and school districts that are based on mutual trust and respect for local authority. This partnership will enable all governments to respond to the demands of their citizens in the 21st century through a mix of taxes and fees that is understandable, equitable, stable, and adequate. The collection and distribution system for these taxes and fees will be simple, efficient, accurate, and timely."

(b) The committees shall coordinate their work and shall report to each other after each meeting. The two committees shall meet together at least once every 6 months.

(c) (i) The committees shall make interim reports to the governor, the chief justice, and the leadership of each house of the legislature every 6 months.

(ii) The committees shall submit a written report to the legislature not later than December 1, 2000, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals to streamline the functions of local government, including courts and a complementary funding structure between state and local governments.

(7) (a) Each committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.

(b) The committees are attached to the department of administration for administrative and staff purposes. Further, the committees may request assistance from or the use of the resources of the legislative, judicial, and executive branch agencies to accomplish their studies.

(8) (a) Except as provided in subsection (8)(b), members of the committees must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committees must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business."

Funding — Appropriations: Section 169, Ch. 584, L. 1999, provided: "Funding — appropriations. (1) The committees established in [section 168] [not codified] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of administration.

(2) In addition to any funds received pursuant to subsection (1), there is appropriated $55,000 from the general fund to the committees created pursuant to the provisions of [section 168] [not codified] for the biennium for the operating expenses and personnel expenses of the committees.

(3) There is appropriated to the office of public instruction from the general fund $1,980,000 for BASE aid for the biennium ending June 30, 2001.

(4) There is appropriated to the office of public instruction from the general fund $2,229,934 for state reimbursements for motor vehicle fee reductions under 61-3-509.

(5) There is transferred from the general fund $691,246 for the fiscal year ending June 30, 2000, and $1,774,042 for the fiscal year ending June 30, 2001, to the state special revenue fund referenced in [section 1 of Senate Bill No. 79] [15-10-107].

(6) There is appropriated from the general fund $12,900,000 for the fiscal year ending June 30, 2000, and $54,934,392 for the fiscal year ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(1) through (5)] [not codified].

(7) There is appropriated from the general fund $1.5 million for the biennium ending June 30, 2001, to the department of revenue for the costs of administration.

(8) There is appropriated from the general fund $2.15 million for the biennium ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(6)] [not codified].

(9) There is appropriated from the general fund $600,000 to the department of revenue for the biennium ending June 30, 2001, for reimbursement to tax increment financing districts created pursuant to 7-15-4299.

(10) The governor shall include the sum of the reimbursements in this section in the present law base budget prepared for the 57th legislative session."

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Effective Date: Section 174, Ch. 584, L. 1999, provided that this section is effective on passage and approval. Approved May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Administrative Rules

ARM 42.20.501 Definitions.

ARM 42.20.514 Determination of total taxable value of eliminated property.

ARM 42.20.515 Determination of total taxable value of newly taxable property.

Attorney General's Opinions

Mill Levy Question Precluded on Study Commission Ballot: A local governing body is required to conduct a decennial election on the question of local government review and establishment of a study commission. Prior to 1999, under 7-3-184, a local government under study was also required to appropriate an amount necessary to conduct the study and local governments were allowed a mill levy to do so. However, the 1999 Legislature eliminated a local government's authority to levy for a study commission in favor of a generic mill levy election procedure. Thus, local governments may now choose whether or not to fund study commissions, but any appropriation for that purpose is subject to the mill levy limitations of this section. The ballot form in 7-3-175 is limited to the single question of establishing a local government study commission, so a local government may not combine a mill levy question with the study commission question. Rather, the mill levy question may be presented pursuant to the general-purpose mill levy election procedure in 15-10-425. 50 A.G. Op. 5 (2004).

County Commission Generally Obligated to Fund Library Budget — County Allowed to Bind Itself to Fund Library Budget Through Interlocal Agreement: The Board of County Commissioners is generally obligated to fund the county library budget, as submitted by the library board pursuant to 22-1-309, within the limits set in this section. The 2001 statutory changes did not delete a library board's authority to determine the amount of financial support

required by the library, nor did the changes confer on the Board of County Commissioners the authority to modify a library budget submitted by the library board. Further, nothing in the 2001 tax and budget amendments prevents a county from voluntarily entering an interlocal agreement to provide that the county would accept a library board's budget proposal and levy the necessary mills to fund it. 49 A.G. Op. 16 (2002). See also 41 A.G. Op. 91 (1986), and 48 A.G. Op. 3 (1999).

Calculation and Expenditure of "Carryforward" Mills Under 2001 Revision to Local Government Property Tax Levy and Budget Provisions: The 2001 revisions to local government property tax levy and budget laws instituted a general approach of deleting numeric limits on the number of mills that a local government could levy for any specific purpose and placed a cap on the number of mills that a local government is allowed to levy through property taxation. The combined effect was to free a local government to dedicate as much of its annual mill levy as it chooses for any lawful governmental purpose, as long as the total millage covered by the cap does not exceed the cap measured by the prior year's property tax assessments. Likewise, the "carryforward" provision in this section does not depend on how many mills, if any, that a city chooses to devote to a particular purpose in any year. Instead, the provision allows a city, if it finds itself able to fund its operations without levying the full number of mills allowed, to hold in reserve for future years the authority to levy the difference between the number of mills allowed and the number actually levied. That authority is not calculated on the basis of the amount budgeted or the number of mills needed to fund a particular government function, but rather is calculated with reference to the whole amount raised by property taxes, subject to the statutory exceptions, without reference to how the money might have been spent in the prior year. However, the "carryforward" authority is prospective only and may not be applied to calculations for the 2001 budget year because the authority did not exist prior to July 1, 2001. Thus, "carryforward" mills may be levied in any future year after budget year 2001 and expended by a local government for any lawful purposes that the local government chooses. 49 A.G. Op. 5 (2001).

Authority of Local Government to Levy Additional Mills to Make Up Difference Between Light Vehicle Tax Reimbursement and Amount Assessed for Fiscal Year 2001: In enacting 15-1-121, the Legislature provided for a reimbursement of an average of 88% of the amount lost by counties in light vehicle fee collections compared to the amount that the counties actually received in combined fees and property taxes in fiscal year 2001. The legislative intent was to simplify the collection and disbursement of county revenue while maintaining rough revenue neutrality for the counties. Under this section, the Legislature also provided an inflation adjustment to the mill levy cap and allowed for an increase in mill levy capacity for a decrease in reimbursements, in effect enabling local governments to maintain for fiscal year 2002 the amount of revenue collected in fiscal year 2001. Thus, a local government was authorized to levy additional mills sufficient to make up the difference between the amount reimbursed by the state for light vehicle fees and taxes under 15-1-121 and the amount of fees and taxes assessed by the local government for fiscal year 2001. 49 A.G. Op. 4 (2001).

15-10-425. Mill levy election.

Compiler's Comments

Dual Enactment — Composite Section: This section was enacted by Ch. 495 and 574, L. 2001. As enacted, the sections differed in several respects and were composited by making the following changes to the version enacted by Ch. 495 to conform to the language in the version enacted by Ch. 574: in (1) substituted "entity may impose a new mill levy" for "entity that proposes to impose a mill levy" and substituted "or exceed the mill levy limit provided for in 15-10-420 by conducting an election" for "shall conduct the election"; in (2) in second sentence after "resolution" inserted "amend its self-governing charter" and inserted "or exceed the current statutory mill levy provided for in 15-10-420" and in last sentence after "resolution" inserted "charter amendment"; in (3) in second sentence after "resolution" inserted "or charter amendment"; in (4) at end inserted "or charter amendment"; and made minor changes in style.

Effective Dates: Section 1, Ch. 495, L. 2001, was effective October 1, 2001.

Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

Attorney General's Opinions

Mill Levy Question Precluded on Study Commission Ballot: A local governing body is required to conduct a decennial election on the question of local government review and establishment of a study commission. Prior to 1999, under 7-3-184, a local government under study was also required to appropriate an amount necessary to conduct the study and local governments were allowed a mill levy to do so. However, the 1999 Legislature eliminated a local

government's authority to levy for a study commission in favor of a generic mill levy election procedure. Thus, local governments may now choose whether or not to fund study commissions, but any appropriation for that purpose is subject to the mill levy limitations of 15-10-420. The ballot form in 7-3-175 is limited to the single question of establishing a local government study commission, so a local government may not combine a mill levy question with the study commission question. Rather, the mill levy question may be presented pursuant to the general-purpose mill levy election procedure in this section. 50 A.G. Op. 5 (2004).

CHAPTER 15
PROPERTY TAX APPEALS

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Case Notes

Failure to Exhaust Administrative Remedies: Taxpayer protested the appraisal of two pieces of real property. He contended that by exhausting his administrative remedies in previous years, he had exhausted them for the year in contest because his basis for appeal was the same for all years. Because the complaint was aimed at the amount of valuation and not the method of valuation, it did not come within the exception to the exhaustion of remedies general rule. Therefore, taxpayer must exhaust his administrative remedies before initiating suit in District Court. Devoe v. Missoula County, 226 M 372, 735 P2d 1115, 44 St. Rep. 731 (1987).

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property; (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648.

Chapter Law Review Articles

Montana's Tax Appeals Process: A Guide Through the Maze, Woodgerd. 51 Mont. L. Rev. 190 (1990).

Chapter Collateral References

Taxation *key* 451 through 500.

84 C.J.S. Taxation §678, et seq.

72 Am. Jur. 2d State and Local Taxation §§710 through 725.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 1
County Tax Appeal Board

Part Case Notes

Appeal to Local Board Exclusive Remedy — Late Assessment Precluding Hearing: The Montana Legislature determined that the County Tax Appeal Board provides the review procedure at the local government unit level mandated by Art. VIII, sec. 7, Mont. Const. An appeal and review before the local Board is a condition precedent to a State Tax Appeal Board review. Except in cases where fraud or the adoption of a fundamentally wrong principle of assessment is shown, an appeal to the local Board is the exclusive remedy granted the taxpayer. If a taxpayer is denied a hearing before the local Board because of a late assessment, the

assessment is invalid because it denies the taxpayer a constitutional right to a hearing before the local Board. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), followed in Boehm v. Nelson, 229 M 452, 747 P2d 213, 44 St. Rep. 2127 (1987), and overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Part Attorney General's Opinions

County Tax Appeal Board Meetings — Notice Required: Adequate notice must be given of any meeting of a county tax appeal board, including the board's deliberations that involve the convening of a quorum to hear, discuss, or act on an appeal. 42 A.G. Op. 61 (1988).

Tax Appeal Board Deliberations Regarding Application for Reduction in Valuation — Open to Public: The deliberations of a county tax appeal board regarding an application for a reduction in property valuation must be open to the public unless the presiding officer determines the discussion relates to a matter of individual privacy and the demands of individual privacy clearly exceed the merits of public disclosure. 42 A.G. Op. 61 (1988).

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

15-15-101. County tax appeal board — meetings and compensation.

Compiler's Comments

1999 Amendment: Chapter 56 in third sentence in (1) substituted "meets" for "is in session"; in second sentence in (2) substituted "from July 1 of the current tax year until December 31 of the current tax year" for "from time to time" and at end after "15-2-201" substituted "may meet after December 31" for "not later than 60 days after the department"; deleted former (2)(a) and (2)(b) that read: "(a) has mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed"; at beginning of second sentence in (3) inserted "Upon notification by the county tax appeal board" and in middle substituted "board will be in session to hear scheduled protests" for "board will meet to hear protests" and in last sentence after "published" substituted "by May 15 of the current tax year" for "at least 7 days prior to the first meeting of the county tax appeal board"; and made minor changes in style. Amendment effective October 1, 1999.

1993 Special Session Amendment: Chapter 27 in (2), at end of introductory clause, deleted "or its agent"; in (3), near beginning of second sentence after "clerk", inserted "and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 594 at end of (4) substituted "15-1-406" for "15-2-307 through 15-2-310"; and made minor changes in style.

1991 Amendment: In (2) substituted first sentence regarding annual organizational meeting for former first sentence that read: "The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue" and in second sentence, after "time to time", inserted "to hear protests concerning assessments made by the department of revenue"; and made minor change in style. Amendment effective March 29, 1991.

1983 Amendments: Chapter 216, in (1), increased compensation of board members from $25 to $45 a day.

Chapter 526, in (2)(a) and (2)(b), after "property owners" inserted "and purchasers under contracts for deed".

1981 Amendments: Chapter 502 inserted "except as provided in 15-2-201" after "disposed of, but" near the end of (2).

Chapter 526 added subsection (4) limiting applicability of challenge to taxpayer bringing challenge.

Implementation of Staggered Terms: Section 2, Ch. 355, L. 1977, read: "As of December 31, 1980, one member of the county tax appeal board shall be appointed for a 1-year term, one member shall be appointed for a 2-year term, and the third and all succeeding members shall be appointed for 3-year terms."

Administrative Rules

Title 2, chapter 51, subchapter 3, ARM County Tax Appeal Boards.

Case Notes

Decision of State Board: Boards of County Commissioners, sitting as a County Board of Equalization (duty now performed by County Tax Appeal Board), had no power, authority, or jurisdiction under the Constitution nor statutes to reduce, compromise, remit, release, cancel, diminish, or extinguish any state tax obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined, and fixed by the State Board of Equalization. Carlson v. Flathead County, 130 M 36, 293 P2d 279 (1956).

Action Void After Expiration of Statutory Time for Hearing Appeals:

When the Board of County Commissioners, at a meeting held in October, passed a resolution which reduced the assessed valuation of a taxpayer, and thereby reduced, remitted, compromised, canceled, and extinguished the assessed tax, such resolution was void, not only because they did not have the power so to do, but also because their life as a County Board of Equalization for the year had expired. Carlson v. Flathead County, 130 M 36, 293 P2d 279 (1956).

While Boards of Equalization (duty now performed by County Tax Appeal Board) were provided for in the 1889 Constitution, their periods of life were prescribed by the Legislature, and they could not hold for any other or longer period than the Legislature had fixed. So when a County Board adjourned on the second Monday of August, as provided in this section, its term of existence for that year absolutely expired. Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903).

Employment of Tax Experts:

While the Board of County Commissioners, sitting as a County Board of Equalization (duty now performed by County Tax Appeal Board), was without power to enter into a contract for services the performance of which is cast upon another county official or Board, it could contract with a private individual for information relative to matters of taxation to aid it in the performance of its duties as a County Board of Equalization, even though, incidentally, the information received may aid other officials in the performance of their duties, provided the grant of power is to be found in the statutes. Simpson v. Silver Bow County, 87 M 83, 285 P 195 (1930).

Since under the law it was the duty of the Board of County Commissioners as the ex officio County Board of Equalization (duty now performed by County Tax Appeal Board) to adjust and equalize the assessments made by the assessor, i.e., to increase or lower them, it had the implied power to contract with experts to furnish it information relative to reclassification, reappraisal and revaluing the real property, with the improvements thereon in a city to enable it intelligently to perform its duties as such Board of Equalization. (This holding not to be understood as declaring that the Board of Equalization may enter into such a contract as would deprive the Assessor of his duty imposed by law, or to relieve him of his official obligation.) State ex rel. Blair v. Kuhr, 86 M 377, 283 P 758 (1930).

Appeal to Courts:

Under former statutes, in the absence of fraud or the adoption of a fundamentally wrong principle of assessment by the taxing officers, a taxpayer could not have recourse to the courts in the first instance to rectify an alleged excessive or erroneous assessment, the remedy provided by the statutes for having assessments adjusted by the County and State Boards of Equalization (duties now performed by State and County Tax Appeal Boards) being exclusive in the absence of the contingencies referred to. Belknap Realty Co. v. Simineo, 67 M 359, 215 P 659 (1923).

Under the law as it stood in 1898, since there was no statute providing for an appeal from the action of the County Assessor and Board of County Commissioners, sitting as a Board of Equalization (duty now performed by County Tax Appeal Board), under sections 3700, et seq., and sections 3780 through 3785 of the Political Code of 1895, courts would not interfere with the action of such officers where the Assessor acted fairly and honestly and the Board gave the plaintiff a fair hearing. Danforth v. Livingston, 23 M 558, 59 P 916 (1900).

Responsibilities: Under former statutes, the Board of County Commissioners, sitting as a Board of Equalization (duty now performed by County Tax Appeal Board), was responsible for the correctness of the assessment book of the county. State ex rel. Shapley v. Bd. of Comm'rs. of Yellowstone County, 12 M 503, 31 P 78 (1892).

Attorney General's Opinions

County Commissioners Ineligible: County Commissioners cannot appoint themselves to the County Tax Appeal Boards. 35 A.G. Op. 16 (1973).

Collateral References

Taxation *key* 464 through 478.

84 C.J.S. Taxation §§626, et seq., 678, et seq.
72 Am. Jur. 2d State and Local Taxation §§710, 711.

15-15-102. Application for reduction in valuation.

Compiler's Comments

1999 Amendment: Chapter 56 inserted second, third, fourth, and fifth sentences authorizing application for reduction to be obtained at local appraisal office or from appeal board, requiring completed application to be submitted to county clerk and recorder, establishing that date of receipt is date stamped on appeal form upon receipt, and providing that appeal board is responsible for obtaining applications from county clerk and recorder; and in sixth sentence substituted "submitted" for "filed". Amendment effective October 1, 1999.

1995 Amendment: Chapter 30 in second sentence increased from 15 to 30 the number of days within which an application for reduction in property valuation must be filed after receipt of a notice of classification and appraisal or determination after review. Amendment effective February 6, 1995.

1993 Special Session Amendment: Chapter 27 in second sentence, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 227 in second sentence, after "appraisal", inserted "or determination after review under 15-7-102(3)" and inserted third sentence requiring review in the next tax year if the Department's determination after review is not made in time to allow county tax appeal board review during the current tax year; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

1989 Amendment: Near end of first sentence inserted reference to Department's agent; and made minor changes in phraseology. Amendment effective February 13, 1989.

Retroactive Applicability: Section 6, Ch. 9, L. 1989, provided that this amendment applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

Case Notes

Filing Application for Reduction of Property Valuation Synonymous With Filing Appeal to Tax Appeal Board: The filing of an application for a reduction of property valuation pursuant to this section is synonymous with filing an appeal to the County Tax Appeal Board. The time for filing an appeal is extended if the taxpayer has submitted a timely request for assessment review under 15-7-102(3) and does not commence until the Department of Revenue has responded to the request. If the taxpayer is aggrieved by the Department's appraisal after the review, the taxpayer can then appeal to the County Tax Appeal Board within the statutory time of after receiving notice of the Department's determination. As used in 15-7-102, the term "submit" is a less restrictive requirement than filing, implying that the receiving party is not required to act but that a unilateral action on the part of a taxpayer will suffice. Canbra Foods Ltd. v. Dept. of Revenue, 278 M 368, 925 P2d 855, 53 St. Rep. 954 (1996).

Failure to File Administrative Appeal — Use of Declaratory Judgment Not Prevented: Woiths attempted to challenge the property tax assessment method provided in House Bill No. 703 (Ch. 636, L. 1989). Woiths intentionally failed to utilize the administrative appeal process provided for in this section and instead proceeded with an alternate remedy of a declaratory judgment action allowed under 15-1-406. The District Court held that Woiths had failed to preserve their appeal and, under the holding in Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533 (1990),

were barred from any further remedy. The Supreme Court held that there was no attempt in Barron to limit the remedies of taxpayers using alternate remedies, such as declaratory judgments, in lieu of the administrative appeal process at issue in Barron. Woith v. Cascade County Treasurer, 262 M 170, 864 P2d 752, 50 St. Rep. 1498 (1993), distinguished as to the requirement that taxpayers using alternative statutory remedies comply with requirements of those statutes in Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

County Tax Appeal Board Challenge Applicable Only to Challenging Taxpayer: Challenges to an assessment procedure adopted by the Department of Revenue apply only to taxpayers protesting the assessment and do not apply to all similarly situated taxpayers unless an action is brought in District Court under Title 15, ch. 2, part 3. Dept. of Revenue v. Countryside Village, 205 M 51, 667 P2d 936, 40 St. Rep. 1090 (1983).

Illegal Tax Alleged — Improper Dismissal: The court erred in granting defendants' motions to dismiss for lack of subject matter jurisdiction because the complaints alleged an illegal tax, and did not put into issue any question of valuation. Thus the courts, and not the tax appeal boards had original jurisdiction to hear the case under former law and the rule of Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975). U.S. Nat'l Bank of Red Lodge v. Dept. of Revenue, 175 M 205, 573 P2d 188 (1977).

Unconstitutional Assessment — No Need to Exhaust Administrative Remedies: A class action suit protesting method of assessment as being unconstitutional was properly filed directly against the Department of Revenue without first exhausting administrative remedies. Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975).

Mandamus to Correct Arbitrary Assessment: In an action in the District Court for a Writ of Mandamus by a taxpayer to compel the State Board of Equalization (now Department of Revenue) to reduce the valuation of unimproved lots in the outskirts of a city from $51,325 to $5,420, when the evidence showed the value thereof not to exceed about $5,400, the assessed value was so far in excess of what the actual cash value was as to indicate the assessment was arbitrary and constructively fraudulent, and the trial court erred in not directing the defendant Board to reduce the valuation to a figure consistent with the proof of the actual cash value. Corcoran v. St. Bd. of Equalization, 116 M 499, 154 P2d 795 (1945).

Exclusive Remedy:

Relief from excessive tax must be by written application to the County Board of Equalization (now County Tax Appeal Board). Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 268 P 555 (1928).

Under former statutes, in the absence of fraud or the adoption of a fundamentally wrong principle of assessment by the taxing officers, a taxpayer could not have recourse to the courts in the first instance to rectify an alleged excessive or erroneous assessment, the remedy provided by the statutes for having assessments adjusted by the County and State Boards of Equalization (now State and County Tax Appeal Boards) being exclusive in the absence of the contingencies referred to. Belknap Realty Co. v. Simineo, 67 M 359, 215 P 659 (1923).

Excessive Taxes: When taxes upon lands were valid but were complained of as excessive, the question of their excessiveness must have been first presented to the County Board of Equalization (now County Tax Appeal Board) under this section, before resort could be had to the statutory remedies. Thwing v. Weiser, 65 M 28, 210 P 750 (1922).

Condition Precedent to Reduction of Assessment or Recovery of Unlawful Taxes: As a condition precedent to the reduction of the valuation of property, the party affected thereby, or claiming a reduction, or his agent, must file a written application therefor with the Board of Equalization (now County Tax Appeal Board), verified by his oath, showing the facts upon which such reduction is claimed. Before a plaintiff in an action to recover taxes paid to the County Treasurer, claimed to be unlawfully assessed, could be entitled to relief, his complaint should show a compliance with this essential condition. Barrett v. Shannon, 19 M 397, 48 P 746 (1897).

Collateral References

Taxation *key* 478.

84 C.J.S. Taxation §§628, 681.

72 Am. Jur. 2d State and Local Taxation §§718 through 720.

15-15-103. Examination of applicant — failure to hear application.

Compiler's Comments

2005 Amendment: Chapter 533 in (1) near middle of fifth sentence after "department" deleted "of revenue"; inserted (2)(b) requiring that the county tax appeal board provide written notification of each application that is automatically granted; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendments — Composite Section: Chapter 56 at end of (2)(b) after "current" deleted "60-day". Amendment effective October 1, 1999.

Chapter 85 at beginning of (2) inserted exception clause; and made minor changes in style. Amendment effective March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 134 in (1), at end of fifth sentence, substituted "must be electronically recorded" for "must be taken in shorthand, taken by stenotype, or electronically recorded" and near middle of sixth sentence substituted "the record of the proceedings, including the electronic recording of all testimony, must be forwarded" for "all testimony must be transcribed or otherwise reduced to writing and forwarded". Amendment effective March 24, 1997.

1993 Special Session Amendments: Chapter 15 in (1), at end of second sentence after "attends", substituted "the county tax appeal board hearing" for "and answers all questions pertinent to the inquiry" and inserted third, fourth, and fifth sentences that read: "An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing"; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 27 in (1), in second sentence after "unless", substituted "the applicant" for "such person or agent"; in (2), in second sentence, substituted "department" for "county treasurer" and "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 227 in (2) inserted language concerning appeals; inserted (2)(b) concerning nonautomatic untimely appeals; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

1987 Amendment: Near end of fifth sentence of (1), before "mail", deleted "registered or certified".

Administrative Rules

ARM 2.51.307 Orders of the Board.

Collateral References

Taxation *key* 479 through 492.

84 C.J.S. Taxation §701, et seq.

72 Am. Jur. 2d State and Local Taxation §§712 through 717.

15-15-104. Appeal to state tax appeal board.

Compiler's Comments

2005 Amendment: Chapter 533 in (1) near beginning after "15-15-103" inserted "(1)" and after "department" deleted "of revenue"; inserted (2) providing that if an appeal has been automatically granted by a county tax appeal board pursuant to 15-15-103(2), the department or any municipal corporation aggrieved by the action may appeal to the state tax appeal board; and made minor changes in style. Amendment effective October 1, 2005.

1993 Special Session Amendment: Chapter 15 at beginning, before "person", substituted "If the appearance provisions of 15-15-103 have been complied with, a" for "Any"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Collateral References

84 C.J.S. Taxation §724.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of Tax Board or Commission. 61 ALR 2d 1350.

Part 2
Motor Vehicle Appeals

15-15-201. Motor vehicle tax appeals — payment and protest of local option taxes or fees in lieu of tax on motor vehicles.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (1)(a) near end of first sentence before "vehicle" inserted "motor" (amendment rendered void by Ch. 596 amendment); in (1)(b) in second sentence deleted reference to 61-3-528; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1)(a) at end of first sentence substituted "receipt of the mail renewal notice from the department as provided in 61-3-535" for "the anniversary date for reregistration, as determined by 61-3-315, of the vehicle that is the subject of the appeal". Amendment effective January 1, 2006.

2001 Amendment: Chapter 191 in (1)(a) in first sentence near beginning substituted "imposition of local option taxes on light vehicles" for "imposition of taxes"; in (1)(b) near end after "department of justice under" substituted "61-3-503" for "61-3-502 through 61-3-504"; and in (2)(a) in first sentence near middle after "is not required to deposit" substituted "local option vehicle taxes" for "property taxes". Amendment effective April 3, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

1999 Amendment — Coordination Instruction: Section 6, Ch. 85, L. 1999, a coordination instruction, substituted (3) concerning time of filing motor vehicle tax appeal for version of (3) in sec. 1, Ch. 85. L. 1999. Amendment effective March 16, 1999.

Effective Date: Section 8, Ch. 85, L. 1999, provided: "[This act] is effective on passage and approval." Approved March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

CHAPTER 16
COLLECTION OF PROPERTY TAXES

Chapter Case Notes

Mandatory and Exclusive Statutes: The procedure outlined in Ch. 199, R.C.M. 1935, for the collection of property taxes and the enforcement of tax liens was mandatory and exclusive. Calkins v. Smith, 106 M 453, 78 P2d 74 (1938).

Chapter Law Review Articles

Do Property Taxes Constitute Personal Liability in Montana?, 1 Mont. L. Rev. 94 (1940).

Chapter Collateral References

Construction and effect of will provisions relied on as affecting payment of real or personal property taxes or income taxes. 70 ALR 3d 726.

Lease clause providing for payment of taxes by lessor as applicable to increase in real estate taxes occasioned by lessee's improvements. 68 ALR 2d 1289.

Rights in respect to real estate taxes where property taken in eminent domain. 45 ALR 2d 522.

Provisions of Soldiers' and Sailors' Civil Relief Act relating to taxation of property of military personnel. 32 ALR 2d 618.

Power of Legislature to remit, release, or compromise tax claim. 28 ALR 2d 1425.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Property Tax Delinquencies, Tax Sales, and Tax Deeds, 1986 Interim Report, Montana Legislative Council.

Part 1
Notice and Payment

Part Case Notes

Notice of Sale Must Reflect Sale as Tax Sale: The notice posted by the Sheriff, appointed as Deputy County Treasurer, of the sale of an automobile for delinquent taxes was entitled "Execution sale of personal property for taxes" instead of Treasurer's sale of personal property seized for taxes, and entitled as a court action, it being signed by the Sheriff and his deputy. Since the notice was in effect one of a Sheriff's and not a Treasurer's sale, it did not comply with 15-16-113 (now repealed), and rendered the sale void. Perham v. Putnam, 82 M 349, 267 P 305 (1928).

15-16-101. Treasurer to publish notice — manner of publication.

Compiler's Comments

2005 Amendment: Chapter 453 deleted former (2)(a)(iii) that read: "(iii) the value of each mill in that county"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 472 inserted (2)(b) requiring notice for property subject to tax sale and for which tax sale certificate has been issued to include statement that property is subject to tax sale and that taxpayer may contact county treasurer for information; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 448 inserted (5) providing that an additional tax is not owed if the department revises an assessment that results in an additional tax of $5 or less. Amendment effective April 22, 1999.

Effective Date — Applicability — Retroactive Applicability: Section 5, Ch. 448, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax bill or refund has not yet been issued."

1993 Special Session Amendment: Chapter 27 in introductory clause of (1) substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (1)(a), relating to November tax notice, inserted "or within 30 days after the notice is postmarked" and after "unless paid prior" substituted "to that time" for "thereto"; in (1)(b), relating to May tax notice, after "unless paid prior to" substituted "that time the taxes" for "said date said taxes"; and in (4), relating to publishing of notice, made minor grammatical changes.

1981 Special Session Amendment: Reduced the interest on delinquent taxes from ⅚of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight ⅚of 1% per month rate on all delinquent taxes.

1981 Regular Session Amendments: Chapter 492 inserted "and assessments" after "taxes" in the first sentence of (2); inserted subsection (2)(d) relating to city services and county SIDs; and inserted subsection (3) requiring municipality to provide information.

Chapter 576 increased the interest on delinquent taxes from ⅔of 1% per month to ⅚of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000.

Penalty Provisions: The penalty prescribed in this section was changed to conform to sec. 1, Ch. 30, Ex. Laws 1933, which read: "From and after the first day of March, 1934, the penalty on all delinquent ad valorem taxes or assessments shall be at the rate of two per cent (2%); provided, however, that nothing herein contained shall be deemed as in any manner whatsoever changing penalties imposed prior to the first day of March, 1934."

Section Not Codified: Section 84-4102, R.C.M. 1947, which is an effective date and provided for nonretroactivity, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 67, L. 1931.

Case Notes

Statute of Limitations to Run From Date Tax Notice Sent: In defining when actual "imposition" of taxes occurs for purposes of establishing the 90-day period within which a declaratory judgment action must be brought under 15-1-406, the Supreme Court held that imposition of taxes occurs on the date actual notice of taxes due is sent pursuant to this section

rather than the date the taxes are entered on the assessment book pursuant to 15-10-305. Holly Sugar Corp. v. Dept. of Revenue, 252 M 407, 830 P2d 76, 49 St. Rep. 299 (1992).

Notice of Default on Tax Deed Not Personally Served — Order Set Aside: In a case involving the setting aside of a default judgment in a tax deed setting, the defaulting party was not personally served, service being accomplished through legal publication. Because a motion to set aside was timely made and service was not personally made, the party was entitled to use Rule 60(b), M.R.Civ.P., to set aside the order of default. McDonald v. Grassle, 228 M 25, 740 P2d 1122, 44 St. Rep. 1312 (1987).

Ex Post Facto Rule — Inapplicable to Tax Delinquency Proceedings: The prohibition against ex post facto laws applies only to penal or criminal matters. The collection of delinquent taxes by the assessment of interest and penalties on the amounts due does not change a civil proceeding to a penal or criminal matter. Thus the ex post facto rule does not apply to a legislative enactment that retroactively applied an increase in the rate of interest charged on delinquent tax payments. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Retroactive Application of Tax Delinquency Interest Increase: After the Legislature passed an amendment raising the rate of interest applied to tax payments in delinquency, the Attorney General issued two opinions as to whether the increase should be given retroactive application, the first opinion saying "no" and the second opinion, issued 2 months later, saying "yes". Appellant claimed that the effect of the Attorney General's opinions was to divide delinquent taxpayers into two groups, those to whom the increase was not retroactively applied, under the first opinion, and those to whom the increase was applied, under the second opinion, and that therefore, retroactive application of the increase violated the Due Process and Equal Protection Clauses of the Montana Constitution as well as the 14th amendment of the United States Constitution. The Supreme Court upheld the District Court's dismissal of appellant's claim, ruling that the constitutionality of a law is determined by looking at the enactment itself rather than at an administrative interpretation of it. Further, the law is not discriminatory and a delinquent taxpayer does not have a vested right to application of a particular rate of interest. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Notice of Delinquency Need Not Be Published: The notice mentioned in subsection (3) (now (4)) is the same one referred to in subsection (1) and not the one "mailed" to delinquent taxpayers as provided in subsection (2). Salvation Army v. St., 144 M 415, 396 P2d 463 (1964).

Penalties and Interest:

A taxpayer, after receiving a notice of delinquent taxes as provided by subsection (2), may not pay his delinquent taxes and then be relieved of the obligation to pay penalty and interest on said taxes. Salvation Army v. St., 144 M 415, 396 P2d 463 (1964).

Failure of present County Treasurer's predecessors to send plaintiff any notice "showing the amount of taxes due and delinquent for other years", as provided in subsection (2), did not relieve plaintiff of the obligation to pay the principal of the delinquent taxes, but did relieve plaintiff of any obligation to pay penalties and interest on the taxes because of the lack of such statutory notice. Salvation Army v. St., 144 M 415, 396 P2d 463 (1964).

Notice to Nonresident: It is incumbent upon nonresident property owners to take notice that all property is taxed annually and that, unless the taxes are paid, the property will be sold at tax sale, irrespective of the fact that the owner requested a County Treasurer, instead of the County Assessor, to send tax notices to a certain address which request was ignored. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Failure to Notice Delinquencies Not Fatal to Certificate of Sale: Under this section, failure of County Treasurer to notify taxpayer of amount of delinquent taxes due does not affect the legality of the tax or warrant cancellation of a certificate of sale issued to the county. Smith v. Blaine County, 102 M 116, 56 P2d 177 (1936).

Attorney General's Opinions

Tax Notices for Service Charges Not to Be Mailed Until Service Actually Begun: Under the language of the applicable statutes, the fee for the services of a refuse disposal district could not be charged until the services of the district had commenced. The fee is to be collected in the same assessment of taxes that is sent to members of the district under the procedure of 7-13-233. That section provides a schedule for collection beginning in the month that service begins. Tax notices containing the fee may therefore not be mailed until service is begun. 40 A.G. Op. 45 (1984).

Collateral References

Taxation *key* 516, 569.

84 C.J.S. Taxation §§860 through 862.

72 Am. Jur. 2d State and Local Taxation §§738, 795.

Sufficiency of compliance with statute providing for service by mail of notice in tax procedure. 155 ALR 1279.

15-16-102. Time for payment — penalty for delinquency.

Compiler's Comments

2005 Amendment: Chapter 587 in introductory clause near beginning inserted "10-1-606 or". Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 315 inserted (5)(b) providing that a payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of subsection (5)(a) is not a partial payment; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 436 inserted (8) authorizing the county treasurer to accept a partial payment of centrally assessed property taxes. Amendment effective October 1, 2003.

2001 Amendment: Chapter 410 inserted (4)(b) concerning payment of taxes on property qualifying under low-income property tax assistance; and made minor changes in style. Amendment effective April 28, 2001.

Applicability: Section 3, Ch. 410, L. 2001, provided: "[This act] applies to eligible property tax payments made after March 1, 2001."

1999 Amendment: Chapter 448 inserted (7) providing that an additional tax is not owed if the department revises an assessment that results in an additional tax of $5 or less. Amendment effective April 22, 1999.

Effective Date — Applicability — Retroactive Applicability: Section 5, Ch. 448, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax bill or refund has not yet been issued."

1997 Amendment: Chapter 42 in introduction deleted exception clause referring to 15-16-802 and 15-16-803; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment — Not Codified in Permanent Version: Chapter 33 near end of introductory clause inserted "production from horizontally completed wells, or incremental production". The amendment was intended to clarify the taxation of oil production from horizontally completed wells. Chapter 451 was a bill generally revising the taxation of oil and natural gas, including production from horizontally completed wells. Chapter 451 deleted language from the sentence amended by Ch. 33, rendering the Ch. 33 amendment meaningless. Chapter 33 has not been repealed and is valid law, but it is not codified in the permanent section.

1995 Amendment: Chapter 451 in introductory paragraph, after "15-16-103", deleted "and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121"; and made minor changes in style. Amendment effective January 1, 1996.

Effective Date — Retroactive Applicability: Section 4, Ch. 33, L. 1995, provided: "[This act] is effective on passage and approval [approved February 7, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1993."

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996].

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendments: Chapter 449 inserted (6) authorizing waiver of penalty and interest on delinquent assessments; and made minor changes in phraseology. Amendment effective April 5, 1989.

Chapter 631 near beginning inserted "unless" clause. Amendment effective April 25, 1989, and terminates December 31, 1993.

Chapter 699 at beginning inserted exception clause. Amendment effective May 22, 1989.

Chapter 704 in (5) changed "If the taxes become delinquent" to "A taxpayer may pay his current year taxes without paying delinquent taxes", after "county treasurer" substituted "must" for "may", and at end inserted "The payment of the current tax year is not a redemption of the property tax lien for any delinquent tax year." Amendment effective May 22, 1989.

Saving Clause: Section 17, Ch. 449, L. 1989, was a saving clause.

Severability: Section 18, Ch. 449, L. 1989, was a severability clause.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Effective Date: Section 5, Ch. 699, L. 1989, provided that this section is effective May 22, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 704, L. 1989, provided: "A statement of intent is not required for this bill but is included to make clear that the purpose of this bill is to clarify the provisions of Senate Bill No. 162 (Chapter 587, Laws of 1987), relating to partial payments of delinquent property taxes and to the procedures governing the sale of property for delinquent taxes.

In addition, this bill defines the term "costs", clarifies how redemption proceeds are distributed, requires a person who redeems property to pay the taxes and other charges that have been assessed since the date of the sale of the tax lien, revises the method by which county tax-deed land is sold, lengthens the notification period prior to issuing a tax deed, changes the time when proof of notice must be filed, and clarifies the effect of the tax deed.

In 1987, the legislature enacted 15-16-102(5) authorizing the partial payment of delinquent property taxes. The attorney general in 42 Attorney General Opinion [42 A.G. Op. 71 (1988)] opined, however, that a partial payment made pursuant to 15-16-102(5) does not toll the redemption period. In order to redeem the property, the attorney general stated that the taxpayer had to pay all of the delinquent taxes, including penalty and interest, plus all subsequently assessed taxes.

The intent of this bill is to reverse the attorney general's opinion. It is the intent of the legislature that each tax year for which property taxes are delinquent has a separate 36- or 18-month redemption period. If a partial payment is made for a particular tax year, a tax deed may not be issued based on that tax year because the taxes for that year have been paid.

For example, assume that the 1984, 1985, 1986, 1987, and 1988 property taxes are delinquent. Assume further that a 36-month redemption period applies to the property on which the taxes have not been paid. In February 1989, the current year, as that term is used in 15-16-102(5), is the 1988 tax year for which taxes are due on November 20, 1988, and May 31, 1989. The 36-month redemption period has expired for 1984, and it will expire for the 1985 taxes in the summer of 1989. This bill contemplates that a taxpayer may pay his 1988 taxes, even though the first half is delinquent. After the 1988 taxes are paid, the taxpayer may redeem the property for the 1984 tax year by paying the 1984 taxes.

The taxpayer may still lose his property unless he pays his 1985 taxes before the tax deed is issued. Because the current year and the most delinquent year are paid, the taxpayer may redeem the property for the 1985 tax year by paying the 1985 taxes.

In 1990, the taxpayer would have to pay the 1989 taxes before he could pay the 1986 taxes to redeem the property for the 1986 tax year. Following this pattern, the taxpayer would be current on all taxes after 3 years.

As used in this statement of intent, taxes include penalty, interest, and costs."

1987 Amendments: Chapter 69 in (1) and (2) inserted "or within 30 days after the tax notice is postmarked, whichever is later"; and inserted (4) relating to holiday or Saturday.

Chapter 587 in (1) and (2) inserted "or within 30 days after the notice is postmarked, whichever is later"; and inserted (5) relating to partial payment of taxes.

Chapter 655 in introductory clause, before "new production", inserted "interim production and".

Effective Date — Applicability: Section 28, Ch. 655, L. 1987, provided: "This act is effective on passage and approval [approved April 13, 1987] and applies retroactively, within the meaning of 1-2-109, to taxable quarters beginning on or after April 1, 1987. The tax rate and filing method applicable to a well that qualifies as interim production under section 10 [15-23-601, now repealed] but which did not qualify as new production under 15-23-601 [now repealed] prior to the applicability date of this act does not change for tax periods prior to the applicability date."

1985 Amendment: In lead-in language, near middle, after "15-16-103", inserted "and assessments made on new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121".

1981 Special Session Amendment: Reduced the interest on delinquent taxes from ⅚of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight ⅚of 1% per month rate on all delinquent taxes.

1981 Regular Session Amendments: Chapter 527 substituted "assessments made for special improvements in cities and towns payable under 15-16-103" for "on municipal special improvement district bonds sold on or before July 1, 1979" after "Montana, except" in the first sentence of the section.

Chapter 576 increased the interest on delinquent taxes from ⅔of 1% per month to ⅚of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000.

Penalty Provisions: The penalty prescribed in this section was changed to conform to sec. 1, Ch. 30, Ex. Laws 1933, which read: "From and after the first day of March, 1934, the penalty on all delinquent ad valorem taxes or assessments shall be at the rate of two per cent (2%); provided, however, that nothing herein contained shall be deemed as in any manner whatsoever changing penalties imposed prior to the first day of March, 1934."

Section Not Codified: Section 84-4102, R.C.M. 1947, which is an effective date and provided for nonretroactivity, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 67, L. 1931.

Case Notes

Payment of Taxes Not Yet Due Not Required to Sustain Adverse Possession Claim: Pursuant to 70-19-411, a party claiming adverse possession must occupy the property continuously for 5 years and must have paid all legally levied and assessed taxes on the property. Parker received notice for property taxes due on October 31, 1997, but the taxes were not paid. The 5-year period of adverse possession commenced when Parker received the defective tax deeds on November 24, 1992, so the 5-year adverse possession period would have expired on November 24, 1997. The District Court held that because the 1997 taxes were assessed prior to November 24, 1997, and were unpaid, Parker's claim for adverse possession failed. Parker maintained that the adverse possession language in 70-19-411 should be interpreted in combination with the statutory provisions for levy, notice, and payment of taxes in the tax code in Title 15. The Supreme Court agreed. Pursuant to 15-10-305, real estate taxes are levied and assessed on the second Monday in October, while this section provides that one-half of each year's property taxes is payable on or before November 30 and the other one-half is payable on or before May 31 of the following year. Therefore, although the 1997 taxes were levied prior to the expiration of the 5-year adverse possession period on November 25, 1997, the taxes were not delinquent until November 30, 1997, 1 week after the adverse possession period ended. The Supreme Court concluded that 70-19-411 does not require the payment of taxes that are not yet due in order to sustain a claim of adverse possession. Thus, the District Court erred in concluding that Parker did not meet the requirements of 70-19-411, and the decision was reversed. Tungsten Holdings, Inc. v. Parker, 2001 MT 117, 305 M 329, 27 P3d 429 (2001).

Ex Post Facto Rule — Inapplicable to Tax Delinquency Proceedings: The prohibition against ex post facto laws applies only to penal or criminal matters. The collection of delinquent taxes by the assessment of interest and penalties on the amounts due does not change a civil proceeding to a penal or criminal matter. Thus the ex post facto rule does not apply to a legislative enactment that retroactively applied an increase in the rate of interest charged on delinquent tax payments. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Retroactive Application of Tax Delinquency Interest Increase: After the Legislature passed an amendment raising the rate of interest applied to tax payments in delinquency, the Attorney General issued two opinions as to whether the increase should be given retroactive application, the first opinion saying "no" and the second opinion, issued 2 months later, saying "yes". Appellant claimed that the effect of the Attorney General's opinions was to divide delinquent taxpayers into two groups, those to whom the increase was not retroactively applied, under the first opinion, and those to whom the increase was applied, under the second opinion, and that therefore, retroactive application of the increase violated the Due Process and Equal Protection Clauses of the Montana Constitution as well as the 14th amendment of the United States Constitution. The Supreme Court upheld the District Court's dismissal of appellant's claim, ruling that the constitutionality of a law is determined by looking at the enactment itself rather than at an administrative interpretation of it. Further, the law is not discriminatory and a delinquent taxpayer does not have a vested right to application of a particular rate of interest. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Interest and Penalties Not Part of Tax for Purpose of Priority: While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. U.S. v. Christensen, 218 F. Supp. 722 (D.C.Mont. 1963).

When Interest Accrues: While the interest rate provided by the 1923 law was 1% per month, the section did not state or contemplate that interest shall only be computed in full months, treating each fractional part of a month as a whole. Certainly no one would claim that a note bearing "eight per cent per annum" would require the payment of a whole year's interest for each year, and each fractional part of a year. The interest under the section can only be charged until all delinquent taxes are paid. Glacier County v. Halvorson Mercantile Co., 93 M 520, 19 P2d 648 (1933).

Application to City Taxes: This section, providing for the semiannual payment of "all taxes levied and assessed in the state", applies to city taxes as well as to county taxes. Thomas v. Missoula, 70 M 478, 226 P 213 (1924).

Constitutionality: The title to Ch. 96, L. 1923, sufficiently expressed the subject of the act—authorizing the semiannual payment of taxes—to meet the requirements of Art. V, sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.). Thomas v. Missoula, 70 M 478, 226 P 213 (1924).

Attorney General's Opinions

No Discretion by County Treasurer to Refuse Partial Payment of Delinquent Taxes: A County Treasurer has no discretion to refuse a partial payment of delinquent taxes as long as the payment is made in accordance with subsection (5) of this section. 42 A.G. Op. 117 (1988). (See 1989 amendment made by Ch. 704, L. 1989.)

Seizure of Mobile Home Upon Delinquency of First-Half Taxes: If the owner of a mobile home that is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of this section apply, and the mobile home may be seized and sold for delinquent taxes pursuant to 15-16-113 (now repealed) and/or 15-17-911. 42 A.G. Op. 95 (1988).

Current Tax Year Defined — Partial Payments: The current tax year for purposes of partial tax payments under subsection (5) of this section is the current tax billing year that extends from the date the County Treasurer mails notice of the tax due to the taxpayer until the following year's tax bill is sent. 42 A.G. Op. 71 (1988).

Partial Payment Conditions Inapplicable to Payment of Delinquent Taxes: The partial tax payment conditions of subsection (5) of this section do not apply to taxpayers who tender complete payment of all delinquent taxes. 42 A.G. Op. 71 (1988).

Delinquency Interest, Penalties, and Costs to Follow Tax: The Montana Supreme Court held in School District v. Pondera County, 89 M 342, 297 P 498 (1931), that unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax; therefore, school districts, cities, and other government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the County Treasurer. 41 A.G. Op. 25 (1985).

Timeliness of Mailed Payments — Postmark: Tax payments deposited in the United States mail on or before payment deadlines enumerated in this section, as shown by the postmark on the envelope received by the Treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the County Treasurer. 40 A.G. Op. 12 (1983).

Retroactive Application of 1981 Delinquency Rate: The interest rate of ⅝of 1% a month provided by the 1981 special session amendment applies to all delinquent taxes collected after November 30, 1981, for the entire period of delinquency. 39 A.G. Op. 76 (1982).

Application to Certain Personal Property: This section applies to personal property taxes that are not a lien on real estate to the extent those taxes draw interest from the time they become delinquent until they are paid and a penalty is added. 38 A.G. Op. 6 (1979).

Collateral References

Taxation *key* 526.

84 C.J.S. Taxation §851, et seq.; 85 C.J.S. Taxation §1579.

72 Am. Jur. 2d State and Local Taxation §748.

Rights in respect of real estate taxes when property is taken in eminent domain. 45 ALR 2d 552.

Right of taxing authorities to collect post-petition interest on tax claims in bankruptcy or related proceedings. 13 ALR Fed. 511.

15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements.

Compiler's Comments

1989 Amendment: In (1)(a) and (1)(b) inserted last sentence relating to waiver of penalty and interest; and made minor changes in phraseology. Amendment effective April 5, 1989.

Saving Clause: Section 17, Ch. 449, L. 1989, was a saving clause.

Severability: Section 18, Ch. 449, L. 1989, was a severability clause.

1981 Amendment: Inserted "the bonds for which annual interest payments have been specified and that were issued after July 1, 1981, and that have been" after "towns and cities" in the middle of (1); inserted "as follows:" at the end of (1); inserted "one-half of such taxes shall be payable" at the beginning of (1)(a); deleted "are or may hereafter be provided by the laws of the state of Montana for other" after "nonpayment as" near the end of (1)(a); added "under 15-16-102" to the end of (1)(a); inserted subsection (1)(b) relating to second half payment; substituted "of special assessments or installments of special assessments made for special improvements in towns or cities" for "thereof" at the beginning of (2); and made minor changes in phraseology.

Attorney General's Opinions

When Semiannual Collections Required: A city is required to make semiannual collections of special improvement district assessments only when the SID bond specifies annual interest payments and the bond was issued after July 1, 1981. 40 A.G. Op. 64 (1984).

Collateral References

Municipal Corporations *key* 521.

63 C.J.S. Municipal Corporations §1572; 84 C.J.S. Taxation §851, et seq.

72 Am. Jur. 2d State and Local Taxation §748.

15-16-104. Entry of payment — receipt.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1) substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (2)(a), relating to receipt issuance, at beginning inserted exception clause; and inserted (2)(b), the receipt exception.

Attorney General's Opinions

Receipt to Be Issued for Taxes if Fee Withheld: If members of a refuse disposal district were improperly billed for a disposal fee before service was begun, any member paying his district taxes but withholding the fee should be issued a receipt by the County Treasurer for the taxes that were paid. Because the language of the statute directs that a receipt be issued for the payment of "any tax", the Treasurer may also issue a receipt for taxes only, even after the services have begun, if payment of the service fee is withheld. 40 A.G. Op. 45 (1984).

Collateral References

Taxation *key* 527, 528.5.

84 C.J.S. Taxation §§858, 900 through 902.

72 Am. Jur. 2d State and Local Taxation §§739, 740.

15-16-105. When property assessed more than once.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near beginning, before "treasurer", inserted "county" and at end substituted "report that fact to the department" for "make return of the facts under affidavit to the county clerk and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Duty of County Treasurer — Double Tax: If a motor vehicle is subject to tax twice in the same year, once in the hands of the dealer and once in the hands of the purchaser, it is the duty of the County Treasurer, under this section, to collect only the tax justly due. Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Purpose: The provisions of this section, 15-16-601 (now repealed), and others of like import are intended to secure the collection of lawful revenue and to protect the owner whose property is made to bear more than its just proportion of the burden of taxation, and were not enacted to secure immunity from taxation to anyone. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

Collateral References

Taxation *key* 550.

15-16-118. Minimum tax payment — limitation of appeal.

Compiler's Comments

1993 Amendment: Chapter 557 in first sentence of (1), after "15-16-101(2) are", inserted "less than $5 or if a tax notice of taxes and special assessments due on personal property is" and inserted third sentence requiring deposit of the difference between taxes and assessments in the county general fund; in (2), after "15-16-101(2)", inserted "or in the notice of taxes and special assessments due on personal property"; and inserted (4) providing that the minimum assessment does not apply to levies against certain governmental entities unless total assessments are less than $5.

Applicability: Section 2, Ch. 557, L. 1993, provided: "[Section 1] [15-16-118] applies to all tax notices sent to taxpayers after September 30, 1993."

Applicability: Section 4, Ch. 474, L. 1991, provided: "[This act] applies to taxable year 1992, beginning January 1, 1992, and to all taxable years thereafter."

15-16-119. Taxation of personal property — duty of department — collection by department of administration.

Compiler's Comments

1999 Amendment: Chapter 197 in (4) in third sentence substituted language entitling sheriff to fees, mileage, and costs, as provided in 7-32-2141 and 7-32-2143, as assessment against taxpayer for "may receive the same fees as for making a seizure and sale as provided in 15-17-911". Amendment effective October 1, 1999.

Applicability: Section 4, Ch. 197, L. 1999, provided: "[This act] applies to any levy and sale begun after September 30, 1999."

1997 Amendment: Chapter 42 in (7) substituted "department of administration" for "state auditor". Amendment effective March 12, 1997.

1995 Amendment: Chapter 589 in (3), after "delinquent", inserted "either proceed under subsection (7)"; and inserted (7) concerning delinquent personal property taxes. Amendment effective July 1, 1995.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that this section applies to tax years after December 31, 1993.

Effective Date: Section 173(1), Ch. 27, Sp. L. November 1993, provided that this section is effective January 1, 1994.

Case Notes

Invalid Application — Flathead Reservation Indians: Section 15-16-111 (now repealed) was invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Former Statute Unconstitutional: Former section 3940 of the 1895 Political Code, which required the Assessor to collect taxes on all personal property, when, in his opinion, such taxes were not a lien on real property sufficient to secure payment of the personal property tax, was unconstitutional since the Legislature had no power to vest any other person than the Treasurer with power to collect taxes. Mut. Life Ins. Co. of New York v. Martien, 27 M 437, 71 P 470 (1903). See also Missouri River Power Co. v. Steele, 32 M 433, 80 P 1093 (1905); Butte v. Bennetts, 51 M 27, 149 P 92 (1915); and Pohl v. Chicago, Milwaukee, & St. Paul Ry., 52 M 572, 160 P 515 (1916).

Personal Property of National Bank: Personal property of a national bank is not subject to taxation under the state laws. First Nat'l Bank v. Province, 20 M 374, 51 P 821 (1898).

Assessment of Real Estate: The statutes in force in 1889, regulating taxation, contemplated the assessment of each distinct parcel of real estate separately, and created a direct lien on each parcel only for the tax levied thereon, and the lands of a delinquent taxpayer were not chargeable thereunder with a direct lien for a personalty tax. Ward v. Bd. of Comm'rs, 12 M 23, 29 P 658 (1892).

Part 2
Special Payment Provisions

15-16-201. Tax prepayment — new industrial facilities.

Compiler's Comments

1991 Amendment: In (2) changed subsection reference to 90-6-302. Amendment effective March 29, 1991.

1981 Amendment: In (2), inserted "other than a large-scale mineral development as defined in 90-6-302(4)".

Collateral References

Taxation *key* 526.

84 C.J.S. Taxation §895, et seq.

72 Am. Jur. 2d State and Local Taxation §748.

15-16-203. Assessment of property previously exempt.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Special Session Amendment: Chapter 27 in (4), after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Applicability: Section 4, Ch. 570, L. 1991, provided: "[This act] applies after December 31, 1991."

Part 3
Reporting Delinquent Taxes

Part Collateral References

Taxation *key* 560.

84 C.J.S. Taxation §1006.

72 Am. Jur. 2d State and Local Taxation §788.

15-16-301. Delinquent list — list of taxes suspended or canceled — real property.

Compiler's Comments

2005 Amendment: Chapter 189 in (1) at beginning of first sentence deleted "On the third Monday of December and" and inserted second sentence requiring electronic submission of the report to the county clerk and recorder; in (2) near end after "during the" substituted "1-year period" for "6-month period"; and made minor changes in style. Amendment effective April 8, 2005.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: Inserted (2) requiring the County Treasurer to report suspended or canceled taxes under Title 15, ch. 24, part 17; and made minor changes in phraseology. Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: In first sentence, before "list", deleted "delinquent" and made minor changes in grammar and phraseology.

Case Notes

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with this section, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 or to follow the alternative procedure under 15-17-214, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Collateral References

Taxation *key* 560.

84 C.J.S. Taxation §1006.

15-16-302. Tabulation and transmittal of real property delinquent list.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in three places substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (3), relating to duties of County Clerk and Recorder, made minor changes in grammar and phraseology.

Collateral References

Taxation *key* 557.

84 C.J.S. Taxation §1006.

15-16-303. Treasurer charged with delinquent taxes.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: In middle inserted "minus taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17". Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: Substituted "in 15-16-302" for "herein" and made minor changes in phraseology by deleting redundant wording.

15-16-305. Disposition of delinquent list.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), at end of first sentence, substituted "property tax record" for "assessment book" and at end of second sentence substituted "section of the property tax record" for "column in the assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendments: Chapter 370 in (1), relating to comparison of delinquent lists and assessments, near beginning changed "third Monday" to "third Tuesday".

Chapter 587 in (1) substituted first sentence for "The county treasurer must annually on the third Monday of February attend at the office of the county clerk and recorder with the delinquent list"; and made minor changes in grammar and phraseology throughout section.

Case Notes

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 or to follow the alternative procedure under 15-17-214, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Collateral References

Taxation *key* 557, 560.

84 C.J.S. Taxation §1006.

Part 4
Liens and Limitations

Part Case Notes

Personal Property Taxes Due Are Liens: When taxes were due on personal property (cattle), the tax was a lien on that property and also a lien on the real property of the owner. Since the cattle have long since been disposed of, the lien on the cattle per se has evaporated. It has not evaporated, however, as against the real property of the owners of the cattle. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

Part Collateral References

Taxation *key* 501 through 514.5.

84 C.J.S. Taxation §824, et seq.

72 Am. Jur. 2d State and Local Taxation §§798 through 811.

Validity, construction, and effect of statutory provision for tax lien on property not belonging to taxpayer but used in his business. 84 ALR 2d 1090.

Application of general Statute of Limitations to real estate tax lien foreclosure action. 59 ALR 2d 1144.

Priority between tax or assessment lien and mortgage or other nontax lien held by state or municipality. 159 ALR 852.

Enforcement against tax-exempt property of tax on nonexempt property or on owner of tax-exempt property. 159 ALR 461.

Construction and application of Small Business Act subordinating interest held by Small Business Administration in property, as security for loan, to lien for state or local taxes where such lien would be superior under state law. 17 ALR Fed. 874.

15-16-401. Tax due as a judgment or lien.

Compiler's Comments

1999 Amendment: Chapter 197 in second sentence after "to the sheriff" inserted language regarding sheriff of any county where property is located, inserted third sentence concerning issuance of writs of execution, and in fifth sentence after "to the fees" substituted language entitling sheriff to mileage and costs as assessment against taxpayer for "fees provided for in 15-17-911"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 4, Ch. 197, L. 1999, provided: "[This act] applies to any levy and sale begun after September 30, 1999."

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: At beginning of first sentence and in middle of second sentence inserted "unless suspended or canceled under the provisions of Title 15, chapter 24, part 17". Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: Made minor changes in grammar and in next-to-last sentence substituted "fees provided for in 15-17-911" for "same fees for his services in executing the same, to be collected in the same manner".

Application: The word "title" as used in this section first appeared in section 3827, Political Code of 1895. The reference to "this title" was not changed during the 1979 or any previous recodification, and therefore might not technically apply to all sections currently codified in Title 15, MCA, and might apply to some sections codified in other MCA titles.

Case Notes

County Tax Lien Not Restricted to Specific Property Against Which Tax Assessed: The plaintiff had designated that the proceeds of the auction of certain of his personal property should go to pay creditors. The county argued that it should be able to levy on and seize the funds for taxes owed. The Supreme Court ruled that the county could attach the proceeds even though the taxes owed had not been assessed against the property sold at the auction. Statutes providing for the seizure and sale of personal property as a means of discharging a tax lien have no application when the property seized is money. Inman v. Farmers Nat'l Co., 240 M 182, 783 P2d 1328, 46 St. Rep. 2038 (1989).

Purpose of Resort to Property: Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment when the owner makes default. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Migratory Cattle: When nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, R.C.M. 1947 (now repealed), county had a lien for the tax under this section, as amended in 1963, and 15-16-402 and properly seized and noticed up for sale 200 head of cattle, as the lien was not limited to 1960 cattle by 15-16-113 or 15-17-901 (both now repealed), as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Priority:

A lien for taxes is superior to other liens, ex proprio vigore, even in the absence of a statute expressly so declaring. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Liens for taxes take precedence over mortgages of a federal agency. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

This section and 15-16-403 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. Streeter Bros. v. Overfelt, 202 F. Supp. 143 (D.C. Mont. 1962).

Priority — Interest and Penalties: While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Taxes on Realty Not Collectible by Court Action:

Taxes on real estate cannot be collected by civil action, but only through voluntary payment or sale of the property at tax sale. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Taxes on realty cannot be collected by an action for that purpose, nor can the tax lien be foreclosed, not only because the Legislature has provided no such remedy, but also because this section provides that the tax has the effect of a personal judgment and levy of execution upon all personal property of the delinquent which is not satisfied until the tax is paid or the property is sold for payment of the tax. State ex rel. Tillman v. District Court, 101 M 176, 53 P2d 107 (1936).

Subrogation: When a mortgagor who had not paid any of the principal or interest and mortgagee allowed lien to outlaw but paid the taxes on the land to prevent delinquency, the mortgagee, who paid the taxes, became subrogee of the county and state as to the lien against the land, and acquired all the rights of the county and state except the rights to impose penalties for delinquency, and was entitled to reimbursement for the taxes before the court would quiet title to the land in mortgagor on the theory of equitable subrogation. Swingley v. Riechoff, 112 M 59, 112 P2d 1075 (1941).

Not Applicable to Special Assessments: The provision of this section that every tax has the effect of a judgment applies only to general taxes, not special taxes. State ex rel. Spokane & E. Trust Co. v. Nicholson, 74 M 346, 240 P 837 (1925). See also State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928).

Not Applicable to Corporation Filing Fee: The fee for filing articles of incorporation, required of a foreign corporation by 2-6-103, is not a property tax, creating a lien on the property until paid. State ex rel. Gen. Elec. Co. v. Alderson, 49 M 29, 140 P 82 (1914), explained in J. I. Case Threshing Mach. Co. v. Stewart, 60 M 380, 199 P 909 (1921).

Attorney General's Opinions

Duration of Tax Lien: Under this section, a tax lien created under Title 15 is valid and enforceable until the taxes are paid or the property is sold for the payment of the delinquent tax regardless of whether the lien is upon real property or personal property. 42 A.G. Op. 122 (1988).

Priority as to Local Tax Liens, Private Mortgages, and Small Business Administration Liens: Montana law expressly confers priority of local tax liens on personal property. Although there is no such provision for liens on real property, the tax statutes read as a whole and federal case law compel the conclusion that local tax liens on both personal and real property have priority over liens of private mortgagees. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: first in time is first in right, unless a federal statute provides otherwise. Under 15 U.S.C.A. 646, Small Business Administration liens are subordinate to state and local tax liens. 40 A.G. Op. 80 (1984).

Writ of Execution Issuable to Sheriff of Any County: The provisions of 15-16-401 and 15-24-206 do not apply exclusively to the county where the original tax was assessed, and a Writ of Execution against a delinquent personal property taxpayer may be issued by the County Treasurer to the Sheriff of any county in the state. 35 A.G. Op. 79 (1974).

Collateral References

Taxation *key* 501.

84 C.J.S. Taxation §835, et seq.

72 Am. Jur. 2d State and Local Taxation §798.

15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (3), after "county", inserted "and with the department"; in (5), at beginning of first sentence, substituted "A holder" for "Any owner", in second sentence, before "certified", deleted "registered or", and in third sentence, in two places after "department", deleted "or its agent"; in (5), near middle of first sentence, and in (6)(b), after "department", deleted language concerning the Department's agent in the county in which property is located; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Throughout (2) increased taxable value to $10,000 from $1,000; in (3), in introductory clause, inserted "each year"; in (4) deleted last sentence that read: "If the mortgage

be not paid at maturity, such notice shall thereafter be filed annually unless the mortgage be extended for a definite period to be stated in such notice"; and made minor changes in style.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendments: Chapter 286 inserted (6) relating to filing of a copy of a certificate of satisfaction with the County Treasurer and Department of Revenue.

Chapter 631 inserted (7) relating to suspended or canceled delinquent property taxes under Title 15, ch. 24, part 17. Amendment effective April 25, 1989, and terminates December 31, 1993.

Applicability: Section 3, Ch. 286, L. 1989, provided: "[This act] applies to notices and written requests filed under the provisions of 15-16-402 after September 30, 1989."

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: At end of (1), relating to tax being prior lien, substituted "on and after January 1 of each year" for "from and after 12 midnight of January 1 in each year".

Case Notes

County Tax Lien Not Restricted to Specific Property Against Which Tax Assessed: The plaintiff had designated that the proceeds of the auction of certain of his personal property should go to pay creditors. The county argued that it should be able to levy on and seize the funds for taxes owed. The Supreme Court ruled that the county could attach the proceeds even though the taxes owed had not been assessed against the property sold at the auction. Statutes providing for the seizure and sale of personal property as a means of discharging a tax lien have no application when the property seized is money. Inman v. Farmers Nat'l Co., 240 M 182, 783 P2d 1328, 46 St. Rep. 2038 (1989).

Purpose of Resort to Property: Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment when the owner makes default. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Migratory Cattle: When nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, R.C.M. 1947 (now repealed), county had a lien for the tax under this section and 15-16-401, as amended in 1963, and properly seized and noticed up for sale 200 head of cattle, as the lien was not limited to 1960 cattle by 15-16-113 or 15-17-901 (both now repealed), as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Attorney General's Opinions

Payment to Person With Security Interest Not Necessary Prior to Seizure and Sale: Because tax liens on personal property are superior to all other liens, when personal property is subject to a delinquent tax lien, a county is not required to tender payment to a person having a security interest in the property before seizing and selling the property. 43 A.G. Op. 19 (1989). See also 42 A.G. Op. 95 (1988); 40 A.G. Op. 80 (1984); and 38 A.G. Op. 6 (1979).

Mobile Home Not Improvement — Lienholder to Pay Personal Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home not classified as an improvement to real property must pay the personal property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Purchaser Under Contract for Deed Not "Owner" for Purpose of Attaching Tax Lien: One who is purchasing land under a contract for deed is not the "owner" of the property for purposes of subsection (1) of this section. Personal property taxes assessed to the purchaser would not constitute a lien on the land because title remains in the seller until the contract is finally executed. 42 A.G. Op. 27 (1987), citing A.G. Op. 440 (1920-22).

Attachment of Tax Lien on All Personal Property: The language of this section clearly indicates that a tax lien attaches to the taxpayer's property that has been assessed and to any other personal property in his possession. This holding is consistent with the decision in O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964). 41 A.G. Op. 90 (1986).

Annual Notice Not Required Until Tax Delinquent: A mortgage holder or lienholder is not generally required to file annual notices to prevent taxes on personal property valued in excess of $1,000 from becoming a first and prior lien against the real property. However, 15-16-402(5) requires that when the personal property taxes have been delinquent for 1 or more years, the mortgage holder must comply with the procedural requirements in this section on an annual basis to prevent the personal property taxes from becoming a lien on the real property. 41 A.G. Op. 83 (1986).

Priority as to Local Tax Liens, Private Mortgages, and Small Business Administration Liens: Montana law expressly confers priority of local tax liens on personal property. Although there is no such provision for liens on real property, the tax statutes read as a whole and federal case law compel the conclusion that local tax liens on both personal and real property have priority over liens of private mortgagees. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: first in time is first in right, unless a federal statute provides otherwise. Under 15 U.S.C.A. 646, Small Business Administration liens are subordinate to state and local tax liens. 40 A.G. Op. 80 (1984).

Tax Deed Purchaser — No Recovery of Personal Property Tax Owed: The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer. The taxpayer's right, title, and interest in the property are cut off by issuance of a tax deed. The taxpayer's obligation is satisfied by his forfeiture of the property. The grantee acquires only title to the property, not a right to proceed further against the taxpayer. 39 A.G. Op. 53 (1982).

Transfer of Property — Effect on Lien: The personal property tax lien created by this section is not extinguished when the property is transferred to a third person. 36 A.G. Op. 69 (1976).

Collateral References

Taxation *key* 507, 509.

84 C.J.S. Taxation §835, et seq.

72 Am. Jur. 2d State and Local Taxation §800.

15-16-403. Lien on real property and improvements.

Compiler's Comments

2005 Amendment: Chapter 392 inserted second sentence providing that a person who issues check, draft, converted check, electronic funds transfer, or payment order of real property taxes is liable if instrument is dishonored or if issuer stops payment with intent to fraudulently defeat a possessory lien or to defraud payee. Amendment effective October 1, 2005.

Case Notes

Priority:

A lien for taxes is superior to other liens, ex proprio vigore, even in the absence of a statute expressly so declaring. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Liens for taxes take precedence over mortgages of a federal agency. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

The relative priority of taxes upon real property under Montana law cannot be determined solely upon the basis of this section. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

This section and 15-16-401 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. Streeter Bros. v. Overfelt, 202 F. Supp. 143 (D.C. Mont. 1962).

Priority — Interest and Penalties: While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Time of Attachment of Lien: Even though this section, prior to its amendment in 1975, provided that the tax lien attached in March, the lien could not become choate for the purpose of determining its priority as against federal tax liens until the amount was determined pursuant to 7-6-2502 (now repealed, however see 7-6-4034 through 7-6-4036). Streeter Bros. v. Overfelt, 202 F. Supp. 143 (D.C. Mont. 1962).

Action for Collection of Taxes on Realty: Taxes on real property cannot be collected by an action, either at law or in equity, in the absence of statute so providing, such action being rendered unnecessary by the provisions of this section making taxes a lien akin to a judgment against the property. State ex rel. Tillman v. District Court, 101 M 176, 53 P2d 107 (1936).

Attorney General's Opinions

Mobile Home as Improvement — Lienholder to Pay Delinquent Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Priority as to Local Tax Liens, Private Mortgages, and Small Business Administration Liens: Montana law expressly confers priority of local tax liens on personal property. Although there is no such provision for liens on real property, the tax statutes read as a whole and federal case law compel the conclusion that local tax liens on both personal and real property have priority over liens of private mortgagees. When federal mortgages are involved, the rule regarding priorities

between local taxes and those mortgages is: first in time is first in right, unless a federal statute provides otherwise. Under 15 U.S.C.A. 646, Small Business Administration liens are subordinate to state and local tax liens. 40 A.G. Op. 80 (1984).

Tax Lien — Delinquent Tax, Penalty, Interest Secured — No Priority Over SBA Mortgage: The tax lien provided in 15-16-403 secures both the delinquent tax and any penalties and interest. The lien for penalties and interest does not enjoy statutory priority over an SBA (Small Business Administration) mortgage but is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure. A county may not enforce a lien for penalties and interest under 15-16-403 through the tax sale procedure under Title 15, ch. 17, if there are other prior security interests in the property. 39 A.G. Op. 69 (1982).

Collateral References

Taxation *key* 507.
84 C.J.S. Taxation §847.
72 Am. Jur. 2d State and Local Taxation §798.

15-16-404. County lien on moneys of taxpayer.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: At end of first sentence inserted "and that are not delinquent personal property taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17"; and made minor changes in phraseology. Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: At end of section substituted "if known" for "if any".

Case Notes

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Part 5
Collection by Suit

Part Collateral References

Taxation *key* 583 through 598.
84 C.J.S. Taxation §§1049 through 1056.
72 Am. Jur. 2d State and Local Taxation §780.
Right to maintain action in another state. 165 ALR 796.
When Statute of Limitations commences against action to recover tax. 131 ALR 822.

15-16-503. Collection by suit of personal property taxes when taxpayer moves to another county.

Collateral References

Taxation *key* 585.
84 C.J.S. Taxation §§1050, 1052.

15-16-504. Evidence at trial.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near middle, before "treasurer", inserted "county" and substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: Near end of section substituted "the taxes, plus interest, penalties, and costs" for "such tax and the per centum" and made minor change in grammar.

Collateral References

Taxation *key* 593.

84 C.J.S. Taxation §§1069 through 1072.

Part 6
Refunds

Part Case Notes

Choice of Available Remedies — Concurrent Remedies Statute Inapplicable to Consecutive Remedies: A bank that was denied a claim for a refund under 15-1-402 then sought to proceed on a claim for a tax refund pursuant to 15-16-601 (now repealed). The District Court held that because the bank's original claim was dismissed, it could not file for another refund under a different statute. The bank asserted that the plain language of 15-16-602 (prior to 1993 amendments) allowed it to proceed under 15-16-601 (now repealed) after it lost on procedural grounds under 15-1-402. However, the bank did not pursue its remedies at the same time, but rather received an unfavorable judgment on one theory and then tried another for a more favorable result. Section 15-16-602 permits a taxpayer to whom various options are available to choose among statutory remedies; it does not provide for a taxpayer to consecutively try different methods of relief. To hold otherwise would destroy the rule of res judicata in tax matters. Mont. Bank of Roundup v. County Bd. of Comm'rs, 248 M 199, 810 P2d 1192, 48 St. Rep. 392 (1991).

Use of Administrative Remedies Not Precluded by Alleged Breach of Settlement Agreement: Plaintiff and Department of Revenue entered into a settlement agreement for tax assessments applicable to years 1978 through 1985. When the Department adjusted the assessment by adding land value to improvement value and increased the valuation for years after 1985, resulting in figures higher than stated in the agreement, plaintiff obtained a restraining order to preclude collection of taxes and attempted to proceed directly to District Court based on breach of the settlement agreement. The District Court properly dismissed the complaint for lack of subject matter jurisdiction and quashed the restraining order. The Supreme Court affirmed, finding plaintiff had failed to exhaust administrative remedies and had no recourse to statutory remedies provided in 15-1-406, 15-2-307 (now repealed), or 15-16-601 (now repealed). Hedden-Empire Ltd. Partnership v. Dept. of Revenue, 243 M 206, 793 P2d 828, 47 St. Rep. 1139 (1990).

Refund Due for Erroneous Assessment: For 4 years the property owner received tax assessment notices for certain property he owned and paid the taxes each year without protest. The Department of Revenue subsequently discovered it had overvalued the property. The Department reappraised the property and reduced the assessment. The property owner then sought a refund, which was denied by his County Commissioners. The property owner appealed to his County Tax Appeal Board, which declared he was owed a refund. That decision was affirmed by the State Tax Appeal Board. When the Department appealed the state Board's decision to the Supreme Court, the court held that under 15-16-601 (now repealed) the State Tax Appeal Board has the authority to change the value of property for past tax years when a taxpayer has not filed any administrative appeals as to those years. The taxpayer is entitled to a refund of taxes paid because of an erroneous assessment made on his land. Dept. of Revenue v. Jarrett, 216 M 189, 700 P2d 985, 42 St. Rep. 734 (1985).

Mandamus Not Available to Compel Refund: Mandamus was not a proper remedy to compel the County Commissioners to refund erroneously collected taxes, since 15-16-601 (now repealed) gave a plain, speedy, and adequate remedy at law. Moran v. Bd. of County Comm'rs, 139 M 351, 363 P2d 1073 (1961).

Unwarranted or Illegal Action by Tax Officials Required: To authorize recovery under 15-16-601 (now repealed), there must have been unwarranted or illegal action on part of taxing officials. N. Butte Min. Co. v. Silver Bow County, 118 M 618, 169 P2d 339 (1946), followed in Lingscheit v. Cascade County, 249 M 526, 816 P2d 682, 48 St. Rep. 820 (1991).

Voluntary Payment — Mistake of Law: When mining company furnished statement to county of its gross yield, erroneously including the bonus or subsidy received from the government because of mistake of law, and paid taxes based on that statement without protest, mining company was not entitled to recover the taxes under 15-16-601 (now repealed). N. Butte Min. Co. v. Silver Bow County, 118 M 618, 169 P2d 339 (1946).

Cancellation of Taxes Due on Land Reverting to State: Article V, sec. 39, 1889 Mont. Const., prohibited the cancellation of an obligation due the state, and the authority of the Legislature to authorize cancellation of taxes in the sense of releasing taxpayer's obligation to pay, is doubted, however, 77-2-314 may be properly construed to mean the cancellation of the lien against the

land reverting to the State and not as canceling the tax owed by the prior owner of the land. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937), explained in Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Purpose — Former Law: The purpose of 15-16-601 (now repealed) was to do justice in a class of cases when the application of the doctrine of caveat emptor or the common-law rule that where taxes are voluntarily paid they may not be recovered, will work a hardship to one who has paid money which it is inequitable for the county to retain. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937).

Erroneous and Illegal Assessments Distinguished: An erroneous assessment occurs when the taxing officers have power to act but err in the exercise of that power, and an illegal assessment takes place when they have no power to act at all. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937).

Individual Liable for Tax — Lien as Security: Taxes are not levied upon the property but upon the person, while the property that the person owns is used to determine the amount of the tax he shall pay, it is, after all, the person who pays the tax; he is liable. The property under our statutes is security for the payment. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Paid More Than Once: The portion of 15-16-601 (now repealed) that related to taxes "paid more than once" must be considered a special statute on the subject and when the Board of County Commissioners took no action on a claim for more than 2 years, the remedy by court action was available to the claimant, and in such action plaintiff is entitled to interest on the unlawful tax from the date of payment, even though plaintiff, to avoid the imputation that the payment made was voluntary, made it under protest. Williams v. Harvey, 91 M 168, 6 P2d 418 (1931). See also Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937).

Remission or Compromise of Taxes Unconstitutional: Under 15-16-601 (now repealed), which authorized the Board of County Commissioners to refund taxes when paid more than once or erroneously or illegally collected, the Board was without power to remit taxes that had never been paid or compromise delinquent taxes, and under Art. V., sec. 39, 1889 Mont. Const., forbidding the release, remission, or extinguishment of any obligation due the state or a municipal corporation therein, except by payment thereof into the proper treasure, the Legislature may not confer such power. Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 268 P 555 (1928), affirmed in Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937).

Purpose: The provisions of 15-16-105, 15-16-601 (now repealed), and others of like import are intended to secure the collection of lawful revenue and to protect the owner whose property is made to bear more than its just proportion of the burden of taxation, and were not enacted to secure immunity from taxation to anyone. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

Part Collateral References

Taxation *key* 535 through 542.

84 C.J.S. Taxation §§910, 911.

72 Am. Jur. 2d State and Local Taxation §§756 through 758.

When right to refund of state or local taxes accrues within statute limiting time for refund. 46 ALR 2d 1350.

Right of property taxpayer to recover back taxes voluntarily but mistakenly paid a second or successive time. 84 ALR 1133.

Right to relief, under 42 U.S.C.S. 1983, for alleged unlawful action by state or local tax officials. 50 ALR Fed. 773.

15-16-602. Concurrent remedies.

Compiler's Comments

1993 Amendment: Chapter 539 in two places substituted "Sections 15-16-603 through 15-16-605" for reference to 15-16-601; and made minor changes in style.

Case Notes

Choice of Available Remedies — Concurrent Remedies Statute Inapplicable to Consecutive Remedies: A bank that was denied a claim for a refund under 15-1-402 then sought to proceed on a claim for a tax refund pursuant to 15-16-601 (now repealed). The District Court held that because the bank's original claim was dismissed, it could not file for another refund under a different statute. The bank asserted that the plain language of this section allowed it to proceed under 15-16-601 (now repealed) after it lost on procedural grounds under 15-1-402. However, the bank did not pursue its remedies at the same time, but rather received an unfavorable judgment on one theory and then tried another for a more favorable result. This section permits a taxpayer

to whom various options are available to choose among statutory remedies; it does not provide for a taxpayer to consecutively try different methods of relief. To hold otherwise would destroy the rule of res judicata in tax matters. Mont. Bank of Roundup v. County Bd. of Comm'rs, 248 M 199, 810 P2d 1192, 48 St. Rep. 392 (1991).

15-16-603. Refund of taxes — limitations on refunds.

Compiler's Comments

1999 Amendment: Chapter 85 inserted (1)(f) concerning motor vehicle refund; and made minor changes in style. Amendment effective March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1995 Amendment: Chapter 440 inserted (3)(b) requiring refund to be made for shorter of either 5 years or duration of error; inserted (3)(c) prohibiting refund unless taxpayer allowed the Department access to appraise property; and made minor changes in style. Amendment effective April 14, 1995.

Effective Date — Retroactive Applicability: Section 2, Ch. 440, L. 1995, provided: "[This act] is effective on passage and approval [approved April 14, 1995] and applies retroactively, within the meaning of 1-2-109, to errors in the description or location of real property or improvements that existed after December 31, 1992."

15-16-605. Payment of refunds — exception.

Compiler's Comments

1999 Amendment: Chapter 448 in (2) at beginning inserted exception clause; inserted (3) providing that a refund is not owed if the board revises a property tax assessment that results in a refund of taxes of $5 or less; and made minor changes in style. Amendment effective April 22, 1999.

Effective Date — Applicability — Retroactive Applicability: Section 5, Ch. 448, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax bill or refund has not yet been issued."

15-16-611. Reduction of property tax for property destroyed by natural disaster — proration of taxes on replaced property.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (2) substituted "15-16-119" for "15-16-113"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendments: Chapter 717 in (1) inserted "or that personal property taxed under Title 15, chapter 6, part 1" and after "improvements" inserted "or personal property"; in (2), after "15-16-102", inserted "or on personal property under 15-16-113 or 15-24-202"; inserted (5) concerning notification of replacement of destroyed personal property and concerning proration of tax; and in (6) inserted last three sentences concerning fire, arson, and collection of adjusted taxes. Amendment effective April 27, 1991.

Chapter 773 in (1), after "mobile home", deleted "as described in 15-6-142". Amendment effective May 15, 1991.

Effective Date — Retroactive Applicability: Section 2, Ch. 717, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Applicability: Section 18(1), Ch. 773, L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1985 Amendment: In (1) near middle, changed "15-6-134(1)(c)" to "15-6-142" and near end, after "adjust", inserted "the taxable value on the property, accounting for the destruction"; in (2) at beginning inserted "The county treasurer shall adjust" and changed "subsection (2)" to "subsection (3)"; in (3)(a) after "assessed on", inserted "the original taxable value of"; and inserted (3)(b) describing the formula for calculating postdisaster tax.

1981 Amendment: Inserted "or a trailer or mobile home as described in 15-6-134(1)(c)" in (1).

15-16-612. Refund of tax paid.

Compiler's Comments

1993 Amendment: Chapter 539 in (2), at end, substituted "15-16-603 through 15-16-605" for "15-16-601"; and made minor changes in style.

15-16-613. Refund of certain taxes paid on migratory property.

Compiler's Comments

2001 Amendment: Chapter 59 in (1) near beginning substituted "property tax" for "tax"; in (2) near beginning substituted "board of county commissioners" for "county treasurer" and near middle after "15-16-603, the" deleted "taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment"; and made minor changes in style. Amendment effective March 16, 2001.

Retroactive Applicability: Section 3, Ch. 59, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1993 Amendments: Chapter 539 in (1), near beginning, substituted "15-16-603 through 15-16-605" for "15-16-601"; in (2), at beginning of second sentence, inserted "If a taxpayer receives an order by the board of county commissioners pursuant to 15-16-603, the"; and made minor changes in style.

Chapter 587 near end of (1), after "property", substituted "is located" for "has taxable situs"; and near end of first sentence of (3), after "property", substituted "was located" for "had taxable situs". Amendment effective April 28, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 587, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved April 28, 1993.

1991 Amendment: In (1) substituted "Subject to the provisions of 15-16-601 and upon proof that a tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property has taxable situs in the state is entitled to a refund, as provided in this section" for "Subject to the provisions of 15-16-601 and upon proof that tax was paid in another state, a taxpayer is entitled to a refund equal to the amount of tax paid in another state on a helicopter or property that was assessed in Montana under 15-6-138(1)(g) on January 1 of the year for which the refund is due. The refund under this section may not exceed the tax that was paid in Montana on the same property for the same period of time"; inserted (2) concerning taxpayer application for refund with County Treasurer on form provided by Department of Revenue and time for submission of application and payment of refund; inserted (3) concerning method of calculation of refund and prohibiting refund to exceed amount of tax paid in this state; and inserted (4) defining month. Amendment effective May 17, 1991.

Retroactive Applicability: Section 2, Ch. 778, L. 1991, provided: "[Section 1] [15-16-613] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Administrative Rules

ARM 42.21.162 Personal property taxation dates.
ARM 42.21.163 Personal property tax refund.

Collateral References

71 Am. Jur. 2d State and Local Taxation §§1064 through 1079.

Part 7
Cancellations

Part Collateral References

Taxation *key* 552.5.
84 C.J.S. Taxation §§907 through 999.
72 Am. Jur. 2d State and Local Taxation §§756 through 758.

15-16-701. Personal property taxes five years delinquent — list.

Compiler's Comments

1993 Amendment: Chapter 521 in (1), near end, reduced from 10 years to 5 years the years of delinquency of taxes included in list; inserted (2) relating to uncollected personal property taxes; and made minor changes in style.

1987 Amendment: In (1)(b) substituted "amount of the delinquent taxes, plus interest, penalties, and costs, if any" for "amount of the delinquent tax, plus penalty, if any"; in (1)(c) substituted "the date the taxes became delinquent" for "the year the tax became delinquent"; in (2), before "27-2-202(1)", inserted "provided in"; in (2)(c) inserted "provided in 27-2-202(1)"; and made minor changes in grammar and phraseology.

Collateral References

Taxation *key* 552.5.
84 C.J.S. Taxation §1007.

15-16-702. Cancellation of taxes and obligations — filing of lists.

Compiler's Comments

1987 Amendment: Made minor changes in grammar and phraseology.

Collateral References

Taxation *key* 552.5.
84 C.J.S. Taxation §1007.

15-16-703. Adjustment of accounts after cancellation.

Compiler's Comments

1987 Amendment: Made minor changes in grammar and phraseology.

15-16-704. Certain unpaid taxes uncollectible — stricken from records.

Compiler's Comments

1987 Amendment: Made minor change in grammar.

Part 8
Suspensions

15-16-801. Payment of suspended delinquent property taxes.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated this section December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Collateral References

72 Am. Jur. 2d State and Local Taxation §709.

CHAPTER 17
TAX SALES

Chapter Compiler's Comments

Transition: Section 61, Ch. 587, L. 1987, provided: "(1) (a) Except as provided in subsection (1)(b), for the purpose of implementing the provisions of Title 15, chapters 17 and 18, no tax deed may be applied for or issued during the period between April 23, 1987, and July 1, 1988.

(b) A tax deed may be issued between April 23, 1987, and July 1, 1988, if the tax deed is issued for property on which property taxes are delinquent for 1982 and prior years. In such a case the tax deed is to be issued based on the procedures provided for in Title 15, chapters 17 and 18.

(2) During the period between April 23, 1987, and July 1, 1988, the county clerk and county treasurer of each county shall cooperate in identifying all property in their respective counties on which the taxes are delinquent or on which a tax sale certificate or assignment certificate was issued.

(3) Not less than 60 days or more than 90 days prior to July 1, 1988, the county clerk in each county shall give notice, as provided in 15-18-212, for each property on which the taxes have been delinquent for the 3 preceding years or more or for which there had been issued a tax sale certificate to the county and for which the board of county commissioners has directed the county treasurer to issue a tax deed.

(4) After January 1, 1988, and before May 1, 1988, the county clerk shall send a notice to each purchaser other than the county and to each assignee who has taken an assignment from the county. The notice must be sent by certified mail and contain a statement apprising the purchaser or assignee of his obligation to give notice as required in 15-18-212. The county clerk shall also publish in the official newspaper of the county or such other newspaper as the board of county commissioners may designate a general notice to all purchasers and assignees stating the obligations to the purchaser or assignee regarding the notice required in 15-18-212."

Chapter Case Notes

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 or to follow the alternative procedure under 15-17-214, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Entry of Judgment by Court of General Jurisdiction in Foreclosure Action Affirmed — Collateral Attack Precluded: Glickman contended that the District Court acted outside or in excess of its jurisdiction by decreeing that the purchaser of Glickman's property at a Sheriff's foreclosure sale be "let into possession". A judgment entered by a court lacking subject matter jurisdiction is subject to attack at any time. A collateral attack on a judgment is possible only if the judgment is void on its face and if it appears affirmatively from the judgment roll that the court did not have jurisdiction or committed an act in excess of jurisdiction. Absent any authority that a court of general jurisdiction may not enter a judgment in a foreclosure sale, the Supreme Court held that the District Court did not act outside or in excess of its jurisdiction by decreeing that the purchaser of the property at a Sheriff's foreclosure sale be "let into possession". Further, Glickman's failure to allege any statutory causes of action in his original petition precluded him from bringing an independent action under the residual clause of Rule 60(b), M.R.Civ.P. (Title 25, ch. 20). Glickman v. Whitefish Credit Union Ass'n, 1998 MT 8, 287 M 161, 951 P2d 1388, 55 St. Rep. 27 (1998).

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Chapter Attorney General's Opinions

Tax Lien — Delinquent Tax, Penalty, Interest Secured — No Priority Over SBA Mortgage: The tax lien provided in 15-16-403 secures both the delinquent tax and any penalties and interest. The lien for penalties and interest does not enjoy statutory priority over an SBA (Small Business Administration) mortgage but is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure. A county may not enforce a lien for penalties and interest under 15-16-403 through the tax sale procedure under Title 15, ch. 17, if there are other prior security interests in the property. 39 A.G. Op. 69 (1982).

Chapter Law Review Articles

Tax Titles in Montana, 20 Mont. L. Rev. 73 (1958).

Chapter Collateral References

Taxation *key* 582, 614 through 694.

85 C.J.S. Taxation §§1044, et seq., 1101, et seq.

72 Am. Jur. 2d State and Local Taxation §§779, 812 through 856.

Tax sales or forfeitures by or to governmental units as interrupting adverse possession. 50 ALR 2d 600.

Void tax deed, tax sale certificate, and the like, as constituting color of title. 38 ALR 2d 986.

Tax sale as freeing property from possibility of further assessments for benefits to land. 11 ALR 2d 1133.

Necessity of consent of court to tax sale of property in custody of court or receiver or trustee appointed by it. 3 ALR 2d 893.

Discretion of court to refuse confirmation of, or to set aside, tax sale, where all proceedings are in compliance with statutory requirements. 152 ALR 887.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Personal liability of tax official or his bond to purchaser at tax sale. 149 ALR 220.

Property Tax Delinquencies, Tax Sales, and Tax Deeds, 1986 Interim Report, Montana Legislative Council.

Part 1
Notice of and Protest of Sale

Part Case Notes

Notice to Nonresident: It is incumbent upon nonresident property owners to take notice that all property is taxed annually and that, unless the taxes are paid, the property will be sold at tax sale, irrespective of the fact that the owner requested a County Treasurer, instead of the County Assessor, to send tax notices to a certain address which request was ignored. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Sufficiency of Publication: When a notice of sale for delinquent taxes was published December 30, 1895, and January 6 and 13, 1896, and the sale took place January 27, 1896, the publication was for a sufficient time. Section 15-17-101 (now repealed) does not require the Commissioners to designate a paper for publication, but to direct the publication to be made in a certain paper. Conklin v. Cullen, 29 M 38, 74 P 72 (1903).

Part Attorney General's Opinions

Failure to Pay Refuse Disposal Fee Subjects Property to Tax Sale: The nonpayment of a refuse disposal fee by someone receiving a service from a refuse disposal district constitutes a lien upon the underlying real property, and that property thereby becomes subject to a tax sale under the proceedings provided in Title 15, ch. 17. 40. A.G. Op. 45 (1984).

Construction: The procedure a County Treasurer must follow under 15-17-101 (now repealed) is clear and unequivocal, leaving nothing to construe, and creation of a legitimate deviation from the present statutory procedure must be done by the Legislature. 39 A.G. Op. 40 (1981).

Correction of Defective Notice After Time for Notice: If, because of a defective first notice, a County Treasurer cannot publish a proper notice of a tax sale on or before the last Monday of June as required by 15-17-101 (now repealed), the Treasurer does not have authority to publish a corrected notice after that date and conduct a legal tax sale. 39 A.G. Op. 40 (1981).

Lack of Compelling State Interest to Invade Privacy: Publication by county officers of a list of delinquent taxpayers in a newspaper for purposes of embarrassment would be an excessive exercise of their statutory powers provided by 15-17-101 (now repealed) and an invasion of privacy in violation of Art. II, sec. 10, Mont. Const. 35 A.G. Op. 62 (1974).

Part Collateral References

Taxation *key* 619, 655, 658, 660, 662, 692.

85 C.J.S. Taxation §§754, 790 through 796, 800, 801, 830.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 ALR 4th 447.

Inclusion or exclusion of first and last days in computing time for giving notice of tax sale. 98 ALR 2d 1422.

"Public place" within requirements as to posting of tax notices. 90 ALR 2d 1212.

Validity of notice of tax sale or of tax sale proceeding that fails to state tax year or kind or type of taxes covered by tax assessments. 43 ALR 2d 988.

Effect of misnomer of landowner or delinquent taxpayer in notice or advertisement of tax sale. 43 ALR 2d 967.

What constitutes "public sale". 4 ALR 2d 575.

15-17-121. Definitions.

Compiler's Comments

2003 Amendment: Chapter 241 in definition of cost in (b) at beginning substituted "The term includes receipted costs that are required by law and incurred by the purchaser" for "Cost does not include the costs incurred by the owner" and inserted second sentence requiring the purchaser of the property tax lien to provide receipts and notification and inserted (c) providing that cost does not include interest for payments for certain items. Amendment effective October 1, 2003.

1989 Amendment: Inserted definition of cost. Amendment effective May 22, 1989.

15-17-122. Notice of pending tax sale.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: Inserted (7) relating to suspended or canceled delinquent property taxes under Title 15, ch. 24, part 17. Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

15-17-124. Irregular assessment.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in second sentence substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-17-131. Common undivided ownership interest — separate assessment — property tax payments.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Part 2
Sale

Part Compiler's Comments

Part of Section Not Codified: Part of section 84-4124, R.C.M. 1947, which is a validation clause enacted in 1923 dealing with certificates of sale issued to any county on the purchase of any county of real property sold at any delinquent tax sale, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 46, L. 1923, as amended by sec. 1, Ch. 31, L. 1929 and sec. 1, Ch. 170, L. 1947.

Part Case Notes

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 or to follow the alternative procedure under 15-17-214, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the

County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Tax Deed and Sale Proceedings Invalid for Lack of Jurisdiction — County's Reversionary Interest Relinquished by Settlement to Heirs of Pretax Deed Owner: Rosebud County applied for and received a tax deed pursuant to law (now repealed) and subsequently quitclaimed all but a royalty interest in the property. The Stanfords brought an action in District Court, alleging the invalidity of the tax deed and alleging that they were the owners of a royalty interest in the property. The county settled its interest in the action by relinquishing all its interests in the property. The District Court held that the tax deed was invalid but awarded the property to another party. The Supreme Court found that the tax deed was invalid under the former law because the proceedings on tax sales are in invitum. Citing King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), the court held that the failure to file an affidavit of notice of application for the tax deed, the fact that there was a recitation in the notice for application of a tax deed that the time for redemption had "long since expired" (contrary to the law), and the failure of the record to include an "affidavit of notice of tax sale" resulted in a lack of jurisdiction in the County Treasurer to issue the tax deed. The reservation of the royalty interest by the county survived the defective tax sale, and when the county relinquished all rights to its royalty interest as part of the settlement agreement, that interest reverted to the pretax sale owner. The heirs of that owner thus had a prima facie claim to the royalty interest. Stanford v. Rosebud County, 251 M 128, 822 P2d 1074, 48 St. Rep. 1124 (1991).

Lienholder's Right to Redeem: One who was occupier of land and assignee of tax sale certificate held lien on such land in accord with 15-17-206 (now repealed), and thus could redeem subsequent tax sale certificate at any time before application for tax deed. State ex rel. Burkhartsmeyer Bros. v. McCormick, 162 M 234, 510 P2d 266 (1973).

Extent of Lien:

Section 15-17-206 (now repealed) does not permit mortgagee who had previously purchased certificates of tax sale to retain a lien upon the real estate for the amount of certificates after Sheriff's sale. Stallings v. Erwin, 148 M 227, 419 P2d 480 (1966).

Where, subsequent to purchase of tax certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted the mortgagee to pay taxes and collect the same upon foreclosure. Stallings v. Erwin, 148 M 227, 419 P2d 480 (1966).

Purchaser Not to Have Whole Day to Appear: The purchaser does not have the whole day to appear, as the sale need continue only until the list of delinquent property in alphabetical or numerical order of lots or blocks is "completed" as provided under 15-17-201 (now repealed). Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

When Property May Be Struck Off to County:

It is no longer the law that where there is no purchaser in good faith on the first day delinquent property is offered for sale, it must not be struck off to the county until the following day; therefore a tax sale certificate issued to the county in 1931 on the same day the property was offered for sale and struck off to the county was valid. Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

Under prior law providing that where no purchaser appears on the first day set for delinquent tax sale, and "when the property is offered for sale thereafter" there is again no purchaser, it may be struck off to the county, a sale may not be made to the county on the first day but only on some subsequent day. Glacier County v. Schlinski, 90 M 136, 300 P 270 (1931).

Mistake as to Amount Payable: In an action to quiet title to real property acquired by tax deed in which defendant attacked the deed on the ground that the county's notice of application for tax deed naming $1,036.25 as the amount payable for redemption purposes was erroneous, the error apparently involving $3, the error was cured under this part, thus rendering the deed valid, under the holding in Martin v. Glacier County, 102 M 213, 56 P2d 742 (1936). Howard v. Newlon, 112 M 189, 114 P2d 272 (1941). See also Stoican v. Washburn, 112 M 603, 120 P2d 426 (1941).

Constitutionality: The title to Ch. 31, L. 1929, which amended former sections 15-17-202, 15-17-207, and 15-17-208, did not violate Art. V, sec. 23, 1889 Mont. Const. (now Art. V., sec. 11, 1972 Mont. Const.). Martin v. Glacier County, 102 M 213, 56 P2d 742 (1936).

Defect Not Affecting Jurisdiction Cured by Legislative Validation: Irregularities in sale of delinquent real property not affecting jurisdiction were cured by Ch. 46, L. 1923, as amended by Ch. 31, L. 1929, validating certificates of sale, and Ch. 79, L. 1933, validating tax deeds therefore issued. Martin v. Glacier County, 102 M 213, 56 P2d 742 (1936), distinguished in Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Irregularities Cured by Validating Clause:

Irregularities in sale of delinquent real property not affecting jurisdiction, were cured by Ch. 46, L. 1923, as amended by Ch. 31, L. 1929, validating certificates of sale, and section 84-4160.1, R.C.M. 1947 (not codified) validating tax deeds theretofore issued. Martin v. Glacier County, 102 M 213, 56 P2d 742 (1936), distinguished in Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

In an action to enjoin a County Treasurer from issuing a tax deed to city lots bought by the county at delinquent tax sale, irregularities affecting general taxes for the year for nonpayment of which the property was sold, relied upon by appellant, were cured by Ch. 46, L. 1923, as amended by Ch. 31, L. 1929, when the taxes were regularly levied and there was a substantial compliance with the statutes relative to notice and sale, thus rendering the certificate of sale immune to attack. Morse v. Kroger, 87 M 54, 285 P 185 (1930).

Charge for Duplicate Certificate: When the county is the purchaser of property at tax sale, the Treasurer is without authority to charge it 50 cents for the duplicate certificate of sale, and therefore the county may not, in its application for a tax deed, add such charge to the amount which the redemptioner must pay to redeem the property. Glacier County v. Halvorson Mercantile Co., 93 M 520, 19 P2d 648 (1933).

Sale En Masse:

Under 15-17-207 (now repealed), as amended by Ch. 46, L. 1923, a tax sale certificate issued to the county showing on its face that several parcels of land were sold en masse, is not void on its face, since thereunder the entire property assessed may be struck off to the county for want of purchasers. Skillen v. Harris, 90 M 389, 3 P2d 1054 (1931).

A tax deed to two or more noncontiguous tracts of land, showing on its face that the tracts were struck off to the county together, was not void for that reason, as 15-17-207 (now repealed) provides that where there is no purchaser in good faith "the whole amount of the property must be struck off to the county". Rogers v. Embleton, 90 M 134, 300 P 296 (1931).

Under former law, a tax deed, showing on its face that it was based on a sale en masse of several noncontiguous parcels, was void. Lindeman v. Pinson, 54 M 466, 171 P 271 (1918); Horsky v. McKennan, 53 M 50, 162 P 376 (1916); Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913); N. Real Estate Loan & Title Co. v. Billings Loan & Trust Co., 36 M 356, 93 P 40 (1907); Casey v. Wright, 14 M 315, 36 P 191 (1894).

Clause Ineffective to Cure Irregularities in Tax Deed Void on Face: Chapter 31, L. 1929, amending Ch. 46, L. 1923, enacted to cure irregularities in the issuance of certificates of sale to lands struck off to the county on delinquent tax sales, has no application to a tax deed void on its face. Glacier County v. Schlinski, 90 M 136, 300 P 270 (1931).

Year of Assessment: When from recitals in a tax deed the year of the assessment was made apparent indirectly, the fact that it contained no direct statement imparting such information did not render the deed void. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913). However, see Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

County Not to Bid Competitively at Sale: Former section 15-17-207 prohibited the county from becoming a competitive bidder at the sale of property for delinquent taxes, and it can only acquire it when there is no other purchaser in good faith; and the recitals in the deed must show the right of the county to take the property, and that it did not enter the lists as a competitive bidder for the same, otherwise the deed is void. The county cannot purchase lands at a tax sale unless authorized to do so by the statute, and a strict compliance with the statute must be had before the title of the owner can be divested. Rush v. Lewis & Clark County, 36 M 566, 93 P 943 (1908), affirmed, 37 M 240, 95 P 836 (1908).

Part Attorney General's Opinions

County Not Required to Take Tax Deed — Property Under Tax Sale Certificate: A county is not required under 15-18-203 (now repealed) to take a tax deed to subdivision property it holds under a tax sale certificate if the rights of the county to property struck off pursuant to 15-17-207 (now repealed) are not assigned. 41 A.G. Op. 77 (1986).

Tax Deed Purchaser — No Recovery of Personal Property Tax Owed: The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer. The taxpayer's right, title, and interest in the property are cut off by issuance of a tax deed. The taxpayer's obligation is satisfied by his forfeiture of the property. The grantee acquires only title to the property, not a right to proceed further against the taxpayer. 39 A.G. Op. 53 (1982).

Part Collateral References

Taxation *key* 670 through 672, 674, 679, 684, 686, 711, 730, 742.

85 C.J.S. Taxation §1178, et seq.

72 Am. Jur. 2d State and Local Taxation §§841 through 848, 850 through 857, 866, 867, 883.

Inadequacy of price as basis for setting aside execution or sheriff's sale—modern cases. 5 ALR 4th 794.

Rights of purchaser at tax sale where property is taken in eminent domain. 45 ALR 2d 534.

Duties, rights, and remedies between attorney and client where attorney purchases property of client at or through tax, execution, or judicial sale. 20 ALR 2d 1280.

Enforceability as between parties of agreement to purchase property at tax sale for their joint benefit. 14 ALR 2d 1267.

What constitutes "public sale". 4 ALR 2d 575.

Sale of property at tax sale for more or less than the amount of taxes, penalties, and costs as affecting its validity. 147 ALR 1141.

15-17-211. Conduct of tax sale.

Case Notes

Caveat Emptor: The County Assessor's office told Weinberg that a house was part of a tax deed property. Weinberg purchased the property and found that the house was completely on Walter's property. The general rule is that the doctrine of caveat emptor applies with full force against purchasers at tax sales. A government entity is not a guarantor of title in tax deed proceedings. Quirin v. Weinberg, 252 M 386, 830 P2d 537, 49 St. Rep. 331 (1992).

15-17-212. Tax sale certificate.

Compiler's Comments

2001 Amendment: Chapter 472 in (1) at beginning inserted "After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and"; in (2) inserted second sentence requiring copy of certificate to be mailed to person assessed taxes along with notice regarding property tax sale; inserted (3) requiring 2 weeks' notice of proposed payment by certified mail and proof of mailing prior to payment of delinquent taxes, penalties, interests, and costs; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 42.19.1301 Tax sale certificates — definitions.

ARM 42.19.1302 Tax sale certificates — form.

Case Notes

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with this section or to follow the alternative procedure under 15-17-214, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new

address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

15-17-214. County as purchaser — assignment.

Case Notes

Full Legal Property Description Not Required in Notice That Tax Deed May Be Issued: Appellant contended that because the county did not include a full legal property description in a notice that a tax deed may be issued, the tax deed itself was void. Section 15-18-211 requires that the tax deed contain the full legal description, but 15-18-212 requires that the notice that a tax deed may be issued contain a description of the property on which the taxes are or were delinquent, and the description must be the same as the description of the property on the tax sale certificate or in the record described in this section. Therefore, the description of property in a notice that a tax deed may be issued need not include the full legal description of the property unless, pursuant to 15-18-212(6)(b), the full legal description was used on the tax sale certificate or in the record described in subsection (2)(b) of this section. Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Hudson v. McDonald, 229 M 426, 747 P2d 221 (1987), and Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 or to follow the alternative procedure under this section, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Attorney General's Opinions

County Not Required to Pay Special Assessments After Tax Sale: It would be illogical to consider a county the purchaser of a tax sale certificate, without payment of delinquent taxes and assessments, when no other purchaser comes forward at a tax sale, and then to place responsibility on the county for payment of future assessments. Therefore, when a county becomes a purchaser of a tax certificate pursuant to this section, the county is not required to pay special assessments levied against the property after the tax sale. 43 A.G. Op. 38 (1989).

Part 3
Procedure After Sale

Part Compiler's Comments

Sections Not Codified:

Section 84-4143, R.C.M. 1947, which provided that Ch. 65, L. 1933 is not to be construed as an amendment or modification of section 84-4161, R.C.M. 1947 (15-18-403, now repealed) was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be make to sec. 5, Ch. 65, L. 1933.

Section 84-41-102, R.C.M. 1947, which provided that Ch. 33, Ex. L. 1933 did not amend or modify sections 84-4140 through 84-4143, R.C.M. 1947, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 33, Ex. L. 1933.

Part Case Notes

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Entry of Judgment by Court of General Jurisdiction in Foreclosure Action Affirmed — Collateral Attack Precluded: Glickman contended that the District Court acted outside or in excess of its jurisdiction by decreeing that the purchaser of Glickman's property at a Sheriff's foreclosure sale be "let into possession". A judgment entered by a court lacking subject matter jurisdiction is subject to attack at any time. A collateral attack on a judgment is possible only if the judgment is void on its face and if it appears affirmatively from the judgment roll that the court did not have jurisdiction or committed an act in excess of jurisdiction. Absent any authority that a court of general jurisdiction may not enter a judgment in a foreclosure sale, the Supreme Court held that the District Court did not act outside or in excess of its jurisdiction by decreeing that the purchaser of the property at a Sheriff's foreclosure sale be "let into possession". Further, Glickman's failure to allege any statutory causes of action in his original petition precluded him from bringing an independent action under the residual clause of Rule 60(b), M.R.Civ.P. (Title 25, ch. 20). Glickman v. Whitefish Credit Union Ass'n, 1998 MT 8, 287 M 161, 951 P2d 1388, 55 St. Rep. 27 (1998).

Tax Deed and Sale Proceedings Invalid for Lack of Jurisdiction — County's Reversionary Interest Relinquished by Settlement to Heirs of Pretax Deed Owner: Rosebud County applied for and received a tax deed pursuant to law (now repealed) and subsequently quitclaimed all but a royalty interest in the property. The Stanfords brought an action in District Court, alleging the invalidity of the tax deed and alleging that they were the owners of a royalty interest in the property. The county settled its interest in the action by relinquishing all its interests in the property. The District Court held that the tax deed was invalid but awarded the property to another party. The Supreme Court found that the tax deed was invalid under the former law because the proceedings on tax sales are in invitum. Citing King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), the court held that the failure to file an affidavit of notice of application for the tax deed, the fact that there was a recitation in the notice for application of a tax deed that the time for redemption had "long since expired" (contrary to the law), and the failure of the record to include an "affidavit of notice of tax sale" resulted in a lack of jurisdiction in the County Treasurer to issue the tax deed. The reservation of the royalty interest by the county survived the defective tax sale, and when the county relinquished all rights to its royalty interest as part of the settlement agreement, that interest reverted to the pretax sale owner. The heirs of that owner thus had a prima facie claim to the royalty interest. Stanford v. Rosebud County, 251 M 128, 822 P2d 1074, 48 St. Rep. 1124 (1991).

Insufficient Notice of Tax Sale — County Tax Deed Void: County's tax deed was void for insufficient notice of the tax sale and failure to give notice of application for a tax deed to the owners of the property. The county had deeded the land to Swigart, reserving a 6 ¼% royalty interest. Swigart, using a statutory proceeding, applied for and received a deed confirming the tax deed. The confirmation deed did not mention the county's 6 ¼% royalty interest. The confirmation deed was void for failure to give sufficient notice to the owners who had lost the

land to the county or to their successors in interest. The two original owners had each had an undivided one-half interest in the land. Plaintiff heirs of one of the original owners sued to quiet title to the county's 6 ¼% royalty interest and then quitclaimed to Swigart's heirs all plaintiffs' interest in the land, reserving a 6 ¼% royalty interest. In return, Swigart's heirs quitclaimed the 6 ¼% royalty interest to plaintiffs. Plaintiffs' quitclaim to Swigart's heirs did not convey or give up any claim plaintiffs had to or any interest they had in the 6 ¼% royalty interest. The court analyzed 10 factors relating to laches and ruled that laches barred plaintiffs' claim and that the 6 ¼% royalty interest was vested in the county. Anderson v. Richland County, 219 M 60, 711 P2d 784, 42 St. Rep. 1843 (1985).

Failure to Assert Royalty Interest in Tax Deed Land — Laches: A tax deed issued to the county in 1930 without affidavits setting forth the statutorily requisite statements as to notice to the owner and as to occupancy was void. The county sold the land to A.O., reserving a 6 ¼% royalty interest. Plaintiff children of the original owner who had lost the land for failure to pay taxes quitclaimed all their interest in the land to A.O.'s successors, reserving their claim to and interest in the 6 ¼% royalty claimed by the county, and in turn A.O.'s successors conveyed to plaintiffs all of the successors' interest in that royalty. Plaintiffs' conveyance cleared the title of any insufficiency in the tax deed proceedings but did not convey or give up plaintiffs' claim to the 6 ¼% royalty interest. Plaintiffs' redemption argument failed because they had never attempted a redemption. After analyzing nine factors relating to laches, the court ruled that laches barred plaintiffs' claim to the county's royalty interest. Richardson v. Richland County, 218 M 48, 711 P2d 777, 42 St. Rep. 1834 (1985), followed in Filler v. Richland County, 247 M 285, 806 P2d 537, 48 St. Rep. 200 (1991). (The court also stated that King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), in which the court concluded that laches was inapplicable because laches did not commence until oil was produced and royalties earned, was incomplete in its laches analysis because the court overlooked the inchoate ownership of the royalty interest.)

Ex Post Facto Rule — Inapplicable to Tax Delinquency Proceedings: The prohibition against ex post facto laws applies only to penal or criminal matters. The collection of delinquent taxes by the assessment of interest and penalties on the amounts due does not change a civil proceeding to a penal or criminal matter. Thus the ex post facto rule does not apply to a legislative enactment that retroactively applied an increase in the rate of interest charged on delinquent tax payments. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Retroactive Application of Tax Delinquency Interest Increase: After the Legislature passed an amendment raising the rate of interest applied to tax payments in delinquency, the Attorney General issued two opinions as to whether the increase should be given retroactive application, the first opinion saying "no" and the second opinion, issued 2 months later, saying "yes". Appellant claimed that the effect of the Attorney General's opinions was to divide delinquent taxpayers into two groups, those to whom the increase was not retroactively applied, under the first opinion, and those to whom the increase was applied, under the second opinion, and that therefore, retroactive application of the increase violated the Due Process and Equal Protection Clauses of the Montana Constitution as well as the 14th amendment of the United States Constitution. The Supreme Court upheld the District Court's dismissal of appellant's claim, ruling that the constitutionality of a law is determined by looking at the enactment itself rather than at an administrative interpretation of it. Further, the law is not discriminatory and a delinquent taxpayer does not have a vested right to application of a particular rate of interest. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Due Process: A tax sale is a proceeding in rem against the property itself and not in personam. Thus a notice with description of the property accurately contained therein suffices to support any requirements of due process. Meyer v. Chessman, 132 M 187, 315 P2d 512 (1957).

Land Transferred After Tax Deed: Defendants in quiet title action acquired no property rights in disputed land by deed from transit company because at the time they received deed, transit company had already been divested of title in proceedings for the taking of a tax deed. Meyer v. Chessman, 132 M 187, 315 P2d 512 (1957).

Assignee Does Not Receive Title: An assignee does not receive title to the property; rather, he has an inchoate right that can ripen into a title free from all encumbrances. Higgins v. Mont. Hotel Corp., 181 M 149, 592 P2d 930 (1979).

Irrigation District Land Acquired at Tax Sale:

The County Treasurer is without authority to assign the right of his county to irrigation lands acquired by it at tax sale under either the irrigation district law as it was prior to July, 1920, when the district sold its bonds, or under 15-17-303 (now repealed), a general statute, which provides that where a county has bid in a parcel of land for "taxes" the Treasurer shall assign its right to any person willing to pay the amount due, irrigation district assessments not being taxes

within the meaning of the section. State ex rel. Malott v. Cascade County, 94 M 394, 22 P2d 811 (1933).

It is the duty of a county which holds irrigation district lands acquired at tax sale to apply for tax deed, sell the land as speedily as possible and distribute the proceeds agreeably to equity, and where it has disposed of such land by assignment of its right under 15-17-303 (now repealed), it must return the purchase price. State ex rel. Malott v. Cascade County, 94 M 394, 22 P2d 811 (1933).

Informality or Irregularity: When land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to render it void or voidable, such mistake being in the nature of an informality or irregularity only. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913). However, see Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Personal Property: Section 15-17-311 (now repealed) does not apply to personal property. Birney v. Warren, 28 M 64, 72 P 293 (1903).

Injunction: The fact that the Treasurer intends to violate 15-17-304 and 15-17-305 (both now repealed) by exposing for sale, for the delinquent taxes of 1 year, part of the lands purchased by the county at the sale for the taxes of the preceding year, and yet unredeemed, does not entitle the owner of the equity of redemption to an injunction. Cobban v. Hinds, 23 M 338, 59 P 1 (1899), explained in Danforth v. Livingston, 23 M 558, 59 P 916 (1900).

Part Attorney General's Opinions

Payment of Delinquent and Outstanding Assessments on Assigned Property to Obtain Tax Deed — Pre-1987: Prior to 1987, a city, as assignee, could not obtain a valid tax deed on property it received through a tax sale until the outstanding and delinquent assessments on the property were paid and discharged. 42 A.G. Op. 82 (1988).

Payment of Delinquent Taxes, Including Special Assessments, to Effect Assignment of Rights: Under 15-17-303 (now repealed), an assignee must pay the amount for which the property was bid at the tax sale, and no provision is included for an assignment following partial payment of the delinquent general taxes, excluding unpaid special assessments, which are treated the same as general taxes under 7-12-4183. Therefore, a city must pay all delinquent taxes, including special assessments, to a county to effect an assignment of the rights of the county in property struck off following a tax sale. 41 A.G. Op. 77 (1986).

Tax Deed Purchaser — No Recovery of Personal Property Tax Owed: The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer. The taxpayer's right, title, and interest in the property are cut off by issuance of a tax deed. The taxpayer's obligation is satisfied by his forfeiture of the property. The grantee acquires only title to the property, not a right to proceed further against the taxpayer. 39 A.G. Op. 53 (1982).

Part Collateral References

Taxation *key* 679, 682 through 692, 697, 742, 821.

85 C.J.S. Taxation §1195, et seq.

72 Am. Jur. 2d State and Local Taxation §§822, 867, 868, 880.

Effect of misnomer of landowner or delinquent taxpayer in notice or advertisement of tax sale. 43 ALR 2d 967.

Assignability of claim for tax refund and rights of assignee in respect thereof. 134 ALR 1202.

Right to amend claim for refund of taxes after time for filing has expired. 113 ALR 1291.

Permissive or mandatory character of legislation providing for refund of taxes illegally assessed or collected. 103 ALR 817.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted. 98 ALR 284.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities when tax sale proves invalid. 77 ALR 824, supplemented in 116 ALR 1408.

15-17-316. Definitions.

Compiler's Comments

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

15-17-317. Municipality as purchaser.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 at end of third sentence substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1989 Amendment: Near beginning of first sentence, in clause relating to tax sale, deleted "15-17-207" and removed brackets from around "15-17-214" and in clause relating to assignment deleted "15-17-208" and "15-17-303" and removed brackets from around "15-17-214" and "15-17-323".

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Code Commissioner Correction — Bracketed References: Chapter 587, L. 1987, repealed the former tax sale procedure and replaced it with a new procedure. Chapter 587 repealed 15-17-207, 15-17-208, and 15-17-303. The Code Commissioner has inserted the corresponding sections from Ch. 587 in brackets.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

Attorney General's Opinions

Collection of Delinquent Taxes From Assignee — Exception for Municipality: If a county assigns its interest as purchaser of a tax sale certificate, it must collect from the assignee all delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency. The only exception is if the county assigns its interest to a municipality under this section, in which case a municipality is excused from paying delinquent assessments. 43 A.G. Op. 38 (1989).

15-17-318. Assignment of municipality's interest.

Compiler's Comments

1989 Amendment: In (2), in clause relating to form of certificate, deleted "15-17-303" and removed brackets from around "15-17-212".

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Code Commissioner Correction — Bracketed Reference: Chapter 587, L. 1987, repealed the former tax sale procedure and replaced it with a new procedure. Chapter 587 repealed 15-17-303. The Code Commissioner has inserted the corresponding section from Ch. 587 in brackets.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

Attorney General's Opinions

Assignment of Interest Only After Payment of Purchase Price and Delinquent Assessment: After a municipality has purchased a county's interest in tax sale property pursuant to 15-17-317, the municipality must reassign that interest only if a subsequent purchaser pays the municipality's purchase price and the delinquent assessment, plus penalties, interest, and costs. 43 A.G. Op. 38 (1989).

15-17-319. Sale or lease and disposition of proceeds from lands acquired by municipality.

Compiler's Comments

1993 Amendment: Chapter 369 in two places, in first sentence after "sell", inserted "donate"; and made minor changes in style. Amendment effective April 16, 1993.

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

15-17-320. Taxes and subsequent installments of special assessments on land acquired by a municipality.

Compiler's Comments

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

15-17-323. Assignment of rights — form.

Compiler's Comments

2001 Amendment: Chapter 472 in (1) in middle inserted "after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5)"; inserted (2)(b) requiring copy of assignment certificate to be mailed to person assessed taxes; inserted (5) requiring 2 weeks' notice of proposed payment by certified mail and proof of mailing prior to payment of delinquent taxes, penalties, interests, and costs; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 51 in (2) in first paragraph after "year" substituted "20..." for "19..." and at end of third paragraph after "day of ....." substituted "20..." for "19..."; and made minor changes in style. Amendment effective January 1, 2000.

Administrative Rules

ARM 42.19.1301 Tax sale certificates — definitions.

ARM 42.19.1302 Tax sale certificates — form.

Attorney General's Opinions

Collection of Delinquent Taxes From Assignee — Exception for Municipality: If a county assigns its interest as purchaser of a tax sale certificate, it must collect from the assignee all delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency. The only exception is if the county assigns its interest to a municipality under 15-17-317, in which case a municipality is excused from paying delinquent assessments. 43 A.G. Op. 38 (1989).

15-17-324. Assessment of property sold at tax sale.

Attorney General's Opinions

County Not Required to Pay Special Assessments After Tax Sale: It would be illogical to consider a county the purchaser of a tax sale certificate, without payment of delinquent taxes and assessments, when no other purchaser comes forward at a tax sale, and then to place responsibility on the county for payment of future assessments. Therefore, when a county becomes a purchaser of a tax certificate pursuant to 15-17-214, the county is not required to pay special assessments levied against the property after the tax sale. 43 A.G. Op. 38 (1989).

Part 9
Sale of Personal Property

Part Case Notes

Invalid Application — Flathead Reservation Indians: Subsection (1) of 15-17-901 (now repealed) is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Part Collateral References

Taxation *key* 582.

84 C.J.S. Taxation §1044, et seq.

72 Am. Jur. 2d State and Local Taxation §779.

15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property.

Compiler's Comments

1999 Amendment: Chapter 197 inserted (3)(a)(ii) requiring sale to be conducted pursuant to 25-13-701(1)(b); inserted (3)(a)(iii) requiring sale to be noticed as treasurer's sale; inserted (3)(b) requiring return to be signed by sheriff; in (4)(a) in first sentence at beginning deleted "For

seizing and selling personal property", after "charge $25" inserted "or a fee set by the county commissioners", and after "plus" substituted language regarding cost as defined in 15-17-121 of collection of property taxes for "mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property seized" and substituted last sentence requiring cost to be assessed against delinquent taxpayer in addition to amounts charged under subsection (4)(b) for "The charge and other costs may be charged only when property is actually seized and offered for sale or sold"; inserted (4)(b) entitling sheriff to certain amounts provided in 7-32-2141 and 7-32-2143 as assessment against taxpayer; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 4, Ch. 197, L. 1999, provided: "[This act] applies to any levy and sale begun after September 30, 1999."

1993 Special Session Amendment: Chapter 27 in (2) substituted "15-16-119" for "15-16-113"; in (4), before "treasurer", inserted "county"; and in (9), after "clerk", inserted "and recorder". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 36 in (3) deleted former second sentence that read: "The minimum bid for any property offered for sale must be of a sufficient amount to pay the delinquent taxes, including penalties, interest, and costs"; substituted (6)(a) concerning proceeds of sale for former subsection that read: "All money collected from the sale of property in liquidation of the delinquency, including delinquent taxes, penalties, and interest but not costs, must be credited by the treasurer to the appropriate funds"; inserted (9) allowing cancellation of personal property taxes remaining unsatisfied after sale of personal property; and made minor changes in style.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: Inserted (8) relating to suspended or canceled delinquent property taxes under Title 15, ch. 24, part 17. Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Case Notes

County Tax Lien Not Restricted to Specific Property Against Which Tax Assessed: The plaintiff had designated that the proceeds of the auction of certain of his personal property should go to pay creditors. The county argued that it should be able to levy on and seize the funds for taxes owed. The Supreme Court ruled that the county could attach the proceeds even though the taxes owed had not been assessed against the property sold at the auction. Statutes providing for the seizure and sale of personal property as a means of discharging a tax lien have no application when the property seized is money. Inman v. Farmers Nat'l Co., 240 M 182, 783 P2d 1328, 46 St. Rep. 2038 (1989).

Attorney General's Opinions

Seizure of Mobile Home Upon Delinquency of First-Half Taxes: If the owner of a mobile home that is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of 15-16-102 apply, and the mobile home may be seized and sold for delinquent taxes pursuant to 15-16-113 (now repealed) and/or this section. 42 A.G. Op. 95 (1988).

CHAPTER 18
OWNERSHIP INTERESTS IN LAND SOLD FOR TAXES

Chapter Compiler's Comments

Transition: Section 61, Ch. 587, L. 1987, provided: "(1) (a) Except as provided in subsection (1)(b), for the purpose of implementing the provisions of Title 15, chapters 17 and 18, no tax deed may be applied for or issued during the period between April 23, 1987, and July 1, 1988.

(b) A tax deed may be issued between April 23, 1987, and July 1, 1988, if the tax deed is issued for property on which property taxes are delinquent for 1982 and prior years. In such a

case the tax deed is to be issued based on the procedures provided for in Title 15, chapters 17 and 18.

(2) During the period between April 23, 1987, and July 1, 1988, the county clerk and county treasurer of each county shall cooperate in identifying all property in their respective counties on which the taxes are delinquent or on which a tax sale certificate or assignment certificate was issued.

(3) Not less than 60 days or more than 90 days prior to July 1, 1988, the county clerk in each county shall give notice, as provided in 15-18-212, for each property on which the taxes have been delinquent for the 3 preceding years or more or for which there had been issued a tax sale certificate to the county and for which the board of county commissioners has directed the county treasurer to issue a tax deed.

(4) After January 1, 1988, and before May 1, 1988, the county clerk shall send a notice to each purchaser other than the county and to each assignee who has taken an assignment from the county. The notice must be sent by certified mail and contain a statement apprising the purchaser or assignee of his obligation to give notice as required in 15-18-212. The county clerk shall also publish in the official newspaper of the county or such other newspaper as the board of county commissioners may designate a general notice to all purchasers and assignees stating the obligations to the purchaser or assignee regarding the notice required in 15-18-212."

Chapter Case Notes

Tax Deed and Sale Proceedings Invalid for Lack of Jurisdiction — County's Reversionary Interest Relinquished by Settlement to Heirs of Pretax Deed Owner: Rosebud County applied for and received a tax deed pursuant to law (now repealed) and subsequently quitclaimed all but a royalty interest in the property. The Stanfords brought an action in District Court, alleging the invalidity of the tax deed and alleging that they were the owners of a royalty interest in the property. The county settled its interest in the action by relinquishing all its interests in the property. The District Court held that the tax deed was invalid but awarded the property to another party. The Supreme Court found that the tax deed was invalid under the former law because the proceedings on tax sales are in invitum. Citing King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), the court held that the failure to file an affidavit of notice of application for the tax deed, the fact that there was a recitation in the notice for application of a tax deed that the time for redemption had "long since expired" (contrary to the law), and the failure of the record to include an "affidavit of notice of tax sale" resulted in a lack of jurisdiction in the County Treasurer to issue the tax deed. The reservation of the royalty interest by the county survived the defective tax sale, and when the county relinquished all rights to its royalty interest as part of the settlement agreement, that interest reverted to the pretax sale owner. The heirs of that owner thus had a prima facie claim to the royalty interest. Stanford v. Rosebud County, 251 M 128, 822 P2d 1074, 48 St. Rep. 1124 (1991).

Attorney Fees to Intervenor — Attorney Also Retained by Title Insurance Company: Where fees related to a buyer's efforts to defend title subsequent to seller's refusal to do so, fees were recoverable against the seller despite the fact that buyer's attorney was also retained by the title insurance company that undertook the title defense of the case. McDonald v. Grassle, 228 M 25, 740 P2d 1122, 44 St. Rep. 1312 (1987).

Costs and Attorney Fees in Action Collaterally Attacking Tax Deed Procurement Action Judgment: This section, providing for costs and attorney fees in an action to procure a tax deed, does not allow them to be granted to a plaintiff bringing a collateral action to attack the judgment against her in an action to procure a tax deed. Kahle v. Smithers, 225 M 452, 733 P2d 844, 44 St. Rep. 394 (1987).

Failure of Affidavit for Service by Publication to State "Residence of the Defendant Is Unknown": In an action to procure a tax deed, an affidavit for publication stating that defendant could not be found in the State of Montana did not satisfy the requirement of Rule 4D(5)(e), M.R.Civ.P. (Title 25, ch. 20). The key fact required in an affidavit for publication is that the affidavit state that the residence of defendant is unknown. The affidavit was thus insufficient, and service was insufficient to obtain jurisdiction over defendant. Therefore, she could collaterally attack the judgment against her in the action for procurement of a tax deed by bringing a separate action. It was reversible error for the lower court to grant summary judgment against her in her separate action on the ground that her case was barred by res judicata as a result of the judgment against her. Kahle v. Smithers, 225 M 452, 733 P2d 844, 44 St. Rep. 394 (1987).

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log

cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Nature of Title Conveyed: A tax deed creates a paramount title, which by its nature is not derivative and creates a new title in the nature of an independent grant from the sovereign, striking down the former owner's fee title. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed in 698 F2d 1230 (9th Cir. 1982).

Prior Recorded Reserved Mineral Rights Not Subject to Lien: Where a deed reserving coal and mineral rights was recorded after taxes on the land attached by statute but before the actual assessment of taxes and before the tax sale, the tax lien did not attach until after the recordation of the deed and thus the tax deed did not carry with it and convey the reserved coal and mineral rights. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed in 698 F2d 1230 (9th Cir. 1982).

Prior Reserved Mineral Estate Not Affected by Deed: The paramount title of a tax deed does not extinguish a vested mineral estate in the land reserved prior to any delinquent tax assessments upon the surface estate. A grantor who has reserved a mineral estate has freed himself from any subsequent tax assessment and cannot be stripped of the reserved title due to the surface owner's failure to pay taxes. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed in 698 F2d 1230 (9th Cir. 1982).

Attorney Fee: Even though defendant in a quiet title action for a tax deed had not prayed for a reasonable attorney fee she should have been allowed one as the successful party. Plaintiff was not entitled to attorney fees as "successful party" because that designation was intended to mean the party obtaining the tax deed and not the party receiving reimbursement for taxes, penalties, and interest paid. Niles v. Carbon County, 174 M 20, 568 P2d 524 (1977).

Creditors of Deceased Owner: Section 84-4150, R.C.M. 1947 (now repealed), cut off the rights of creditors of a deceased landowner unless they could bring themselves within the exceptions stated in the section, and they must look to other assets of the estate for satisfaction of their claims. Madden v. Zimmerman, 166 M 285, 532 P2d 414 (1975).

Alternate Methods of Obtaining Tax Deed: The holder of a tax sale certificate may obtain a deed through notice under 15-18-202 (now repealed) or through action pursuant to 15-18-301 (now repealed). U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Collateral Attack: Decree in favor of plaintiff, son of deceased, in action to procure tax deed could not be collaterally attacked in condemnation proceedings on the ground of defective service where it was expressly found that defendant son, and the administrator of the estate of the deceased, were the same person and that all defendants had been duly and legally served and there was no suggestion that creditors of the deceased or estate yet remained to be paid, or that final settlement of the estate would be dependent upon this asset. U.S. v. Hoerner, 157 F. Supp. 563 (D.C. Mont. 1957).

Void Assessment: When county assessed tax on minerals and mineral rights under the land but did not assess a tax on the party's right of entry for mining purposes, a tax deed based on such proceeding was void since under Art. XII, sec. 3, 1889 Mont. Const., minerals or mineral rights could not be taxed. Lehfeldt v. Adams, 130 M 395, 303 P2d 934 (1956).

Priority of Liens: Prior to the 1937 amendment, taxes assessed against personal property for general purposes and which became a lien upon lands of owner were superior to assessments to pay interest on bonds, or for other purposes in connection with the irrigation district. U.S. v. Markey, 87 F. Supp. 102 (D.C. Mont. 1947), modified in Dawson County v. Hagen, 177 F2d 186 (9th Cir. 1949).

Expiration of Period of Redemption: Section 15-18-101 (now repealed) provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed". Section 15-18-309 (now repealed) mentions "the date of the expiration of the period for redemption", but since, under 15-18-202 (now repealed), the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in 15-18-309 (now repealed) is the time of the application for tax deed. Hartman v. Nimmack, 116 M 392, 154 P2d 279 (1944).

Tax Deed as Extinguishing Special Improvement Assessments Payable Before Its Execution: A general tax lien and a special improvement assessment lien are not of equal rank. Support of government is higher obligation than cost of local improvement. Where a special assessment for city improvement became delinquent on November 30, 1940, and was certified by the city to the County Clerk on December 7, 1940, and by the County Treasurer entered upon the tax rolls as a

lien against the property, a county tax deed issued on December 23, 1940, extinguished the lien for the 1940 installment of the city special improvement assessment, because under 15-18-309 (now repealed) such assessment installment was payable before execution of the tax deed. Hartman v. Nimmack, 116 M 392, 154 P2d 279 (1944), explained in U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Implied Amendment — Lien of Special Improvement Assessments: The title conveyed by a tax deed issued in 1936 pursuant to notice under 15-18-202 (now repealed) is controlled by 15-18-309 (now repealed) which impliedly amended 15-18-403 (now repealed) confining the exception to taxes as distinguished from special improvement assessments. This holding is expressly limited to special assessments made after enactment of 15-18-309 (now repealed), as against the suggestion that it is retroactive and offends against Art. XV, sec. 13, 1889 Mont. Const. (see Art. II, sec. 31, 1972 Mont. Const.). Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Waiver of Priority of General Tax Lien: While the lien of general taxes is superior to that of special assessments, the Legislature has power to waive the priority of such lien and postpone it to that of special assessments. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

New Title in Nature of Independent Grant: When landowner commenced suit to enjoin an irrigation district from assessing the land for interest on bonds of the district under former law, the bonds constituted an encumbrance upon the land within the district which was extinguished by the tax deed taken by the county, the deed creating a new title extinguishing all former titles and liens not expressly exempted from its operation. Rosebud Land & Improvement Co. v. Carterville Irr. District, 102 M 465, 58 P2d 765 (1936), explained in Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Chapter Attorney General's Opinions

Payment of Special Assessments Due Prior to Deed Issuance: Following the issuance of a tax deed to a county, the county is not responsible for payment of delinquent special assessments, accelerated under authority of 7-12-4183, due prior to issuance of the deed. 41 A.G. Op. 77 (1986).

Tax Deed Purchaser — No Recovery of Personal Property Tax Owed: The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer. The taxpayer's right, title, and interest in the property are cut off by issuance of a tax deed. The taxpayer's obligation is satisfied by his forfeiture of the property. The grantee acquires only title to the property, not a right to proceed further against the taxpayer. 39 A.G. Op. 53 (1982).

Tax Deeds — Improvement District Assessments: A county acquiring title to real property by tax deed is liable for the payment of installments of special improvement assessments that become due after the execution of the tax deed. The issuance of a tax deed extinguishes the lien for installments of special improvement assessments on the property that became due before the execution of the tax deed. 29 A.G. Op. 40 (1962).

Chapter Law Review Articles

Tax Titles in Montana, 20 Mont. L. Rev. 73 (1958).

Chapter Collateral References

Lis Pendens *key* 3; Taxation *key* 753 through 766, 777 through 789.

54 C.J.S. Lis Pendens §8; 85 C.J.S. Taxation §1402, et seq.

72 Am. Jur. 2d State and Local Taxation §§885, 891 through 893.

Tax sales or forfeitures by or to governmental units as interrupting adverse possession. 50 ALR 2d 600.

Rights of purchaser at tax sale where property is taken in eminent domain. 45 ALR 2d 534.

Tax deed, tax sale certificate, and the like, as constituting color of title. 38 ALR 2d 986.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 1
Redemption

Part Compiler's Comments

Section Not Codified: Section 84-4132.1, R.C.M. 1947, which allowed hospitals, charitable corporations, and nonprofit associations a special redemption privilege prior to December 1, 1957, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 112, L. 1957.

Part Case Notes

Effect of Defective Description in Notice of Application for Tax Deed: In his notice of application for a tax deed, appellant described property by reference to a nonexistent "Tract 1 in H.E.S. 735" and failed to indicate north or south for the township and east or west for the range. In this situation, the notice was held inadequate to identify the land and therefore fatally defective. Such defective notice deprived the County Treasurer of jurisdiction to issue a tax deed. Therefore, because no valid tax deed had been issued, the right of redemption had not terminated. Walters v. Kruse, 219 M 386, 712 P2d 780, 43 St. Rep. 33 (1986).

Running of Redemption Period: The redemption period began to run the day the county purchased the land by tax certificate, and the right of redemption is cut off only by the application for a tax deed. Therefore, a property owner was not prejudiced by the exercise of application for a tax deed 7 days after gaining ownership of a tax certificate for the land. Madden v. Zimmerman, 166 M 285, 532 P2d 414 (1975).

Assignee's Right to Redeem: Occupier of land who was assignee of tax sale certificate held lien on the land under 15-17-206 (now repealed), and thus had right to redeem subsequent certificate at any time before notice and application for tax deed. State ex rel. Burkhartsmeyer Bros. v. McCormick, 162 M 234, 510 P2d 266 (1973).

Check as "Lawful Money": Use of a check by the Small Business Administration in the redemption of tax delinquent property by the United States constituted "lawful money" under 15-18-105 (now repealed), and certificate of redemption issued to the government 4 days before defendant filed application for tax deed was valid. U.S. v. Johnston, 247 F. Supp. 707 (D.C. Mont. 1965).

Right of Cotenant on Mining Property to Redeem: Under the provisions of 70-1-311 (now repealed) and 70-19-202, where a mining company neglected to pay its taxes, a cotenant, having a right to operate the mining property and pay all expenses of the operation and account to other cotenants, had sufficient interest in patented mining claims, separately assessed to the mining company, to permit her to redeem the property from a tax sale. Dudley v. Higgins, 141 M 140, 375 P2d 689 (1962), followed in Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163, 56 St. Rep. 334 (1999).

Loss of Right to Redeem: When right of redemption is not exercised before issuance of tax deed, the right of redemption is lost. Beckman Bros. v. Weir, 120 M 305, 184 P2d 347 (1947).

Right of Preferential Purchase: In addition to the right to redemption before the issuance of a tax deed, the law gives the former owner a preferential right to purchase the property from the county after the issuance of a tax deed by complying with 7-8-2303. Beckman Bros. v. Weir, 120 M 305, 184 P2d 347 (1947).

Period of Redemption as Expiring on Application for Tax Deed: Section 15-18-101 (now repealed) provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed". Section 15-18-309 (now repealed) mentions "the date of the expiration of the period for redemption", but since under 15-18-202 (now repealed), the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in 15-18-309 (now repealed) is the time of the application for tax deed. Hartman v. Nimmack, 116 M 392, 154 P2d 279 (1944).

Taxes Paid by Indians — Recovery by Federal Government: Where patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians, in paying a tax, had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however, government could not recover interest on the taxes so paid. Glacier County v. U.S., 99 F2d 733 (9th Cir. 1938).

Suit as for Debt Not Authorized: Failure of owner of realty to pay taxes levied on the realty does not ordinarily subject him to a suit as for a "debt" due within the ordinary meaning of that word. Calkins v. Smith, 106 M 453, 78 P2d 74 (1938).

Computation of Tax Due: While the assessment roll, when completed and certified by the Assessor as required by statute, may not be varied or contradicted by records made under the classification of lands act showing the full and true value of each 40-acre subdivision, the records are admissible in a mandamus proceeding to compel a County Treasurer to compute the tax due on a portion of a tract of land assessed in bulk so as to enable a redemptioner to redeem that portion from tax sale, under 15-18-103 (now repealed), for the purpose of showing that the information was available to the Treasurer from the records to enable him to make such computation. State ex rel. Fed. Land Bank v. Hays, 86 M 58, 282 P 32 (1929).

Constitutionality: Section 15-18-103 (now repealed), in requiring the County Treasurer, upon the request of one seeking to redeem from tax sale a portion of a tract of land on which he holds a mortgage and which portion had not been separately assessed, to compute and apportion the tax on the portion sought to be redeemed, is not unconstitutional as conferring the powers of an assessor upon the Treasurer in a special and limited class of cases (Art. V, sec. 26, 1889 Mont. Const., now Art. V, sec. 12, 1972 Mont. Const.), nor as authorizing levy and collection of taxes in any other manner than by general law (Art. XII, sec. 11, 1889 Mont. Const., now Art. VIII, sec. 1, 1972 Mont. Const.). State ex rel. Fed. Land Bank v. Hays, 86 M 58, 282 P 32 (1929).

Redemption by Mortgagee: When a tract of land not assessed in 40-acre divisions had been sold for taxes and the mortgagee, desiring to redeem a portion of the land, demanded of the County Treasurer that he compute and apportion the taxes delinquent upon each 40-acre tract, it was the legal duty of the Treasurer to comply with the demand and the trial court erred in refusing to compel him by Writ of Mandate to perform that duty. State ex rel. Fed. Land Bank v. Hays, 86 M 58, 282 P 32 (1929).

Payment by County Treasurer on Promise of Taxpayer to Pay: When a County Treasurer, on the last day on which redemption of property from tax sale could be made, on the strength of a telegram received by him from the attorneys of the delinquent owner that on that day a check covering the redemption money had been mailed in New York City, paid the amount due out of his own funds, and mailed a certificate of redemption to the attorneys, although under 15-18-105 (now repealed) redemption must be made in lawful money, there was clear violation of his official duty, and the District Court committed error in dismissing the action of the holder of the certificate of sale to the property seeking to compel the Treasurer by Writ of Mandate to issue to him a tax deed to the property. State ex rel. Bell v. McCullough, 85 M 435, 279 P 246 (1929).

Right to Redeem — Generally: The right to redeem property from tax sale is wholly statutory and the statutes relating to redemption must be liberally construed, but the person seeking to redeem must bring himself within their provisions. State ex rel. Bell v. McCullough, 85 M 435, 279 P 246 (1929). See also State ex rel. Fed. Land Bank v. Hays, 86 M 58, 282 P 32 (1929).

Notice of Amount Due: Under 15-18-102 and 15-18-104 (both now repealed), requiring a redemptioner to pay, in addition to the amount for which the property was sold, subsequent taxes paid by the purchaser, and 15-18-202 (now repealed) declaring that the notice which the purchaser must give when he applies for a tax deed must contain "the amount due", a notice of application for a deed to land sold for taxes assessed against it in 1921, including a statement of the amount due for taxes for the year 1920, did not state the correct amount due and was invalid and, therefore, the deed based thereon was likewise void. Tilden v. Chouteau County, 85 M 398, 279 P 231 (1929).

Part Attorney General's Opinions

No Tolling of Redemption Period by Part Payment: Payment of all taxes and other payments due during the redemption period is required for redemption to occur. The redemption period cannot be tolled by payment of part of the amount due. 40 A.G. Op. 15 (1983).

Part Collateral References

Taxation *key* 695 through 725.

85 C.J.S. Taxation §1242, et seq.

72 Am. Jur. 2d State and Local Taxation §§898 through 940.

Constitutionality, construction, and application of statute as to effect of taking appeal, or staying execution, on right to redeem from execution or judicial sale. 44 ALR 4th 1229.

Application of tax redemption statutes to separate mineral estates. 56 ALR 2d 621.

Who may redeem corporate property. 54 ALR 2d 1172.

Extension of periods of redemption for certain military personnel. 32 ALR 2d 620.

Holder of tax certificate as affected by public official's waiver of or failure to require compliance with condition of redemption. 21 ALR 2d 1273.

Right of person under disability to redeem from tax sale. 159 ALR 1467; 65 ALR 582.

Retroactive application to previous sales of statutes reducing period of redemption from tax sales as unconstitutional impairment of contract obligations. 147 ALR 1123.

Constitutionality, construction, and application of statutes providing for partial or proportional redemption from tax sale. 145 ALR 1328.

Public officer's right to redeem from tax sale for benefit of owner. 66 ALR 1035.

Right of receiver to exercise insolvent's right to redeem from tax sale. 35 ALR 262.

Property Tax Delinquencies, Tax Sales, and Tax Deeds, 1986 Interim Report, Montana Legislative Council.

15-18-111. Time for redemption — interested party.

Compiler's Comments

1995 Amendment: Chapter 248 near beginning of (2) substituted "special improvement district assessments or rural special improvement district assessments" for "taxes or special assessments"; and made minor changes in style.

1989 Amendment: In (2) increased time to 24 months from 18 months.

1987 Amendment: In (1) inserted "Except as provided in subsection (2)"; and inserted (2) relating to redemption of property tax lien on property subdivided as a residential or commercial lot.

Case Notes

Miscalculation of Amount Necessary to Redeem Tax Lien — No Violation of Assignee's Constitutionally Protected Property Rights — Section 1983 Claim Properly Dismissed: Shepherd held an assignment of the tax sale certificate on real property in Red Lodge. A few days before the redemption period was to expire, the owner of record redeemed the property by paying $4,407.28, but the County Treasurer unintentionally overlooked an additional $56.30 in interest that had accrued between the date that notice was given that a tax deed would be issued and the date of redemption. Shepherd then filed a complaint under 42 U.S.C. 1983, alleging that the county's failure to collect the statutorily required amount for redemption deprived Shepherd of a property interest without due process of law. Shepherd sought $250,000 in general damages, punitive damages, and attorney fees and costs. Shortly thereafter, the county tendered Shepherd $56.30 plus interest, but Shepherd rejected the money and added a negligence claim to the complaint. The District Court dismissed the section 1983 claim on grounds that Shepherd failed to state a claim upon which relief could be granted, and awarded summary judgment to the county on the negligence claim, subject to the payment of $60.73 of accumulated interest then owed to Shepherd. Shepherd appealed, but the Supreme Court affirmed. Without ruling on whether Shepherd had a property right, the Supreme Court concluded that the claim failed as a matter of law. To prevail on a section 1983 claim pursuant to Orozco v. Day, 281 M 341, 934 P2d 1009 (1997), plaintiff must establish a violation of federal constitutional or statutory rights proximately caused by the conduct of a person acting under color of state law. Shepherd alleged a violation of the federal constitutional right to due process, but the process due in this case pertained to the redemption of tax liens under Montana law, and except for the inadvertent miscalculation of interest due, that process was followed. The miscalculation was at most a ministerial error, and to equate the miscalculation with a denial of due process would trivialize the constitution and the important remedial purpose of section 1983. Because there was no denial of due process, there was no section 1983 claim, and the District Court properly dismissed Shepherd's claim pursuant to Rule 12(b), M.R.Civ.P. (Title 25, ch. 20). Shepherd v. Carbon County Bd. of Comm'rs, 2002 MT 98, 309 M 391, 46 P3d 634 (2002).

Proper Deposit of Leasehold Interest Entitling Leaseholder to Notice and Right to Redeem Property Tax Lien: Section 15-18-212 requires that the purchaser or assignee of a tax sale certificate notify all persons interested in the property, including a person with properly recorded interest in the property, that a tax deed will be issued to the purchaser unless the tax lien is redeemed prior to the expiration date of the redemption period. Under 70-21-209, an acknowledged or certified instrument is considered recorded when it is deposited with the appropriate County Clerk and Recorder. In this case, an instrument reflecting plaintiffs' interest as assignee of a vendor's interest in the contract for sale of a cabin and leasehold, which constituted real property, was properly recorded at the Lewis and Clark County Clerk and Recorder's office, so plaintiffs were entitled as an interested party to notice by certified mail pursuant to 15-18-212; however, no notice was given. Plaintiffs' right to redeem the property tax lien continued indefinitely until proper notice was given; thus, a tax deed subsequently issued by the county was void for failure to comply with the notice provisions of 15-18-212. Ditto v. Kipp, 2000 MT 162, 300 M 278, 3 P3d 647, 57 St. Rep. 679 (2000). See also Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163 (1999).

Failure to Provide Co-Owner Notice of Issuance of Tax Deed — No County Jurisdiction to Issue Tax Deed: Kneedler was owner of a one-half undivided interest in a parcel of property. The co-owners failed to pay their portion of the property taxes, so the county sent them a notice of tax delinquency, but the notice was not sent to Kneedler. A tax sale was held, and the county purchased the tax lien against the co-owners, but the county's tax sale certificate was never assigned. Taxes on the property remained delinquent, so the County Commission directed that a tax deed be issued to the county for the co-owners' one-half interest in the property. Notice of the impending tax deed was sent to the co-owners, but not to Kneedler. Following sale of the county's

interest to another party, Kneedler filed an action challenging the validity of the county's tax deed for failure to provide Kneedler with proper notice pursuant to 15-18-212. The District Court found that Kneedler lacked standing because she did not qualify as an interested party or as a current occupant of the property and granted summary judgment to the county, dismissing Kneedler's complaint with prejudice. Applying Dudley v. Higgins, 141 M 140, 375 P2d 689 (1962), the Supreme Court held that Kneedler was an interested party with the right to redeem property subject to a tax lien, even though the individual property interests were assessed separately for tax purposes. Further, nothing in the statutes permits or authorizes a county to tax an undivided interest in a jointly owned piece of property separately from the interests of the other cotenants because under 15-8-307, the general rule is that land be assessed in parcels. This form of assessment infringes upon the rights normally afforded to tenants of jointly owned property, including the cotenants' right to pay taxes before they become delinquent. Thus, the District Court erred in granting summary judgment to the county because as co-owner, Kneedler was entitled to notice of the issuance of the tax deed and Kneedler's right of redemption continued indefinitely until proper notice was given. Failure to provide notice deprived the county of jurisdiction to issue a tax deed and rendered the tax deed void. Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163, 56 St. Rep. 334 (1999). See also Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28 (1998).

Notice Required to Occupant Upon Redemption of Noncommercial Property: Wests contended that notice to the occupants of property subject to redemption was not required because the parcel in question was previously used as a railroad right-of-way and was therefore commercial property. On appeal, the Supreme Court noted that the deed that created the right-of-way was dated 1910 and that the subdivision statutes thus did not apply. Further, the railroad abandoned the right-of-way and there was no indication that the property was later used for commercial purposes. Notice to the occupant of the property was therefore required under subsection (1) of this section. Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

Attorney General's Opinions

Redemption Period Not Tolled — Partial Payment of Delinquent Taxes: Partial payment of delinquent property taxes does not toll the period of redemption. The intent of this section was to give taxpayers a break on payment of delinquencies but to do so within the confines of the statutory redemption period. 42 A.G. Op. 117 (1988).

15-18-112. Redemption from property tax lien — lien on interest in property for taxes paid.

Compiler's Comments

2001 Amendment: Chapter 444 inserted (3) providing that a redemptioner of a property tax lien has a lien for taxes paid on any portion of the property not owned by the redemptioner; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1989 Amendment: In (1), at beginning, inserted exception clause; in (2), before "with interest", substituted "assessed" for "paid by the purchaser", after "with interest" inserted "and penalty", and at end deleted "from the date of the payment of the taxes, penalties, interest, and costs"; inserted (3) relating to partial payment redemption for a particular tax year; and made minor change in form. Amendment effective May 22, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 704, L. 1989, provided: "A statement of intent is not required for this bill but is included to make clear that the purpose of this bill is to clarify the provisions of Senate Bill No. 162 (Chapter 587, Laws of 1987), relating to partial payments of delinquent property taxes and to the procedures governing the sale of property for delinquent taxes.

In addition, this bill defines the term "costs", clarifies how redemption proceeds are distributed, requires a person who redeems property to pay the taxes and other charges that have been assessed since the date of the sale of the tax lien, revises the method by which county tax-deed land is sold, lengthens the notification period prior to issuing a tax deed, changes the time when proof of notice must be filed, and clarifies the effect of the tax deed.

In 1987, the legislature enacted 15-16-102(5) authorizing the partial payment of delinquent property taxes. The attorney general in 42 Attorney General Opinion [42 A.G. Op. 71 (1988)] opined, however, that a partial payment made pursuant to 15-16-102(5) does not toll the redemption period. In order to redeem the property, the attorney general stated that the

taxpayer had to pay all of the delinquent taxes, including penalty and interest, plus all subsequently assessed taxes.

The intent of this bill is to reverse the attorney general's opinion. It is the intent of the legislature that each tax year for which property taxes are delinquent has a separate 36- or 18-month redemption period. If a partial payment is made for a particular tax year, a tax deed may not be issued based on that tax year because the taxes for that year have been paid.

For example, assume that the 1984, 1985, 1986, 1987, and 1988 property taxes are delinquent. Assume further that a 36-month redemption period applies to the property on which the taxes have not been paid. In February 1989, the current year, as that term is used in 15-16-102(5), is the 1988 tax year for which taxes are due on November 20, 1988, and May 31, 1989. The 36-month redemption period has expired for 1984, and it will expire for the 1985 taxes in the summer of 1989. This bill contemplates that a taxpayer may pay his 1988 taxes, even though the first half is delinquent. After the 1988 taxes are paid, the taxpayer may redeem the property for the 1984 tax year by paying the 1984 taxes.

The taxpayer may still lose his property unless he pays his 1985 taxes before the tax deed is issued. Because the current year and the most delinquent year are paid, the taxpayer may redeem the property for the 1985 tax year by paying the 1985 taxes.

In 1990, the taxpayer would have to pay the 1989 taxes before he could pay the 1986 taxes to redeem the property for the 1986 tax year. Following this pattern, the taxpayer would be current on all taxes after 3 years.

As used in this statement of intent, taxes include penalty, interest, and costs."

15-18-113. Treasurer to record redemptions.

Compiler's Comments

1999 Amendment: Chapter 446 in (1) inserted second sentence requiring execution of a certificate of redemption; inserted (2) setting out the form of redemption certificate; and made minor changes in style. Amendment effective April 22, 1999.

Effective Date — Applicability: Section 6, Ch. 446, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to filings, recordings, or redemptions occurring after [the effective date of this act]."

15-18-114. Distribution of redemption proceeds.

Compiler's Comments

1993 Amendment: Chapter 97 in (2)(b)(i), after "mail", inserted "return receipt requested".

1989 Amendment: In (2)(a) substituted "the county treasurer shall distribute" for "the money received from the redemption, including penalties and interest but not costs, must be distributed" and at end inserted "the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the purchaser other than the county must be distributed pursuant to subsection (1)". Amendment effective May 22, 1989.

Case Notes

Offer of Total Amount Owing Upon Redemption of Tax Lien — Summary Dismissal of Negligence Claim Proper Absent Damages: Shepherd held an assignment of the tax sale certificate on real property in Red Lodge. A few days before the redemption period was to expire, the owner of record redeemed the property by paying $4,407.28, but the County Treasurer unintentionally overlooked an additional $56.30 in interest that had accrued between the date that notice was given that a tax deed would be issued and the date of redemption. Shepherd then filed a complaint under 42 U.S.C. 1983, alleging that the county's failure to collect the statutorily required amount for redemption deprived him of a property interest without due process of law. Shepherd sought $250,000 in general damages, punitive damages, and attorney fees and costs. Shortly thereafter, the county tendered Shepherd $56.30 plus interest, but Shepherd rejected the money and added a negligence claim to the complaint, based on the County Treasurer's improper extinguishment of the lien. The District Court summarily dismissed the negligence claim because Shepherd was offered the full amount of recovery owing under this section, plus interest, prior to litigation. Shepherd appealed, claiming that the redemption process in this section did not apply to cases in which a negligence action is brought for improperly extinguishing a lien, and that 27-1-317 should apply instead, which would allow compensation for all detriment caused by breach of an obligation not arising from a contract. The Supreme Court disagreed and affirmed the summary dismissal of the negligence claim. Regardless of the statute relied on, Shepherd was tendered all the damage caused by the County Treasurer's

omission when he was offered $56.30 plus interest. Had the County Treasurer not miscalculated, that was the full additional amount Shepherd would have received. Once tendered, it was no longer owed, and without damages, there was no claim for negligence. Shepherd v. Carbon County Bd. of Comm'rs, 2002 MT 98, 309 M 391, 46 P3d 634 (2002).

Part 2
Issuing a Tax Deed

Part Compiler's Comments

Sections Not Codified:

Section 84-4153, R.C.M. 1947, which validated tax deeds issued to counties, cities, and towns prior to 1927, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 92, L. 1927.

Section 84-4160, R.C.M. 1947, which validated sales by counties of real property purchased for taxes and the deeds thereto entered into prior to March 9, 1931, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 140, L. 1931.

Section 84-4160.1, R.C.M. 1947, which validated tax deeds issued prior to March 7, 1933, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1933, as amended by sec. 1, Ch. 132, L. 1937; sec. 1, Ch. 94, L. 1939; sec. 1, Ch. 105, L. 1939; and sec. 1, Ch. 171, L. 1947.

Section 84-41-100, R.C.M. 1947, which provided that tax deeds may not be held invalid by reason of the prior failure of the County Commissioners to provide for the classification of the lands in the county as required by former law and which also validated tax deeds issued prior to July 1, 1941, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 61, L. 1941, as amended by sec. 10, Ch. 126, L. 1977.

Part Case Notes

Failure to Notify Current Occupant That Tax Deed May Issue — Quiet Title Deed Properly Voided: Under 15-18-212, notice that a tax deed will be issued unless a property tax lien is redeemed must be made to each interested party and to the current occupant. In this case, defendant knew that plaintiff was the current occupant and knew where plaintiff was located but simply did not provide the requisite notice. Additionally, because plaintiff did not receive adequate notice, the county was without jurisdiction to issue defendant a quiet title decree. Every essential and material step of the tax deed statutes must be strictly followed. Thus, the District Court correctly voided defendant's quiet title decree and granted summary judgment to plaintiff because no genuine issue of material fact existed. Gentry Mont. Enterprises, Inc. v. McDonald, 2004 MT 322, 324 M 67, 101 P3d 767 (2004), following Moran v. Robbin, 261 M 478, 863 P2d 395 (1993).

Standing to Challenge Tax Deed Proceeding: A person claiming title to real estate against another person who claims an adverse interest meets the criteria in 70-28-101 and has standing to bring a quiet title action. In addition, to establish standing to challenge a tax deed proceeding, the following criteria set out in Stewart v. Bd. of County Comm'rs, 175 M 197, 573 P2d 184 (1977), must be satisfied: (1) the complaining party must clearly allege past, present, or threatened injury to a property or civil right; and (2) the alleged injury must be distinguishable from the injury to the public generally, but the injury need not be exclusive to the complaining party. Further, no Montana statute or case law requires a complaining party to have an interest in the subject property at the time of issuance of the tax deed in order to institute a quiet title action. Sanders v. Yellowstone County, 276 M 116, 915 P2d 196, 53 St. Rep. 305 (1996), distinguishing Bowen v. McDonald, 276 M 193, 915 P2d 201, 53 St. Rep. 343 (1996). Sanders was followed, as to prerequisites for standing generally, in In re Paternity of Vainio, 284 M 229, 943 P2d 1282, 54 St. Rep. 858 (1997).

Sufficiency of Notice:

As required by law, Moran mailed notice of pending tax deed issuance to the Robbins at the address contained in the county records of the County Clerk, stating that the redemption date expired September 20, 1992. When that letter was returned unclaimed, Moran then chose to publish notice of the pending tax deed issuance, stating that the redemption date expired October 26, 1992. Without reaching the issue of whether Moran was required to publish notice after the mailed notice was returned, the Supreme Court held that the first notice was abandoned because of the difference in redemption dates. Moran v. Robbin, 261 M 478, 863 P2d 395, 50 St. Rep. 1417 (1993), followed in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994), and Sanders v. Yellowstone County, 276 M 116, 915 P2d 196, 53 St.

Rep. 305 (1996), and distinguished in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Applicants are not required to search records other than those searched in the records of the County Treasurer, Assessor, Classification Department, and Clerk and Recorder because to require an applicant to search other or all legal records and to be on notice of all legal publications which may affect title to the property would be onerous. Madden v. Zimmerman, 166 M 285, 532 P2d 414 (1975).

A notice of application for tax deed dated December 30, 1935, which recited that deed would be applied for on March 3, 1936, was sufficient under statute so far as record owner was concerned. Milne v. Leiphart, 119 M 263, 174 P2d 805 (1946), overruled in King v. Rosebud County, 193 M 268, 631 P2d 717, 38 St. Rep. 1145 (1981).

Under 15-18-202 (now repealed), it is not required that the name of the owner be given, and the fact that it is not addressed to anyone by name does not render it insufficient. The notice may include tracts of land belonging to more than one owner, and a published notice of application for tax deed to mining claims signed by the County Clerk, showing date of application, and describing the claims by name and survey number was sufficient, without naming the county where located, for anyone interested in ascertaining what property was involved. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Statute Not Curative of Void Tax Deed: A curative statute cannot validate a void tax deed. Hudson v. McDonald, 229 M 426, 747 P2d 221, 44 St. Rep. 2106 (1987).

Insufficient Notice of Tax Sale — County Tax Deed Void: County's tax deed was void for insufficient notice of the tax sale and failure to give notice of application for a tax deed to the owners of the property. The county had deeded the land to Swigart, reserving a 6 ¼% royalty interest. Swigart, using a statutory proceeding, applied for and received a deed confirming the tax deed. The confirmation deed did not mention the county's 6 ¼% royalty interest. The confirmation deed was void for failure to give sufficient notice to the owners who had lost the land to the county or to their successors in interest. The two original owners had each had an undivided one-half interest in the land. Plaintiff heirs of one of the original owners sued to quiet title to the county's 6 ¼% royalty interest and then quitclaimed to Swigart's heirs all plaintiffs' interest in the land, reserving a 6 ¼% royalty interest. In return, Swigart's heirs quitclaimed the 6 ¼% royalty interest to plaintiffs. Plaintiffs' quitclaim to Swigart's heirs did not convey or give up any claim plaintiffs had to or any interest they had in the 6 ¼% royalty interest. The court analyzed 10 factors relating to laches and ruled that laches barred plaintiffs' claim and that the 6 ¼% royalty interest was vested in the county. Anderson v. Richland County, 219 M 60, 711 P2d 784, 42 St. Rep. 1843 (1985).

Failure to Assert Royalty Interest in Tax Deed Land — Laches: A tax deed issued to the county in 1930 without affidavits setting forth the statutorily requisite statements as to notice to the owner and as to occupancy was void. The county sold the land to A.O., reserving a 6 ¼% royalty interest. Plaintiff children of the original owner who had lost the land for failure to pay taxes quitclaimed all their interest in the land to A.O.'s successors, reserving their claim to and interest in the 6 ¼% royalty claimed by the county, and in turn A.O.'s successors conveyed to plaintiffs all of the successors' interest in that royalty. Plaintiffs' conveyance cleared the title of any insufficiency in the tax deed proceedings but did not convey or give up plaintiffs' claim to the 6 ¼% royalty interest. Plaintiffs' redemption argument failed because they had never attempted a redemption. After analyzing nine factors relating to laches, the court ruled that laches barred plaintiffs' claim to the county's royalty interest. Richardson v. Richland County, 218 M 48, 711 P2d 777, 42 St. Rep. 1834 (1985), followed in Filler v. Richland County, 247 M 285, 806 P2d 537, 48 St. Rep. 200 (1991). (The court also stated that King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), in which the court concluded that laches was inapplicable because laches did not commence until oil was produced and royalties earned, was incomplete in its laches analysis because the court overlooked the inchoate ownership of the royalty interest.)

Affidavit of Service Defective: Dillon mailed a notice of application for tax deed substantially in compliance with 15-18-202 (now repealed) addressed to "R. G. Mitchell, c/o Gordon L. and Elizabeth L. Long" by certified mail, with return receipt requested. Long received the mail but returned it unopened because it was addressed to Mitchell. Dillon then executed and filed an affidavit of service of notice of application for tax deed. The affidavit stated that notice was served on R. G. Mitchell and Gordon and Elizabeth Long. Notice was not served on Gordon and Elizabeth Long, and therefore the affidavit of Dillon is defective. Unless the requirements of the law in respect to such notice are complied with, a tax deed may not legally issue. Long v. Dillon, 208 M 490, 679 P2d 772, 41 St. Rep. 486 (1984), followed in Hudson v. McDonald, 229 M 426, 747

P2d 221, 44 St. Rep. 2106 (1987). Hudson was followed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Errors and Omissions in Proceeding — No Jurisdiction in Treasurer: Plaintiffs were the alleged successors to J & J Enterprises in a piece of property. Taxes were delinquent on the property. The County Treasurer issued a certificate of tax sale which was eventually assigned to defendant. Plaintiffs deposited the delinquent taxes with the Clerk of Court and were granted summary judgment in their suit for redemption because of alleged errors in defendant's tax deed application procedure. Plaintiffs contended that the documents filed and the notice provided by defendant were so fatally defective as to deny the County Treasurer jurisdiction to issue the tax deed. The notice of application for tax deed overstated the amount necessary to redeem, failed to include a year in the date as to time for redemption, and gave a vague description of the property. The affidavit of notice failed to include a date, had an overly broad property description, failed to include support of proof of service, and failed to demonstrate that the information required in a mailed notice was in fact included in the notice. Defendant also neglected to state when a certified letter containing the notice was mailed. The Supreme Court held that the errors in the notices and affidavit established a prima facie showing of lack of proper notice. Defendant was precluded from relying on the presumption of 15-18-205(2) (now repealed) to enforce the tax deed. The effect of the errors was to deny the Treasurer jurisdiction to issue the deed. Edwards v. Walters, 204 M 374, 664 P2d 932, 40 St. Rep. 914 (1983), followed in Walters v. Kruse, 219 M 386, 712 P2d 780, 43 St. Rep. 33 (1986), and Hudson v. McDonald, 229 M 426, 747 P2d 221, 44 St. Rep. 2106 (1987). See also Moran v. Robbin, 261 M 478, 863 P2d 395, 50 St. Rep. 1417 (1993).

Filing Proof of Service Mandatory and Prohibitory: The provisions of 15-18-204 (now repealed) for filing of proof of service of application for tax deed before the deed can be issued are mandatory and prohibitory, and issued tax deed was void ab initio when no proof of service of notice was filed. McGuiness v. Maynard, 202 M 484, 658 P2d 1104, 40 St. Rep. 230 (1983).

Notice — Jurisdictional in Issuing Tax Deed: Bond owned property in Yellowstone County on which delinquent taxes were due. The County Clerk mailed notice of application for a tax deed to Bond at the address given in his records. The notice was returned unclaimed. The County Clerk then published notice. On October 11, 1979, Bond transferred his interest in the property. On October 23, 1979, the County Clerk executed an affidavit and proof of service in connection with the county's application for tax deeds. On the same day the County Treasurer issued tax deeds. The county later sold the property. Bond and the party who purchased the property from him filed a complaint attacking the issuance of the tax deeds as invalid because of insufficient notice. Bond's 1979 tax statements and the deeds of October 11, 1979, all contained his proper address. The County Clerk's affidavit stated there was no post-office address for Bond in the county records, while the records of both the County Treasurer and County Assessor had his proper address. The Supreme Court upheld the summary judgment granted to Bond because under 15-18-202 (now repealed), the giving of notice is jurisdictional, and unless proper notice was given the tax deed was invalid and therefore void. Yellowstone Inv. & Dev. Corp. v. Yellowstone County, 201 M 290, 654 P2d 508, 39 St. Rep. 2111 (1982), followed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Duty to Search for Information Regarding Owners: Proper notice of delinquent tax sale and application for tax deed was given where buyer mailed registered letters to those listed on the latest county tax receipt records and, upon their return marked "Moved—Not Forwardable", published the required statutory notice. Buyer was not required to search other legal records, such as the probate records, which would have given him added information relative to the owners; rather, it was the duty of the owners to keep the county taxing authorities informed of their current address. Adkins v. Redeye, 196 M 114, 639 P2d 485, 38 St. Rep. 2170 (1981).

No Jurisdiction to Issue Tax Deed: Rosebud County purchased two tracts of land at tax sales held in the late 1930's and 1940's. King, the original owner of one of the tracts, purchased both tracts from the county in 1944. The county reserved a royalty interest of 6.25% of all oil, gas, and minerals recovered from the land. In 1975 oil was discovered on the two tracts. King's personal representative and his ex-wife got a quitclaim deed from the heirs of the original owner of the second tract and brought this action against the county seeking quiet title to the county's reserved mineral interest. The court found that when the County Treasurer issued the tax deed he did not have sufficient proof of service of notice to the owners of the two tracts as required by statute. Because the Treasurer could not have known from the records in his office whether notice had been given within the statutory period, he had no authority to issue the tax deeds, and the tax deeds he did issue were void. The successors in interest of the original owners were entitled to judgment granting them quiet title to the mineral interest claimed by the county. King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981).

Redemption by Owner: When the plaintiff acquired title from the former owner of record subsequent to the initiation of a quiet title action to challenge the defendant's interest, he did not have sufficient interest to redeem the property. Alden v. Johnson, 167 M 60, 535 P2d 168 (1975).

Delay in Redemption: Redeemer's delay of 58 days after receipt of notice under 15-18-202 (now repealed), or until 2 days before expiration of period, was not unreasonable and did not establish defense of laches in redeemer's mandamus suit. State ex rel. Burkhartsmeyer Bros. v. McCormick, 162 M 234, 510 P2d 266 (1973).

Publication of Notice — Proof of Publication: Assignees unable to produce proof of publication of notice of application for tax deed, who had obtained assignment of tax certificate from county after creditors had executed on judgment against debtors from whom the county had taken the property, could not quiet title as against judgment creditors, who had become owners of certificate of sale. Musgrove v. Olds, 144 M 71, 394 P2d 751 (1964).

Alternate Methods of Obtaining Tax Deed: The holder of a tax sale certificate may obtain a deed through notice under 15-18-202 (now repealed) or through action pursuant to 15-18-301 (now repealed). U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Special Assessment by Irrigation District: When irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under 15-18-202 (now repealed). Vail v. Custer County, 132 M 205, 315 P2d 993 (1957).

Improper Affidavit — Deed Void:

When affidavit recited that notice of application was published for 2 consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by 15-18-202 (now repealed), such affidavit was defective and the tax deed fatally defective. Bentley v. Rosebud County, 230 F2d 1 (9th Cir. 1956).

Under the provisions of a prior act (section 2212, R.C.M. 1935), if the affidavit and notice of application for tax deed in the office of the County Treasurer failed to show the required facts of notice, then it was defective and failed to confer power or authority upon the County Treasurer to issue a tax deed. Perry v. Maves, 125 M 215, 233 P2d 820 (1951), followed in Moran v. Robbin, 261 M 478, 863 P2d 395, 50 St. Rep. 1417 (1993).

When affidavit upon which the tax deed was issued was silent as to occupancy, it was insufficient to give the County Treasurer jurisdiction to issue the tax deed. Mitchell v. Garfield County, 123 M 115, 208 P2d 497 (1949); Ross v. First Trust & Sav. Bank, 123 M 81, 208 P2d 490 (1949); Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

The authority to execute the deed must be shown in and appear on the face of the affidavit. Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Section 84-4159, R.C.M. 1947 (now repealed), which limited the time in which an action could have been brought to set aside a tax deed was unconstitutional, and a tax deed, void because of an improper affidavit, gave the defendant no rights under that statute. Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Under 15-18-204 (now repealed) the County Treasurer has no jurisdiction to issue a tax deed until an affidavit showing that the notice of application for the deed as required by 15-18-202 (now repealed), including a statement whether or not the land is occupied, has been given. If it is silent as to occupancy the deed is void. In determining the sufficiency of the tax title proceedings, the records alone can be considered, and defects or omissions may not be corrected or supplied by anything dehors the record. Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

Finding That Land "Unoccupied": Evidence was sufficient to show that the land was unoccupied when the Sheriff went there and found that the land had not been cultivated and no buildings of any kind were upon it. Shumaker v. Tracy, 126 M 477, 253 P2d 1053 (1953), distinguished in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

Service of Notice — Compliance With Statute:

Where the address of the record owner was known, and the Sheriff, as shown by his affidavit of service, sent by registered mail the notice of tax application to the record owner, service of such notice complied with 15-18-202 (now repealed) and no publication in a newspaper was required. Shumaker v. Tracy, 126 M 477, 253 P2d 1053 (1953), distinguished in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

The giving of notice is jurisdictional and when the requirements were not complied with but, on the contrary, were practically disregarded, the deed issued was void. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Provisions similar in character to those contained in 15-18-202 and 15-18-204 (both now repealed) are a limitation on the power of the Treasurer to issue a tax deed and render void any deed issued without statutory compliance. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Necessity of Affidavit:

Without affidavit that shows whether the land is occupied or unoccupied the Treasurer is wholly lacking in power and authority to issue the deed under 15-18-204 (now repealed). Mitchell v. Garfield County, 123 M 115, 208 P2d 497 (1949); Ross v. First Trust & Sav. Bank, 123 M 81, 208 P2d 490 (1949); Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Under former law, the County Treasurer was without authority to issue a tax deed unless the applicant has shown by his affidavit that, where the property is unoccupied, he posted notice of application therefor in a conspicuous place upon the property as required by 15-18-202 (now repealed) and section 2122, R.C.M. 1921 (now repealed), the affidavit constituting the basis upon which the Treasurer acts. Gallash v. Willis, 90 M 148, 300 P 569 (1931).

The affidavit is the basis on which the Treasurer is to act, and the conditions from which his power to issue the deed arises must appear by the affidavit. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Necessity of Notice:

The validity of the tax deed depends upon compliance with the statute authorizing its issuance and a tax deed is void when the notice required by the statute is not given. Mitchell v. Garfield County, 123 M 115, 208 P2d 497 (1949); Ross v. First Trust & Sav. Bank, 123 M 81, 208 P2d 490 (1949); Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949), followed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Until notice is given, the true owner is never foreclosed from challenging the tax proceedings for the lack of notice. Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Treasurer's Knowledge of Service Insufficient: The fact of service of notice or the Treasurer's knowledge of service otherwise than through the affidavit is wholly insufficient to invest him with jurisdiction to issue the tax deed. Mitchell v. Garfield County, 123 M 115, 208 P2d 497 (1949); Ross v. First Trust & Sav. Bank, 123 M 81, 208 P2d 490 (1949); Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Nature of Right of Redemption: The right of redemption granted by 15-18-202 (now repealed) prior to the giving of notice is a vested property right of which the legal owner cannot be legally deprived except by the giving of notice. Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Loss of Right to Redeem: When right of redemption is not exercised before issuance of tax deed, the right of redemption is lost. Beckman Bros. v. Weir, 120 M 305, 184 P2d 347 (1947).

Preferential Right to Purchase: In addition to the right to redemption before the issuance of a tax deed the law gives the former owner a preferential right to purchase the property from the county after the issuance of a tax deed by complying with 7-8-2303. Beckman Bros. v. Weir, 120 M 305, 184 P2d 347 (1947).

Effect of Deed — Statutory Presumption: In action to quiet title based on a tax deed, where record established that a duly certified copy of tax deed was admitted in evidence, that it contained a recital that necessary notice of application for tax deed had been given, that such notice had been given, and that the deed was duly acknowledged and recorded, such a showing, aided by the statutory presumptions of regularity, entitled plaintiff to judgment, notwithstanding failure of record to show whether County Clerk made and filed affidavit of proof of giving notice of application for tax deed. Cavitt v. Seirson, 119 M 437, 175 P2d 767 (1946).

Proof of Notice:

An affidavit filed by County Clerk in County Treasurer's office showing that he deposited in United States post office an envelope containing a copy of notice of application for tax deed, by registered mail, postage prepaid, addressed to record owner of the land, was sufficient proof to justify County Treasurer in issuing tax deed. Milne v. Leiphart, 119 M 263, 174 P2d 805 (1946), overruled in King v. Rosebud County, 193 M 268, 631 P2d 717, 38 St. Rep. 1145 (1981).

Under former law, a tax deed was not even prima facie evidence that the holder of the certificate had, 30 days before applying for such deed, given the written notice in the manner required by 15-18-202 and 15-18-204 (both now repealed), prior to the 1917 amendment of the latter, of his intention to make such application. Horsky v. McKennan, 53 M 50, 162 P 376 (1916); Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

The reception of tax deeds in evidence, without proof of the fact that the holder of the certificates of purchase gave the 30-day notice of his intention to apply for the deeds under

15-18-202 (now repealed), prior to 1917 amendment, was error. Horsky v. McKennan, 53 M 50, 162 P 376 (1916); Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

When Publication of Notice Permissible:

Section 15-18-202 (now repealed) requires publication of notice of application for tax deed only in case post-office address of record owner, mortgagee, or assignee be unknown. Milne v. Leiphart, 119 M 263, 174 P2d 805 (1946).

Whether publication of notice of application for tax deed to real property is permissible under 15-18-202 (now repealed) depends not upon whether the owner of the property in question is known or unknown, or whether it is assessed to known or unknown owners, but upon whether the address of the owner is known, this being so whether the owner be known by name or unknown, the proceeding being in rem. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Service of Notice — Occupant of Land:

A party challenging tax deed on the ground that as occupant of the property he was entitled to notice of expiration of redemption period, had the burden to establish that he was the person occupying the property and entitled to notice under 15-18-202 (now repealed) and a person who had discontinued paying rent after 3-year lease, maintained no fences for more than 10 years and at time county made application for tax deed land was uninclosed, where everyone, including plaintiff and neighbors, ran livestock, is no occupant entitled to notice. Van Voast v. Blaine County, 118 M 375, 167 P2d 563 (1946), distinguished in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

Whether a person is entitled to notice of application for tax deed as a "person occupying the land" does not depend upon right of occupancy, but whether the use made of the land constituted actual occupancy. Evidence held not to establish plaintiff's occupancy so as to require that notice be given of application for deed. Van Voast v. Blaine County, 118 M 395, 167 P2d 572 (1946), distinguished in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

The fact that registered return receipts of notice of application for tax deed addressed to a corporation owner of the land held by the county under tax sale certificate were signed by the agent of the corporation, who was also an occupant, did not show service on him personally as occupant but merely showed knowledge in him aliunde the record, which, under the rule that the records alone can be considered and defects or omissions may not be corrected or supplied by anything dehors the record, was insufficient as a substitute for the statutory service upon him as an occupant required by 15-18-202 (now repealed). Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

When Period of Redemption Expires: Section 15-18-101 (now repealed) provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed". Section 15-18-309 (now repealed) mentions "the date of the expiration of the period for redemption", but since under 15-18-202 (now repealed) the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in 15-18-309 (now repealed) is the time of the application for tax deed. Hartman v. Nimmack, 116 M 392, 154 P2d 279 (1944).

Deed Void Without Affidavit:

The validity of a tax deed depends upon compliance with the statute authorizing its issuance. Hence, a deed issued without the purchaser having filed an affidavit showing that notice of application had been given as required by 15-18-204 (now repealed) was unauthorized and therefore void. B. Kesselheim, Inc. v. Cocklin, 116 M 150, 148 P2d 945 (1944).

The affidavit, required by 15-18-204 (now repealed) to be filed by a purchaser of property at a delinquent tax sale who asks for a tax deed, must be in strict compliance with the statute, and must, among other things, show whether the property was occupied or not, and if occupied, that the person upon whom the notice was served was at the time occupying it. Harrington v. McLean, 70 M 51, 223 P 912 (1924).

Tax Deed Not Derived From Fee: A tax deed is not derivative, but creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from its operation. It is not derived from the fee but is antagonistic to it, and there is no privity between the holder of the one and the holder of the other. Since the statute relating to tax sales involves confiscation of property in ex parte proceedings, due process necessitates a strict compliance with the provisions of 15-18-202 (now repealed). Hence it may not be contended that a tax deed is good as to a served owner, though not good as to an unserved occupant. Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

Defects Cured by Legislative Validation — Flagrant Defects: Although Ch. 132, L. 1937, cures defects or mistakes in a notice of application for tax deed given pursuant to 15-18-202 (now

repealed) so far as they relate to the amount due and required to be paid for redemption purposes, it does not validate defects and omissions in the service of the notice so flagrant as to amount to a complete failure to follow the requirements of that section in that behalf. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Effect of Curative Statutes on Defective Notice:

Though Ch. 132, L. 1937 cures defects or mistakes in a notice of application for tax deed so far as they relate to the amount due and required to be paid for redemption purposes, it does not validate defects and omissions in the service of the notice so flagrant as to amount to a complete failure to follow the requirements of 15-18-202 (now repealed) in that behalf. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Since the Legislature could not, in violation of the Due Process of Law Clause of the Constitution, have done away with the necessity of giving notice of an application for tax deed prescribed by 15-18-202 (now repealed), contention in an action to set aside such a deed on the ground that notice had not been given, that failure to give notice was cured by Ch. 94 and 105, L. 1939, was without merit. Kerr v. Small, 112 M 490, 117 P2d 271 (1941).

A defective notice cannot be overcome by a validation statute. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Purpose: The purpose of 15-18-202 (now repealed) is to warn the owner of the property and others interested, of the impending issuance of the deed and the termination of the right of redemption, coincident therewith. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Defects in Amount Cured by Validating Statute: The appellant was in error where he contended that notice of application for tax deed was fatally defective in that it recited that the amount due for taxes, penalties, etc., was computed at a date 7 days later than the date of the notice, since the defect was one of those cured by Ch. 94, L. 1939, validating tax deeds issued prior thereto. Stoican v. Washburn, 112 M 603, 120 P2d 426 (1941).

Effect of Legislative Validation on Failure to Give Notice: Since the Legislature could not, in violation of the Due Process of Law Clause of the Constitution, have done away with the necessity of giving notice of an application for tax deed prescribed by 15-18-202 (now repealed), the contention in an action to set aside such a deed on the ground that notice had not been given, that failure to give notice was cured by 84-4160.1, R.C.M. 1947 (not codified), as amended by Ch. 105 and Ch. 94, L. 1939, was without merit. Kerr v. Small, 112 M 490, 117 P2d 271 (1941).

Waiver of Irregularity: When a tax deed was invalid for failure to give the owner the statutory notice of application for a tax deed, the owner could not be held to have waived his right to question the validity of the deed nor acquiesced in the taking of his property by being represented at the county's public auction sale by an agent who bid on it, because he had no rights to waive by bidding on the property. Kerr v. Small, 112 M 490, 117 P2d 271 (1941).

Constitutionality of Legislative Validation: Curative or validating statutes, such as Ch. 79, L. 1933, validating tax deeds issued with errors stating the amount due for taxes, interest, and penalty in the notice of application for tax deed, did not violate Art. III, sec. 27, 1889 Mont. Const. (now Art. II, sec. 17, 1972 Mont. Const.), relative to due process of law. Howard v. Newlon, 112 M 189, 114 P2d 272 (1941).

Extension of Time for Redemption: When notice of tax sale and of application for tax deed did not comply with statute, the time for redemption was extended indefinitely. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Posting Notice Under Former Law:

Under section 3895, Political Code of Montana 1895, as amended by Ch. 79, L. 1905, when tax sale purchaser of mining property merely posted notice of sale on land, without serving notice upon owners residing in the county, his title was invalid because of a jurisdictional defect in the procedure required to obtain a tax title. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Posting of notice for 29 days did not comply with the provisions of section 3895, Political Code of Montana 1895, as amended by Ch. 79, L. 1905, requiring posting of notice 30 days before expiration of time for redemption. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

An affidavit which did not show that notice was posted in a conspicuous place did not show compliance with statute governing notice. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Prerequisites to Reception of Tax Deed in Evidence: A prerequisite to the reception in evidence of a tax deed is that it must be accompanied by the affidavit and notice of application for a tax deed. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Action In Rem: In effect, an application for tax deed is an action in rem, to which all persons interested in the property involved are parties defendant, thus under the law in effect at the time of the decision, and the holder of a tax sale certificate can use this informal in rem method of procedure or can take the more formal method of bringing an action in the District Court under 15-18-301 (now repealed), et seq. State ex rel. Freebourn v. Yellowstone County, 108 M 21, 88 P2d 6 (1939).

Title Conveyed by Tax Deed: The quantum of title conveyed by a tax deed issued in 1936 pursuant to 15-18-202 (now repealed) is governed by 15-18-309 (now repealed) which applies equally to tax deeds issued upon notice under 15-18-202 (now repealed) and to tax deeds issued after suit under 15-18-301 (now repealed), et seq. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

State Lands Not Subject to Tax Deed Proceedings: State lands are not the subject of tax deed proceedings, for the reason that the welfare of the entire State and its citizens is involved, and that valuable rights of the people might be lost thereby through malfeasance or nonfeasance of state officers or employees. State ex rel. Freebourn v. Yellowstone County, 108 M 21, 88 P2d 6 (1939).

Implied Power to Install Tract Index: In view of the provisions of 15-18-202 through 15-18-204 (all repealed), and the powers conferred upon the County Commissioners in Title 7, a Board of County Commissioners may authorize the installation and maintenance of a tract index in the office of the County Clerk for information on lands sold for taxes and facilitating application for tax deeds, under their implied powers. Ransom v. Pingel, 104 M 119, 65 P2d 616 (1937).

Posting of Notice Under Former Law: Under former law, the County Treasurer was without authority to issue a tax deed unless the applicant showed by his affidavit that where the property was unoccupied, he posted notice of application for a tax deed in a conspicuous place upon the property as required by 15-18-202 and 15-18-204 (both now repealed), prior to 1917 amendment, the affidavit constituting the basis upon which the Treasurer acts. Gallash v. Willis, 90 M 148, 300 P 569 (1931).

Deed as Prima Facie Evidence of Notice:

Under 15-18-205 (now repealed) a tax deed is prima facie evidence that proper notice of application for the deed was served or posted as required by law. Richardson v. Lloyd, 90 M 127, 300 P 254 (1931).

Under former law, a tax deed was not prima facie evidence that the notice requirements had been fulfilled. Horsky v. McKennan, 53 M 50, 162 P 376 (1916); Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Proceeding Under Former Law to Compel Application for Tax Deed: When the holders of practically an entire issue of irrigation district bonds brought an action to compel County Commissioners to apply for tax deeds to lands embraced in the district and bought by the county at delinquent tax sale, to enable the county to sell them and apply the proceeds to the payment of interest delinquent on the bonds, the County Commissioners could be required to direct the County Clerk to apply to the County Treasurer for tax deeds as the provision of 15-18-203 (now repealed), prior to 1933 amendment, to the effect that the Board of County Commissioners may at any time, after time for redemption of property sold on tax sale bought by the county, considered proper, order the County Clerk to apply for the tax deeds, was mandatory, and the Board was without discretion in the matter. State ex rel. Malott v. Bd. of County Comm'rs, 86 M 595, 285 P 932 (1930).

Amount Due and Required to Be Paid: The purpose of notice required by 15-18-202 (now repealed) to be given by the purchaser of real property on delinquent tax sale prior to application for tax deed is, inter alia, to advise the owner of the amount he must pay in case he desires to redeem and therefore, the amount must be stated correctly. Hence, where a county in its notice to an owner included in the total amount of taxes due those unlawfully levied for 3 years, the notice stated the amount due incorrectly and the court properly enjoined the County Treasurer from issuing a tax deed to the purchaser. Hinz v. Musselshell County, 82 M 502, 267 P 1113 (1928), explained in Superior Coal Co. v. Musselshell County, 98 M 501, 41 P2d 14 (1935). See also Shubat v. Glacier County, 93 M 160, 18 P2d 614 (1932); Morse v. Kroger, 87 M 54, 285 P 185 (1930); and Tilden v. Chouteau County, 85 M 398, 279 P 231 (1929). But see Stoican v. Washburn, 112 M 603, 120 P2d 426 (1941).

Necessity of Notice — Application to County: The provision of 15-18-202 (now repealed) (prior to 1917 amendment) requiring the purchaser of property sold for delinquent taxes to serve upon the owner or occupant the written notice specified, 30 days before applying for the deed, was as binding upon a county as it is upon an individual. Harrington v. McLean, 70 M 51, 223 P 912

(1924), distinguished in Cavitt v. Seirson, 119 M 437, 175 P2d 767 (1946). See also Small v. Hull, 96 M 525, 32 P2d 4 (1934); Shubat v. Glacier County, 93 M 160, 18 P2d 614 (1932); and Hinz v. Musselshell County, 82 M 502, 267 P 1113 (1928).

Deed Void on Face — County as Bidder: When a tax deed showed on its face that it was void because the county was a competitive bidder at the sale, a grantee of the county could not rely upon the presumption under the prior wording of 15-18-205 (now repealed) that official duty had been regularly performed, or that the property was sold as prescribed by law. Rush v. Lewis & Clark County, 37 M 240, 95 P 836 (1908), affirming 36 M 566, 93 P 943 (1908).

Part Attorney General's Opinions

County Not Required to Take Tax Deed — Property Under Tax Sale Certificate: A county is not required under 15-18-203 (now repealed) to take a tax deed to subdivision property it holds under a tax sale certificate if the rights of the county to property struck off pursuant to 15-17-207 (now repealed) are not assigned. 41 A.G. Op. 77 (1986).

Part Collateral References

Taxation *key* 744 through 789.

85 C.J.S. Taxation §1354, et seq.

72 Am. Jur. 2d State and Local Taxation §§883 through 897.

Effect of misnomer of landowner or delinquent taxpayer in notice or advertisement of tax foreclosure or sale. 43 ALR 2d 967.

Void tax deed, tax sale certificate, and the like, as constituting color of title. 38 ALR 2d 986.

Holder of tax certificate as affected by public official's waiver of or failure to require compliance with conditions of redemption. 21 ALR 2d 1273.

Sufficiency of compliance with statute providing for service by mail in tax procedure. 155 ALR 1279.

15-18-211. Tax deed — fee.

Case Notes

Full Legal Property Description Not Required in Notice That Tax Deed May Be Issued: Appellant contended that because the county did not include a full legal property description in a notice that a tax deed may be issued, the tax deed itself was void. This section requires that the tax deed contain the full legal description, but 15-18-212 requires that the notice that a tax deed may be issued contain a description of the property on which the taxes are or were delinquent, and the description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214. Therefore, the description of property in a notice that a tax deed may be issued need not include the full legal description of the property unless, pursuant to 15-18-212(6)(b), the full legal description was used on the tax sale certificate or in the record described in 15-17-214(2)(b). Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Hudson v. McDonald, 229 M 426, 747 P2d 221 (1987), and Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 or to follow the alternative procedure under 15-17-214, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by this section, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply

walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Attorney General's Opinions

Special Assessment Lien Created Prior to Issuance of Tax Deed Extinguished by Granting of Deed: If either a county or a municipality takes a tax deed to property pursuant to this section, the granting of the tax deed extinguishes the lien created by any special assessment against the property that becomes payable prior to the issuance of the deed but leaves unaffected any lien created by a special assessment that first becomes payable after issuance of the deed. 43 A.G. Op. 38 (1989).

15-18-212. Notice — proof of notice — penalty for failure to notify.

Compiler's Comments

1999 Amendment: Chapter 446 in (3)(b) inserted second sentence requiring filing or recording of a notice of cancellation of a property tax lien. Amendment effective April 22, 1999.

Effective Date — Applicability: Section 6, Ch. 446, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to filings, recordings, or redemptions occurring after [the effective date of this act]."

1993 Amendment: Chapter 97 in second sentence of (3)(a) and first sentence of (4), after "mail", inserted "return receipt requested"; and made minor changes in style.

1991 Amendment: In (3)(a), at end of first sentence, substituted "notify the purchaser or assignee of his obligation to give notice under subsection (1)(b)" for "proceed to give notice in the manner provided in subsection (1)(a)" and inserted second sentence regarding notice by certified mail; substituted (3)(b) regarding cancellation of lien upon failure of purchaser or assignee to give notice for former (3)(b) and (3)(c) that read: "(b) Notice given under this subsection (3) must be given not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(c) A purchaser or assignee who fails to give notice as required by subsection (1)(b), thereby forcing notification to be given under this subsection (3), must be charged a penalty of $500 plus all actual costs of notification incurred by the county proceeding under this subsection (3)"; in (4) and (6) changed subsection references; and in third sentence of (7), after "county", deleted "or if the county treasurer is required to give notice pursuant to subsection (3)".

Applicability: Section 2, Ch. 181, L. 1991, provided: "[Section 1] [15-18-212] applies to all real property tax liens that have not been redeemed on October 1, 1991, or that attach after October 1, 1991."

1989 Amendments: Chapter 83 in (7), near end of first sentence, substituted "within 30 days" for "not less than 30 days". (Amendment by Ch. 704, L. 1989, rendered this amendment ineffectual.)

Chapter 704 in (2)(a), near end, in (3)(b), and near middle of (5) increased maximum period from 90 days to 120 days; in middle of (5) substituted "commence publishing" for "publish"; in (7), before "with the county clerk", deleted "by the county clerk, county treasurer, purchaser, or assignee, as appropriate", after "with the county clerk" deleted "not less than 30 days following the mailing or publication of the notice", and inserted second and third sentences relating to when purchaser is other than the county and when purchaser is the county; and made minor changes in phraseology. Amendment effective May 22, 1989.

Case Notes

Failure to Notify Current Occupant That Tax Deed May Issue — Quiet Title Deed Properly Voided: Under this section, notice that a tax deed will be issued unless a property tax lien is redeemed must be made to each interested party and to the current occupant. In this case, defendant knew that plaintiff was the current occupant and knew where plaintiff was located but simply did not provide the requisite notice. Additionally, because plaintiff did not receive adequate notice, the county was without jurisdiction to issue defendant a quiet title decree. Every essential and material step of the tax deed statutes must be strictly followed. Thus, the District Court correctly voided defendant's quiet title decree and granted summary judgment to plaintiff because no genuine issue of material fact existed. Gentry Mont. Enterprises, Inc. v. McDonald, 2004 MT 322, 324 M 67, 101 P3d 767 (2004), following Moran v. Robbin, 261 M 478, 863 P2d 395 (1993).

Proper Deposit of Leasehold Interest Entitling Leaseholder to Notice and Right to Redeem Property Tax Lien: This section requires that the purchaser or assignee of a tax sale certificate notify all persons interested in the property, including a person with properly recorded interest in the property, that a tax deed will be issued to the purchaser unless the tax lien is redeemed

prior to the expiration date of the redemption period. Under 70-21-209, an acknowledged or certified instrument is considered recorded when it is deposited with the appropriate County Clerk and Recorder. In this case, an instrument reflecting plaintiffs' interest as assignee of a vendor's interest in the contract for sale of a cabin and leasehold, which constituted real property, was properly recorded at the Lewis and Clark County Clerk and Recorder's office, so plaintiffs were entitled as an interested party to notice by certified mail pursuant to this section; however, no notice was given. Plaintiffs' right to redeem the property tax lien continued indefinitely until proper notice was given; thus, a tax deed subsequently issued by the county was void for failure to comply with the notice provisions of this section. Ditto v. Kipp, 2000 MT 162, 300 M 278, 3 P3d 647, 57 St. Rep. 679 (2000). See also Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163 (1999).

Failure to Provide Co-Owner Notice of Issuance of Tax Deed — No County Jurisdiction to Issue Tax Deed: Kneedler was owner of a one-half undivided interest in a parcel of property. The co-owners failed to pay their portion of the property taxes, so the county sent them a notice of tax delinquency, but the notice was not sent to Kneedler. A tax sale was held, and the county purchased the tax lien against the co-owners, but the county's tax sale certificate was never assigned. Taxes on the property remained delinquent, so the County Commission directed that a tax deed be issued to the county for the co-owners' one-half interest in the property. Notice of the impending tax deed was sent to the co-owners, but not to Kneedler. Following sale of the county's interest to another party, Kneedler filed an action challenging the validity of the county's tax deed for failure to provide Kneedler with proper notice pursuant to this section. The District Court found that Kneedler lacked standing because she did not qualify as an interested party or as a current occupant of the property and granted summary judgment to the county, dismissing Kneedler's complaint with prejudice. Applying Dudley v. Higgins, 141 M 140, 375 P2d 689 (1962), the Supreme Court held that Kneedler was an interested party with the right to redeem property subject to a tax lien, even though the individual property interests were assessed separately for tax purposes. Further, nothing in the statutes permits or authorizes a county to tax an undivided interest in a jointly owned piece of property separately from the interests of the other cotenants because under 15-8-307, the general rule is that land be assessed in parcels. This form of assessment infringes upon the rights normally afforded to tenants of jointly owned property, including the cotenants' right to pay taxes before they become delinquent. Thus, the District Court erred in granting summary judgment to the county because as co-owner, Kneedler was entitled to notice of the issuance of the tax deed and Kneedler's right of redemption continued indefinitely until proper notice was given. Failure to provide notice deprived the county of jurisdiction to issue a tax deed and rendered the tax deed void. Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163, 56 St. Rep. 334 (1999). See also Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28 (1998).

Full Legal Property Description Not Required in Notice That Tax Deed May Be Issued: Appellant contended that because the county did not include a full legal property description in a notice that a tax deed may be issued, the tax deed itself was void. Section 15-18-211 requires that the tax deed contain the full legal description, but this section requires that the notice that a tax deed may be issued contain a description of the property on which the taxes are or were delinquent, and the description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214. Therefore, the description of property in a notice that a tax deed may be issued need not include the full legal description of the property unless, pursuant to subsection (6)(b) of this section full legal description was used on the tax sale certificate or in the record described in 15-17-214(2)(b). Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Hudson v. McDonald, 229 M 426, 747 P2d 221 (1987), and Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Mailing of Multiple Tax Notices in Same Envelope Allowed: The County Clerk and Recorder mailed seven tax notices that a tax deed may be issued in the same envelope. Appellant contended that the language in subsection (4) of this section, referring to mailing of a "notice", required that each tax notice be mailed separately. However, under 1-2-105, the singular includes the plural in statutory construction. Therefore, multiple notices of the issuance of a tax deed may be placed in the same envelope for mailing. Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998).

No Requirement That Tax Notice Include Identical Information as Tax Deed: There is no statutory requirement that the taxes, penalties, interest, and costs set forth in a notice that a tax deed may be issued must be identical to those set forth in the tax deed itself. Additional interest and costs will accrue between the date of issuance of the notice and the date of issuance of the tax deed, so it is inevitable that the information will differ between the notice and the deed. Boyes v.

Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996).

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 or to follow the alternative procedure under 15-17-214, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with this section, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Defects in Tax Notice Not Cured by Publishing Notice: This section sets forth the strict statutory requirements for a notice of an intended issuance of a tax deed to real property. One notice requirement is that, in disclosing the amount of taxes due, a separate listing must be made of the delinquent taxes, penalties, costs, and interest that must be paid for the lien to be liquidated. If the notice requirements are not complied with, a County Treasurer may not legally issue a tax deed. In this case, discrepancies and defects in the notice were fatal to the legality of the tax deed proceeding and could not be cured by publishing notice required by 15-18-413. Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996), discussed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Failure to File Proof of Notice — Tax Deed Not to Issue: Although filing of an affidavit is no longer required to satisfy the proof of notice requirement, the reasoning behind the requirement that proof of notice be filed remains clear. The giving of notice is jurisdictional, and unless the statutory requirement that proof of notice is filed with the County Clerk is met, a tax deed may not issue. Proof of notice must be filed within 30 days after the mailing or publication of the notice. Moran v. Robbin, 261 M 478, 863 P2d 395, 50 St. Rep. 1417 (1993), followed in Sanders v. Yellowstone County, 276 M 116, 915 P2d 196, 53 St. Rep. 305 (1996).

15-18-213. Form of tax deed — prima facie evidence.

Compiler's Comments

1993 Amendment: Chapter 97 in (1), in fifth "Whereas" clause before "notice", deleted "not less than 60 days or more than 90 days prior to this date" and after "parties" inserted "in accordance with 15-18-212" and inserted sixth "Whereas" clause concerning nonredemption; and made minor changes in style.

Case Notes

No Requirement That Tax Notice Include Identical Information as Tax Deed: There is no statutory requirement that the taxes, penalties, interest, and costs set forth in a notice that a tax deed may be issued must be identical to those set forth in the tax deed itself. Additional interest and costs will accrue between the date of issuance of the notice and the date of issuance of the tax deed, so it is inevitable that the information will differ between the notice and the deed. Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996).

15-18-214. Effect of deed.

Compiler's Comments

1989 Amendment: In (1)(c), after "when", deleted "an interest in". Amendment effective May 22, 1989.

Attorney General's Opinions

Application of Sale Proceeds to Delinquent Special Improvement District Assessments: A County Treasurer may not require delinquent special improvement district assessments to be paid in addition to the sale price of tax deed land because when a tax deed is issued, special assessment liens that were due and payable at that time are extinguished. However, the County Treasurer must apply the sale proceeds of the land to delinquent assessments, as provided in 7-8-2306. 45 A.G. Op. 24 (1994).

City Assessments to Be Included and Prorated as Part of Allocation Received From Tax Sale: There is no correlation between the method of distribution of tax sale proceeds outlined in 7-8-2306 and the effect of a tax deed in this section. When a city has not requested and received assignment of a county's right to tax sale property, the city assessments must be included and prorated as part of the allocation of money received from a sale of county tax deed land under 7-8-2306. 45 A.G. Op. 2 (1993).

Special Assessment Lien Created Prior to Issuance of Tax Deed Extinguished by Granting of Deed: If either a county or a municipality takes a tax deed to property pursuant to 15-18-211, the granting of the tax deed extinguishes the lien created by any special assessment against the property that becomes payable prior to the issuance of the deed but leaves unaffected any lien created by a special assessment that first becomes payable after issuance of the deed. 43 A.G. Op. 38 (1989).

15-18-216. Form of proof of notice.

Case Notes

Failure to Notify Current Occupant That Tax Deed May Issue — Quiet Title Deed Properly Voided: Under 15-18-212, notice that a tax deed will be issued unless a property tax lien is redeemed must be made to each interested party and to the current occupant. In this case, defendant knew that plaintiff was the current occupant and knew where plaintiff was located but simply did not provide the requisite notice. Additionally, because plaintiff did not receive adequate notice, the county was without jurisdiction to issue defendant a quiet title decree. Every essential and material step of the tax deed statutes must be strictly followed. Thus, the District Court correctly voided defendant's quiet title decree and granted summary judgment to plaintiff because no genuine issue of material fact existed. Gentry Mont. Enterprises, Inc. v. McDonald, 2004 MT 322, 324 M 67, 101 P3d 767 (2004), following Moran v. Robbin, 261 M 478, 863 P2d 395 (1993).

Use of Form in Issuing Proof of Notice Not Mandatory: This section provides a form to follow in issuing the proof of notice for issuance of a tax deed, but use of that form is not mandatory. Thus, a proof of notice that was acknowledged by the County Clerk and Recorder, rather than subscribed and sworn to, was held to comply with statutory requirements. Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998).

15-18-217. Form of cancellation.

Compiler's Comments

Effective Date — Applicability: Section 6, Ch. 446, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to filings, recordings, or redemptions occurring after [the effective date of this act]."

15-18-218. Charge not allowed for filings or recordings made by county treasurer.

Compiler's Comments

Effective Date — Applicability: Section 6, Ch. 446, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to filings, recordings, or redemptions occurring after [the effective date of this act]."

Part 4
Quiet Title

Part Compiler's Comments

Sections Not Codified: Section 84-4143, R.C.M. 1947, which provided that Ch. 65, L. 1933 is not to be construed as an amendment or modification of 84-4161, R.C.M. 1947 (15-18-403, now repealed), was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 5, Ch. 65, L. 1933.

Section 84-41-102, R.C.M. 1947, which provided that Ch. 33, Ex. L. 1933 did not amend or modify sections 84-4140 through 84-4143, R.C.M. 1947, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 33, Ex. L. 1933.

Part Case Notes

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 or to follow the alternative procedure under 15-17-214, failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Federal Statute of Limitations Barring Administrative Suit for Tax Refund: The Supreme Court cited applicable federal law in holding that the 2-year federal statute of limitations barred the bringing of an administrative suit for a refund of taxes 10 years after notice of a tax deficiency was sent. Absent any facts or legitimate contentions to the contrary, the District Court's order granting partial summary judgment quieting title was affirmed. Getter v. Beckman, 236 M 377, 769 P2d 714, 46 St. Rep. 440 (1989).

Jury Trial Not Mandatory in Quiet Title Action: Because quiet title actions are actions in equity, a District Court may impanel an advisory jury but is not required to do so. Getter v. Beckman, 236 M 377, 769 P2d 714, 46 St. Rep. 440 (1989).

Notice Void for Vagueness: McDonald purchased a ranch worth $1 million for $4,085.79. A tax deed was issued and notice was published. The notice, however, contained an abbreviated description prepared by and for the use of the County Tax Assessor. The description did not indicate in which portion of a large tract of land the ranch was located. The Supreme Court held that the description was too vague to adequately identify the land in question. Since the description is void for vagueness, McDonald failed to meet the requirements of 15-18-403 (now repealed). The District Court was directed to cancel the tax deed. Yetter v. Gallatin County, 198 M 243, 645 P2d 941, 39 St. Rep. 905 (1982).

Prior Recorded Reserved Mineral Rights Not Subject to Lien: Where a deed reserving coal and mineral rights was recorded after taxes on the land attached by statute but before the actual assessment of taxes and before the tax sale, the tax lien did not attach until after the recordation of the deed and thus the tax deed did not carry with it and convey the reserved coal and mineral rights. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

Prior Reserved Mineral Estate Not Affected by Deed: The paramount title of a tax deed does not extinguish a vested mineral estate in the land reserved prior to any delinquent tax assessments upon the surface estate. A grantor who has reserved a mineral estate has freed himself from any subsequent tax assessment and cannot be stripped of the reserved title due to the surface owner's failure to pay taxes. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

Application of Rules of Civil Procedure — Notice of Entry of Decree: Since 15-18-401 (now repealed) takes precedence over Rule 77(d) pursuant to Rule 81, M.R.Civ.P., defendants were not entitled to notice of entry of quiet title decree in favor of petitioner where defendant, after hearing on order to show cause, failed to post the required bond. Rosen v. Midkiff, 164 M 116, 519 P2d 416 (1974).

Notice of Order Requiring Deposit: When defendants in action to quiet title had notice through their attorney that if they did not deposit certain sum with court, decree would be entered against them, and they did not pay, court's order quieting title in plaintiffs was upheld. Rosen v. Midkiff, 164 M 116, 519 P2d 416 (1974).

Presumption of Posting of Notice:

Mere fact that affidavit of posting of notice was not in court file did not overcome presumption that notice was posted since 26-1-602 states that an official shall be presumed to have regularly performed his duty. Rosen v. Midkiff, 164 M 116, 519 P2d 416 (1974).

In action to quiet title defendant's attorney's failure to find affidavit of posting in file was not enough to override rebuttable presumption in favor of posting by Clerk in routine and regular manner. Rosen v. Midkiff, 164 M 116, 519 P2d 416 (1974).

Encumbrances:

A tax deed conveys absolute title free from all encumbrances and free of any and all claims of defendants to quiet title actions. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

A tax deed extinguishes all encumbrances including oil leases and assignments of royalty interests. Rist v. Toole County, 117 M 426, 159 P2d 340 (1945).

Under former law making bonds issued by an irrigation district a lien upon all lands in the district, created a lien which constituted an encumbrance against them within the meaning of the term "encumbrance" as used in 15-18-403 (now repealed). State ex rel. Malott v. Bd. of County Comm'rs, 89 M 37, 296 P 1 (1930). See also Stanley v. Jeffries, 86 M 114, 284 P 134 (1929); Richardson v. Lloyd, 90 M 127, 300 P 254 (1931).

Under the provisions of 15-18-403 (now repealed) prior to its implied amendment by Ch. 100, L. 1929, it was imperative that the tax deed in question extinguished the lien of special improvement assessments, as it did all contract liens, and even prior tax liens. State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928), explained in Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

A tax deed extinguishes all former liens not expressly exempted from its operation. State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928), explained in Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Motion to Vacate Deposit Order Barred by Laches: When order was entered in conformity with opinion of Supreme Court, requiring plaintiff to pay to defendant certain sum and reciting that if plaintiff refused to deposit sum by specified date, judgment would be entered for defendant quieting title in him and motion of plaintiff to vacate such order was not brought on for hearing for more than 12 years after it was made, laches of plaintiff barred relief. State ex rel. Johnstone v. District Court, 132 M 377, 319 P2d 957 (1957).

Order Requiring Deposit: Section 15-18-402 (now repealed), requiring the court upon hearing to fix the amount of taxes, interest, penalties, and money spent in improving the property and requiring a deposit of such amount, does not authorize the court to postpone such determination and merely requires a bond be deposited to cover the amount. The court's duty is to determine the amount necessary for plaintiff to deposit in court and then fix the time for its payment. State ex rel. Johnson v. District Court, 130 M 103, 295 P2d 1042 (1956).

Void Tax Deed — Effect of Statute of Limitations: When tax deed proceedings were void for jurisdictional defects, the provisions of section 2214, R.C.M. 1921 (now repealed), requiring an action to set aside or annul a tax deed to be brought within 2 years from date of issuance of deed, did not apply. Miller v. Murphy, 119 M 393, 175 P2d 182 (1946).

Affidavit to Conform to Statute: Under 15-18-401 (now repealed) authorizing the holder of the tax title, upon filing of an affidavit, to obtain an order commanding the true owner to deposit taxes, interest and penalties, the affidavit is jurisdictional and must set forth the matters required by the statute. Glacier County v. Frisbee, 117 M 578, 164 P2d 171 (1945).

Nature of Title Conveyed:

A tax deed is not derivative but creates a new title in the nature of an independent grant from the sovereignty and strikes down the former owner's fee title. Rist v. Toole County, 117 M 426, 159 P2d 340 (1945); see also Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

By the enactment of 15-18-403 (now repealed), providing that a tax deed conveys absolute title "free from all encumbrances except the lien for taxes which may have attached subsequent to the sale", a new title in the nature of an independent grant from the sovereignty is created, extinguishing all former titles and liens not expressly exempted from its operation. State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928), explained in Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Defense of Exemption From Tax Levies and Sale: In an action to quiet title brought by purchaser of Indian land acquired by the county under tax deed, where trust patent issued to half-blood Indian allottee had been changed at his request to fee simple patent, and defense was based on the ground that the lands were exempt from state tax levies and sale upon nonpayment of the state tax levies, and no question of redemption was raised by the pleadings, it was not

necessary to pass upon the question of sufficiency of evidence to make a case under 15-18-401 and 15-18-402 (both now repealed). Chatterton v. Lukin, 116 M 419, 154 P2d 798 (1944).

Appeal of Findings Showing Allowances of Costs: When, in an action to quiet title to property acquired by tax deed brought by its former owner, the court required deposit made up of various items claimed by defendant without showing how the amount was arrived at, including the entire amount of taxes levied on the land after purchase from the county instead of only a one-fifth interest paid under contract of sale before commencement of the action, and there was no request for specific findings showing allowances and deductions nor exceptions taken to its findings, the Supreme Court on appeal will not disturb them. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Effect of Misnomer:

The fact that a tax deed to real property erroneously recited that the property had been assessed to the wife of the owner whereas it had been assessed to her deceased husband, was no more than a clerical error insufficient to affect the validity of the deed. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

When land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership affects the sale to render it void or voidable, that type of mistake being in the nature of an informality or irregularity only. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913). However, see Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Attack on Tax Deed Not Collateral Attack: Though the rule against collateral attack is the same in an action where the validity of a tax deed is called in question as in the case of attack on a judgment, where the purpose of a proceeding is to secure an interpretation to be given a tax deed because of apparently conflicting provisions of statutes as to the extent of title conveyed, there is no infraction of the rule. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Deposit Not Required by Cities: The deposit required by 15-18-401 and 15-18-402 (both now repealed) is in the nature of security, and a city is exempt from the provisions of them under 25-1-402, exempting municipalities from the provisions of any statute requiring parties in civil suits to post security, and therefore need not make such deposit as defendant in a quiet title action as a condition precedent to its right to appear and assert its lien for special improvement assessments payable after execution of tax deed. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Implied Amendment — Lien of Special Improvement Assessments:

Since 15-18-309 (now repealed) applies equally to tax deeds issued after notice under 15-18-202 (now repealed) and those issued after court action under 15-18-301 (now repealed), 15-18-403 (now repealed) was impliedly amended by 15-18-309 (now repealed) so that any tax deed issued after its enactment is subject to the lien of special improvement assessments levied thereafter. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

On the theory that 15-18-403 (now repealed), providing in effect that a tax deed cuts off all prior tax liens, was impliedly amended by sec. 9, Ch. 100, L. 1929 (15-18-309, now repealed) declaring that such a deed shall be subject to the lien of any special or local improvements payable after the execution of the deed, the operation of the amendment is prospective, not retroactive. State ex rel. Billings v. Osten, 91 M 76, 5 P2d 562 (1931), distinguished in Blackford v. Judith Basin County, 109 M 578, 98 P2d 872 (1940).

Easement Not Extinguished by Tax Deed: Since the negative easement created in favor of a townsite company by the restriction inserted in its deeds to lots sold by it prohibiting the sale of liquor upon the premises was appurtenant to its other lots and was taxable as such, a tax deed to the servient tenement—a lot sold under the restriction—though creating a new title free from all encumbrances, did not extinguish the easement but remained subject to it. NW. Improvement Co. v. Lowry, 104 M 289, 66 P2d 792 (1937).

Restrictions in Deeds: Restrictions in deeds as to uses to which the property conveyed may not be put with the provision that if the grantee or his heirs or assigns shall at any time breach the condition, the conveyance shall be void and the premises shall at once revert to the grantor, are valid. Injunction lies to restrain a violation of a covenant against any such use. NW. Improvement Co. v. Lowry, 104 M 289, 66 P2d 792 (1937).

Motion to Quash Because of Illegality of Tax: In an action to quiet title to lands allotted to an Indian but sold for delinquent taxes, where purchaser secured an order to show cause why owner should not deposit in court the taxes paid with penalty and interest, and on return day owner, through a motion to quash, attacked both tax and tax proceedings, and order was issued without hearing, the District Court erred in not hearing the order and in not hearing the plaintiff on the question of the legality of the tax. The motion to quash in a very imperfect manner called the

attention of the court to the fact that the plaintiff wished to be heard and wished to challenge the legality of the tax. State ex rel. Jensen v. District Court, 103 M 461, 64 P2d 835 (1936).

Owner to Show Cause by Affidavit or Oral Testimony: When required to show cause why he should not be required to pay all taxes, interest and penalties, owner, under 15-18-401 and 15-18-402 (both now repealed) may show cause either by affidavit or by oral testimony. State ex rel. Jensen v. District Court, 103 M 461, 64 P2d 835 (1936).

Former Statute of Limitations Unconstitutional: The provision of section 2214, R.C.M. 1921 (now repealed), that an owner of realty sold for delinquent taxes may not maintain an action to set aside a tax deed as irregular or void unless commenced within 1 year from date of its issuance, amounted to a taking of his property, without due process of law, where the affidavit required by 15-18-204 (now repealed) showed upon its face that notice of application for the deed had never been served upon the owner, though the deed recited that this had been done. Small v. Hull, 96 M 525, 32 P2d 4 (1934).

Tax Deed Not Conclusive Evidence:

Under former law (Ch. 85, L. 1927), a provision providing that a duly executed tax deed was conclusive evidence of all tax proceedings up to the execution of the deed did not prevent owner in an action to quiet title from showing that notice of the application for tax deed was not served upon him as required by 15-18-202 (now repealed), such requirement being jurisdictional. Small v. Hull, 96 M 525, 32 P2d 4 (1934).

Under former law, the clause of 15-18-401 and 15-18-402 (both now repealed), as amended by Ch. 85, L. 1927, making a tax deed conclusive evidence of all proceedings leading up to its execution, referred to acts and proceedings required at the hands of the officers charged with duties in relation to assessment and taxation, and not to something necessary to be done by the applicant for the deed. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Tender of Taxes and Costs — No Waiver of Right to Attack Deed: Defendant, in an action by a county to quiet title to real property acquired by tax deed, did not waive his right to attack the deed on the ground that the notice of application for deed did not correctly set out the amount due to bring about redemption, by his tender of a larger amount than that due, made pursuant to an order of court under 15-18-401 through 15-18-403 (all repealed), requiring a deposit as a condition precedent to his right to be heard. Glacier County v. Halvorson Mercantile Co., 93 M 520, 19 P2d 648 (1933).

Amount of Deposit When Land Sold Under Installment Contract: All a purchaser of land from the county at tax sale, on attack of the deed by the original owner, may, under 15-18-401 and 15-18-402 (both now repealed) demand as a deposit from that owner prior to trial is that which he has paid to the county, with interest, and which he has reasonably expended in preserving and improving the property, to be paid to the purchaser in case the deed be set aside, the plaintiff, in that event, being then required to pay to the county the balance of the taxes, penalty, and interest due over and above what had been paid by the purchaser. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933). See also Small v. Hull, 96 M 525, 32 P2d 4 (1934).

Challenge of Order — Default in Making Deposit: Plaintiff in an action to set aside a tax deed may refuse to make the deposit authorized by 15-18-401 and 15-18-402 (both now repealed) where the order requiring it to be made embraces improper items, and raise the question on appeal from the judgment entered for default in making it. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Constitutionality — Deposit When Tax Land Purchased on Installments: Sections 15-18-401 and 15-18-402 (both now repealed) and Ch. 162, L. 1929 (now repealed but see 7-8-2304 for a similar provision), insofar as they purported to authorize a county to relinquish to the purchaser of lands at tax sale the amount of delinquent taxes, interest, and penalty, required by order of court to be deposited by the original owner as a condition precedent to his right to maintain an action to set aside the tax deed, if the deed be set aside even though purchase had been made by installments and the entire amount had not been paid, were in conflict with Art. V, sec. 39, 1889 Mont. Const. (see Art. VIII, sec. 3, 1972 Mont. Const.) which prohibited the release by the state or a subdivision of the state of an obligation due it, and to that extent was invalid. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Cost Bill: An order, requiring plaintiff in an action to set aside a tax deed to deposit in court the money authorized by 15-18-401 and 15-18-402 (both now repealed) as a condition precedent to his right to maintain the action, is not the equivalent of a rendition of judgment and therefore the successful defendant was not required to serve his cost bill within 5 days after notice of the order. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Deposit Not Required Except on Demand — Installment Sale: When a county, defendant in an action to set aside a tax deed, made no demand under 15-18-401 (now repealed), that plaintiff

deposit the taxes, interest, etc., due it, in advance of trial, the court erred in including the total amount in an order made pursuant to a demand by its codefendant, purchaser from the county who was purchasing the deed on installments. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Rights of County When Land Sold Under Installment Contract: Failure of a county, made codefendant in an action to set aside a tax deed, to appear and demand that plaintiff as a condition to his right to maintain the action make a deposit of taxes, interest, and penalty due, did not result in a remission thereof, contrary to Art. V, sec. 39, 1889 Mont. Const. (see Art. VIII, sec. 3, 1972 Mont. Const.), the trial court, on retrial, having power to protect the rights of the county in that behalf. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Application to Action to Enjoin Issuance of Tax Deed: Sections 15-18-401 and 15-18-402 (both now repealed), authorizing the District Court to order one seeking to set aside a tax deed or the quieting of title to real property acquired by tax sale, to make a deposit of accrued taxes, interest, and penalties as a condition precedent to his right to maintain the action, apply to a proceeding to enjoin issuance of a tax deed. State ex rel. Souders v. District Court, 92 M 272, 12 P2d 852 (1932).

Constitutionality in General: In view of the fact that the statutory proceedings for a sale of property for delinquent taxes are primarily designed as a means for collecting the tax against it, 15-18-401 and 15-18-402 (both now repealed), requiring a deposit of taxes, etc., preliminary to action to set aside a tax deed, are not invalid under Art. XV, sec. 13, 1889 Mont. Const. (see Art. II, sec. 31, 1972 Mont. Const.) as destructive of vested rights, in that it imposes obligations with respect to a past transaction which were not required at the time the property was sold for taxes. State ex rel. Souders v. District Court, 92 M 272, 12 P2d 852 (1932).

Constitutionality — Sufficiency of Title: The amendment of 15-18-401 (now repealed) by Ch. 85, L. 1927, did not offend the requirements of Art. V. sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.), relative to the contents of the title of an act, in that the provision for a deposit of taxes, interest, and penalties was germane to the matters expressed in the title, and therefore sufficient to meet the constitutional requirement. State ex rel. Souders v. District Court, 92 M 272, 12 P2d 852 (1932).

Application of Former Limitation on Actions: While Ch. 85, L. 1927 (15-18-401 through 15-18-403, all repealed), is entitled "An act for the validating of tax sales and deeds heretofore or hereafter made", etc., it merely prohibited an attack upon a tax deed for a defect in tax proceedings or tax sales after the expiration of 1 year subsequent to its issuance, and therefore had no effect upon a deed attacked in a suit instituted within the year. Glacier County v. Schlinski, 90 M 136, 300 P 270 (1931).

Stipulation as to Deposit: A stipulation between the parties to an action to annul a tax deed to the effect that the party attacking its validity need not deposit in court, as a condition precedent to his right to maintain the action, the sums required by 15-18-401 and 15-18-402 (both now repealed) to be paid to the purchaser in case the deed be held invalid, is tantamount to a compliance with the requirement, the purchaser thereby waiving immediate deposit and the claimant agreeing to pay when called upon to do so if decree should go for him. Glacier County v. Schlinski, 90 M 136, 300 P 270 (1931).

Appeal Not Allowed From Order Relating to Deposit: Under 15-18-401 and 15-18-402 (both now repealed) plaintiff, in an action to set aside a tax deed, is required to deposit in court the amounts required by those sections before being permitted to maintain his action. If there is any question raised as to the amount so to be deposited, the court has jurisdiction to fix the amount after hearing on order to show cause. No appeal lies from such an order. The order is reviewable on appeal from the judgment in the main action to set aside the tax deed, and the owner (redemptioner) is not estopped from contesting the correctness of the order by making the deposit as fixed by the court, to enable him to maintain his action. Tilden v. Chouteau County, 85 M 398, 279 P 231 (1929). See also Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Void Tax Deed: As 15-18-401 and 15-18-402 (both now repealed) presuppose the issuance of a valid instrument, a tax deed, which is void on its face and therefore not a deed but a nullity, does not come within the purview of their provisions. Lindeman v. Pinson, 54 M 466, 171 P 271 (1918); Horsky v. McKennan, 53 M 50, 162 P 376 (1916).

Title of Action: When the sole aim of an action is to do away with a tax deed as a claim of title adverse to the plaintiff, it is an action "to set aside or annul" a tax deed so as to make the provision of 15-18-401 and 15-18-402 (both now repealed) applicable, even though it may be termed one to quiet title. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Part Law Review Articles

Tax Titles in Montana, 20 Mont. L. Rev. 73 (1958).

Part Collateral References

Taxation *key* 778, 784, 785, 790 through 818, 829.

85 C.J.S. Taxation §1365, et seq.

15-18-411. Action to quiet title to tax deed — notice.

Compiler's Comments

2005 Amendment: Chapter 375 in (3)(a) at end substituted "whose name and address are reasonably ascertainable" for "who is, at that time, known to be in the state of Montana"; and made minor changes in style. Amendment effective October 1, 2005.

1991 Amendment: At beginning of (1)(c) inserted exception clause; inserted (1)(d) providing that a deposit may not be required of an indigent owner; and made minor change in style.

Case Notes

Deposit Required of Defendant in Tax Deed Proceeding Unconstitutional When Applied to Indigents: The defendant in a tax deed proceeding was an inmate in an out-of-state prison. He was financially unable to make the statutorily required deposit and was therefore barred by law from defending the taking of his property in the court proceeding. The Supreme Court held that the deposit had a rational basis in that it helped relieve the congested court system, but when applied to indigents, it deprived them of their right to a hearing and was therefore an unconstitutional denial of due process. Ball v. Gee, 243 M 406, 795 P2d 82, 47 St. Rep. 1196 (1990).

Allowable Costs of Preserving and Improving Property — Period of Purchaser's Possession: Plaintiffs in an action to quiet title granted through a tax deed claimed costs pursuant to 15-18-401, MCA 1985 (predecessor to 15-18-411, MCA 1987), of new kitchen cabinets and appliances, new flooring, new bathroom fixtures, and certain legal costs as part of their cost of preserving and improving property. Defendant failed to deposit the costs as required by the court, and although he did submit a required answer to a show cause order, the District Court did not consider the answer filed because no filing fee accompanied it. The Supreme Court held plaintiffs had no right to claim some of the costs and that under 15-18-401(1)(a)(ii), MCA 1985 (predecessor to 15-18-411, MCA 1987), they could only claim costs incurred after 3 years from the tax sale. The court further indicated a purchaser at a tax sale without more has no right of possession to the real property until 3 years after the tax sale. Ball v. Gee, 234 M 140, 761 P2d 830, 45 St. Rep. 1794 (1988).

15-18-412. Procedure in tax deed quiet title action.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (7), near middle of first sentence after "order", substituted "the department" for "any assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Near beginning of (2)(a) inserted reference to subsection (2)(c); inserted (2)(c) providing that a deposit is not required if the true owner is found by the court to be indigent; and made minor change in style.

Case Notes

Tax Deed Void for Failure to Provide Adequate Notice: While clarifying previous holdings in Stewart and Bowen regarding the standing requirements to challenge a tax deed, the Supreme Court ruled that because the giving of notice to the owner of property by the tax deed applicant is a critical element of obtaining a tax deed, the failure to provide adequate notice deprived the county of jurisdiction to issue a deed and that the Homeowners' Association, brought into the action as a party defendant, did not need to demonstrate standing to sue to be allowed to appear and defend claims asserted. Mont. Earth Resources Ltd. Partnership v. N. Blaine Estates, Inc., 1998 MT 254, 291 M 216, 967 P2d 376, 55 St. Rep. 1047 (1998).

Deposit Required of Defendant in Tax Deed Proceeding Unconstitutional When Applied to Indigents: The defendant in a tax deed proceeding was an inmate in an out-of-state prison. He was financially unable to make the statutorily required deposit and was therefore barred by law from defending the taking of his property in the court proceeding. The Supreme Court held that the deposit had a rational basis in that it helped relieve the congested court system, but when applied to indigents, it deprived them of their right to a hearing and was therefore an unconstitutional denial of due process. Ball v. Gee, 243 M 406, 795 P2d 82, 47 St. Rep. 1196 (1990).

Allowable Costs of Preserving and Improving Property — Period of Purchaser's Possession: Plaintiffs in an action to quiet title granted through a tax deed claimed costs pursuant to 15-18-401, MCA 1985 (predecessor to 15-18-411, MCA 1987), of new kitchen cabinets and appliances, new flooring, new bathroom fixtures, and certain legal costs as part of their cost of preserving and improving property. Defendant failed to deposit the costs as required by the court, and although he did submit a required answer to a show cause order, the District Court did not consider the answer filed because no filing fee accompanied it. The Supreme Court held plaintiffs had no right to claim some of the costs and that under 15-18-401(1)(a)(ii), MCA 1985 (predecessor to 15-18-411, MCA 1987), they could only claim costs incurred after 3 years from the tax sale. The court further indicated a purchaser at a tax sale without more has no right of possession to the real property until 3 years after the tax sale. Ball v. Gee, 234 M 140, 761 P2d 830, 45 St. Rep. 1794 (1988).

15-18-413. Title conveyed by deed — defects.

Compiler's Comments

1997 Amendment: Chapter 407 in (5)(a), at beginning, inserted "Subject to subsection (5)(b)"; in (5)(a)(v), after "demand is made that the", substituted "true owner" for "person assessed or taxed", after "within 30 days after" inserted "the later of service or", before "the county treasurer" deleted "the claimant or to", near end, after "the county treasurer" inserted "to redeem the property", and before "bring a suit" inserted "the true owner may"; inserted (5)(b) requiring service of notice on taxpayer; deleted former (6) that read: "(6) A mistake in the amount or in any name specified in the notice does not invalidate the notice"; in (6), in first sentence at beginning, inserted "Provided that the statutory requirements for a notice of intended issuance of a tax deed required by 15-18-212 have been complied with and" and in second sentence, near middle after "defects or omissions", deleted "or total failure to observe" and after "property for taxes" deleted "and the giving of notices"; adjusted subsection references; and made minor changes in style. Amendment effective April 28, 1997.

Preamble: The preamble attached to Ch. 407, L. 1997, provided: "WHEREAS, the Montana Supreme Court held in Tax Lien Services v. Hall, 53 St. Rep. 614 (1996), that actual notice of a tax sale is required for taxpayers whose names and addresses are reasonably ascertainable."

Case Notes

Defects in Tax Notice Not Cured by Publishing Notice: Section 15-18-212 sets forth the strict statutory requirements for a notice of an intended issuance of a tax deed to real property. One notice requirement is that, in disclosing the amount of taxes due, a separate listing must be made of the delinquent taxes, penalties, costs, and interest that must be paid for the lien to be liquidated. If the notice requirements are not complied with, a County Treasurer may not legally issue a tax deed. In this case, discrepancies and defects in the notice were fatal to the legality of the tax deed proceeding and could not be cured by publishing notice required by this section. (Chapter 407, L. 1997, was, as stated in the preamble, enacted in reaction to this case.) Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996), discussed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Section Unconstitutional — Actual Rather Than Constructive Notice Required Prior to Proceeding Against Known Property Owner: This section essentially provides a delinquent taxpayer with a right of redemption and a right to bring a quiet title action. Both rights are property interests protected under the due process clause of the 14th amendment to the U.S. Constitution. When the identity of the property owner is known or is readily ascertainable, actual rather than constructive notice is required prior to a proceeding that will adversely affect the liberty or property interests of the property owner. Therefore, this section is unconstitutional under the 14th amendment to the extent that it deprives a delinquent taxpayer, whose name and address are reasonably ascertainable, of repurchase or quiet title action filing rights if those rights are not exercised within 30 days of the first publication of notice. (Chapter 407, L. 1997, was, as stated in the preamble, enacted in reaction to this case.) Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996).

Allowable Costs of Preserving and Improving Property — Period of Purchaser's Possession: Plaintiffs in an action to quiet title granted through a tax deed claimed costs pursuant to 15-18-401, MCA 1985 (predecessor to 15-18-411, MCA 1987), of new kitchen cabinets and appliances, new flooring, new bathroom fixtures, and certain legal costs as part of their cost of preserving and improving property. Defendant failed to deposit the costs as required by the court, and although he did submit a required answer to a show cause order, the District Court did not consider the answer filed because no filing fee accompanied it. The Supreme Court held plaintiffs had no right to claim some of the costs and that under 15-18-401(1)(a)(ii), MCA 1985

(predecessor to 15-18-411, MCA 1987), they could only claim costs incurred after 3 years from the tax sale. The court further indicated a purchaser at a tax sale without more has no right of possession to the real property until 3 years after the tax sale. Ball v. Gee, 234 M 140, 761 P2d 830, 45 St. Rep. 1794 (1988).

CHAPTER 23
CENTRALLY ASSESSED PROPERTY

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Administrative Rules

Title 42, chapter 22, ARM Centrally assessed property.

Chapter Attorney General's Opinions

Supplemental Assessments Against Banks — Confidentiality: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301. 35 A.G. Op. 59 (1974).

Chapter Collateral References

Taxation *key* 364 through 407.

84 C.J.S. Taxation §455, et seq.

71 Am. Jur. 2d State and Local Taxation §§218 through 220, 392 through 427, 438 through 442.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Administrative Rules

Title 42, chapter 22, subchapter 1, ARM Centrally assessed companies.

ARM 42.22.111 Valuation method.

ARM 42.22.113 Market indicator.

ARM 42.22.122 Apportionment procedure.

Part Case Notes

Inclusion of Tax Deferrals in Stock and Debt Indicator: The State Tax Appeal Board (STAB) found that a tax deferral account was a true liability. The District Court reversed after finding the account was merely an accounting device that reflected value owed on the books but could not be included under ARM 42.22.113, because it was neither an instrument traded on the financial market nor a true liability as required by the regulation. The Supreme Court reversed the decision as an incorrect substitution of the trial court's judgment for that of STAB on a question of fact, holding that the District Court should not have interpreted the Department's regulation so narrowly as to frustrate the mandate for finding market value. Further, use of the words "outstanding debt" in the regulation was sufficiently comprehensive to include an account that must serve to offset the loss of depreciation deductions that may be experienced in the future. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Valuation of Construction Work in Progress Outside Traditional Indicators — No Abuse of Discretion: To determine the value of Puget Sound Power and Light Company (Puget), the Department of Revenue added 40% of the cost indicator, 50% of the income indicator, and 10% of the stock and debt indicator to arrive at an assessed value. The Department then added the market value of Puget's construction work in progress (CWIP) to calculate total value, and the aggregate figure was then multiplied by an agreed percentage to determine the value of Puget's property in Montana. The District Court concluded the Department abused its discretion by failing to integrate the value of CWIP into the three unit value indicators and that the separate treatment for CWIP was erroneous. The Supreme Court found that under ARM 42.22.111, the Department had explicit authority to combine the unit and summation methods of valuation, noting that credible testimony indicated that capitalization of CWIP was too speculative to render an accurate figure for use in the income indicator and that valuation outside the three indicators was a better way to approximate market value. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Value of Construction Work in Progress but Not Expected to Go Into Service Reflected in Market Value of Stock and Debt — Indicator to Include Property at Market Value: The District Court properly affirmed a State Tax Appeal Board decision that the stock and debt indicator should not be adjusted to reflect the amount of construction work in progress (CWIP) not expected to go into service. Evidence disclosed that the reduction in value of CWIP as a result of CWIP not expected to go into service was already reflected in the market value of stock and debt. The court also correctly concluded that the stock and debt indicator should indicate property at its market value, rather than its cost value. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

15-23-101. Properties centrally assessed.

Compiler's Comments

2005 Amendment: Chapter 559 in (4) inserted exception clause. Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

2001 Amendment: Chapter 7 in (2) near end substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendments — Composite Section: Chapter 531 in (1) at beginning substituted "the railroad transportation property" for "the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property"; and made minor changes in style. Amendment effective April 30, 1999.

Chapter 583 at beginning of (1) after "the" deleted "franchise"; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 7, Ch. 531, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1997 Amendment: Chapter 42 in (4), after "proceeds of mines", deleted "and of oil and gas wells"; and made minor changes in style. Amendment effective March 12, 1997.

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, in (1) inserted reference to railroad car companies.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Department Directed to Amend Rule: Section 1, Ch. 660, L. 1985, provided: "The Department of Revenue shall amend Rule 42.22.112, Administrative Rules of Montana, to read:

"42.22.112 COST INDICATOR (1) The cost indicator of value shall be derived from information contained in the company's report to the department, report to a regulatory agency, property descriptions submitted to the department, and any other reliable source of information. The department will include the cost of all operating properties which are taxable under Montana law. This includes properties both within and without the state.

(2) The type of cost used may be one of the following:

(a) replacement;

(b) replacement less depreciation;

(c) reproduction;

(d) reproduction less depreciation;

(e) historical (original); and

(f) historical less depreciation.

(3) The choice of cost shall depend upon which type best reflects market value of the property at the time of valuation. For taxable periods beginning after December 31, 1985, the cost indicator for railroads, airlines, and other federally protected taxpayers shall be treated consistent with federal law.""

1983 Amendment: Inserted (6) that reads: "property described in subsections (1) and (2) which is subject to the provisions of Title 15, chapter 24, part 12".

Applicability of 1983 Act: Section 7, Ch. 683, L. 1983, provided: "This act is applicable to taxable periods beginning after December 31, 1983."

1981 Amendment: Added the language pertaining to property of public agencies to the end of (2).

Composite of 1981 Amendment and Effective Date: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy." The Code Commissioner has composited this effective date with the substantive amendment made by sec. 3, Ch. 478, L. 1981, in subsection (2). In the composite the Code Commissioner has substituted "if" for "This act is not effective until" to reflect the substance of the effective date within the code section.

Subsection Not Codified: Subsection (1) of section 84-708.1, R.C.M. 1947, which required the department to centrally assess certain property, was not codified in the MCA because it is redundant with 15-23-101. This clause has not been repealed and is still valid law. Citation may be made to sec. 53, Ch. 405, L. 1973, as amended by sec. 1, Ch. 465, L. 1975; sec. 9, Ch. 98, L. 1977; and sec. 53, Ch. 566, L. 1977.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.
ARM 42.22.102 Assessment of centrally assessed property.
ARM 42.22.114 Income indicator.

Case Notes

Specific Provisions Concerning Mine Net Proceeds Taxes to Supersede General Ownership Provision of Tax Law: The respondent owned a limestone quarry and for 3 years filed returns showing a negative value for its mine net proceeds tax. The Department of Revenue subsequently audited the respondent's books and revised its assessment based on arriving at a higher figure than the respondent had reported. The respondent argued that under the provisions of 15-8-601, it was not liable for the revised assessment because it no longer owned the quarry. The Supreme Court stated that the respondent's argument would lead to an absurd result in that a mine owner could report a zero value for its mine net proceeds, sell its property, and be exempt from taxation following an audit of the true result. The court held that the specific provisions of the statutes relating to mine net proceeds taxes must supersede any repugnancy in the ownership provisions of 15-8-601. Dept. of Revenue v. Kaiser Cement Corp., 245 M 502, 803 P2d 1061, 47 St. Rep. 2221 (1990).

Attorney General's Opinions

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

Collateral References

84 C.J.S. Taxation §463, et seq.
72 Am. Jur. 2d State and Local Taxation §§644 through 648.

15-23-102. Independent appraisal option.

Compiler's Comments

1999 Amendment: Chapter 36 substituted (2) providing that department decisions may be taken to the state tax appeal board for former (2) that read: "(2) (a) After assessing property under 15-23-101, the department shall notify the owner and any purchaser under contract for deed of such property, in writing, of the assessed value it has determined.

(b) Within 20 days following notification, the taxpayer may demand a review of the validity of the department's assessment. The department shall conduct an assessment review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act. However, a party has the right of discovery prior to any assessment revision review conference. Upon consideration following such conference, the department may revise the assessment.

(c) Appeals from the final decision may be taken to the state tax appeal board." Amendment effective February 24, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

1983 Amendments: Chapter 253 enacted (1) relating to independent appraisers.

Chapter 526, in (2)(a), after "owner" inserted "and any purchaser under contract for deed".

Administrative Rules

ARM 42.2.510 Review of statement of account notices.
ARM 42.2.511 Review of centrally assessed property appraisals.
ARM 42.2.613 Definitions.
ARM 42.22.115 Notification.
ARM 42.25.1103 Valuation of net proceeds tax on miscellaneous mines.

Attorney General's Opinions

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

Collateral References

Taxation *key* 407.
84 C.J.S. Taxation §530.
72 Am. Jur. 2d State and Local Taxation §§694 through 699.

15-23-103. Due date of reports and returns — extensions.

Compiler's Comments

1995 Amendments: Chapter 397 in (3) inserted "or 15-23-518"; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 451 in (1), after "subsection (2)", deleted "and 15-23-602". Amendment effective January 1, 1996.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendment: Chapter 506 in (1) inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, in (2) inserted reference to 15-23-212.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

1991 Amendment: In (3) inserted reference to 15-23-516; and made minor changes in style. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: Near middle of (3) inserted reference to 15-23-515; and made minor change in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1983 Amendment: In (1), inserted proviso at beginning of subsection, after "15-23-502" deleted "15-23-602"; and inserted (2) relating to oil or gas pipeline returns; amendment applicable to reports or returns filed after December 31, 1982.

Administrative Rules

ARM 42.22.105 Reporting requirements.

15-23-104. Failure to file — estimate by department — penalty.

Compiler's Comments

1995 Amendment: Chapter 451 in (1), in fifth sentence near middle after "pursuant to parts 5", substituted "7 and" for "through"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 27 in (1), in seventh sentence after "department", deleted "will also inform its agents in the counties of the delinquency, and, except as provided in subsection (2), the agents" and inserted last sentence concerning notice to and collection by County Treasurer; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, near end of (1) inserted exception clause; and inserted (2) concerning delinquencies under 15-23-212.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

1991 Amendment: At end of fourth sentence substituted "15-1-211" for "15-8-601".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

1985 Amendment: Inserted third sentence that reads: "In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303"; and in fifth sentence, after "assessment", inserted "pursuant to parts 5 through 8 of this chapter" and after "estimated value", inserted "or imputed value".

1983 Amendment: In first sentence, after "return" changed "under" to "within the time established in", and after "15-23-103" deleted "by March 31"; amendment applicable to reports or returns filed after December 31, 1982.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

Collateral References

84 C.J.S. Taxation §545; 85 C.J.S. Taxation §1579, et seq.

72 Am. Jur. 2d State and Local Taxation §650.

15-23-105. Apportionment among counties.

Compiler's Comments

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, in first sentence inserted "other than railroad car company property".

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Statement of Intent: The statement of intent adopted with HB 643 (Ch. 686, L. 1979) provided: "Section 5 of House Bill 643 requires the department of revenue to apportion the value of certain centrally assessed property among the counties in which such property is located. This apportionment shall be made on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot be apportioned on either of these bases, then the department may adopt such other method or basis of apportionment as may be just or proper. It is the intent of the legislature that apportionments made under this act shall substantially correspond with the location of such property."

Administrative Rules

ARM 42.22.122 Apportionment procedure.

Case Notes

Apportionment Among Counties: Under 15-23-303, prior to its amendment in 1977, apportionment meant the process by which the State Board of Equalization (duty now performed by Department of Revenue) spread out the total value of a system among the counties through which the system passed. Yellowstone Pipe Line Co. v. St. Bd. of Equalization, 138 M 603, 358 P2d 61 (1960).

Collateral References

Taxation *key* 916.

85 C.J.S. Taxation §1654, et seq.

71 Am. Jur. 2d State and Local Taxation §§399 through 401, 406 through 411.

15-23-106. Report to the counties.

Compiler's Comments

1995 Amendments: Chapter 397 in (1)(d) inserted reference to 15-23-518; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 451 in (1)(d), after "royalties from mines", deleted "and oil and gas wells" and after "15-23-518" deleted "15-23-603, and 15-23-605"; and made minor changes in style. Amendment effective January 1, 1996.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 27 in introductory clause of (1) substituted "prepare for" for "transmit to its agent in"; and substituted (2) concerning entry of reported values in property tax record for former language that read: "The agent of the department shall enter the assessed values transmitted in the assessment book in a manner prescribed by the department." Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 506 in (1)(d) inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendment: In (1)(d) inserted reference to 15-23-516. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: Near end of (1)(d) inserted reference to 15-23-515. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1985 Amendment: In (1)(b) substituted "15-23-303" for "15-23-302".

1981 Amendment: Added the last phrase in (1)(c) requiring that 90% of the value of property be stated separately when a state airport is involved.

Collateral References

85 C.J.S. Taxation §1654, et seq.

72 Am. Jur. 2d State and Local Taxation §788.

15-23-107. Amended assessment.

Compiler's Comments

1999 Amendment: Chapter 36 near middle after "15-23-102" deleted "(2)". Amendment effective February 24, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

1993 Special Session Amendment: Chapter 27 at end substituted "enter the revision in the property tax record for each applicable county" for "transmit a statement of the revised assessment to its agent or the county officer then having custody of the assessment book in the county where the property is located"; and deleted second sentence that read: "The revision shall be immediately entered in the assessment book." Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.2.510 Review of statement of account notices.

ARM 42.2.511 Review of centrally assessed property appraisals.

ARM 42.2.613 Definitions.

15-23-108. Rulemaking authority.

Compiler's Comments

Department Directed to Amend Rule: For direction in sec. 1, Ch. 660, L. 1985, to Department of Revenue to amend rule, see Compiler's Comments to 15-23-101.

Administrative Rules

ARM 42.2.511 Review of centrally assessed property appraisals.

ARM 42.21.113 Leased and rental equipment.

Title 42, chapter 22, ARM Centrally assessed property.

Title 42, chapter 25, ARM Natural resource taxes.

Title 42, chapter 25, subchapter 11, ARM Net proceeds tax on miscellaneous mines.

15-23-115. Interest.

Compiler's Comments

1995 Amendments: Chapter 397 inserted "15-23-518". Amendment effective April 12, 1995. Chapter 451 after "15-23-518" deleted "15-23-602". Amendment effective January 1, 1996.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 27 after "15-23-802" deleted "the department shall inform its agents at the county level of the determination"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 506 in first sentence inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendment: In first sentence inserted reference to 15-23-516. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: Near beginning of first sentence inserted reference to 15-23-515. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

15-23-116. Statute of limitations.

Compiler's Comments

2005 Amendment: Chapter 536 inserted (2) providing that a refund or credit may not be allowed or paid unless the taxpayer has paid the tax under protest, except as provided in subsection (3); in (3) at beginning substituted "If the department determines that the taxpayer has made an overpayment, the department shall refund or credit the overpayment if the overpayment was discovered within" for "No refund or credit may be allowed or paid with respect to the year for which a return is filed after" and at end after "return" deleted "or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has

agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended"; and made minor changes in style. Amendment effective April 28, 2005.

Part 2
Railroads

Part Collateral References

Taxation *key* 389 through 393.

84 C.J.S. Taxation §§221, et seq., 535, et seq., 566 through 575.

71 Am. Jur. 2d State and Local Taxation §§402 through 415.

What property is within provision in relation to local taxation of certain railroad property under statute or Constitution providing for assessment or taxation of railroad property by state commission or board. 80 ALR 252.

From Liquor Stores to Burlington Northern Railroad: Issues Before the Revenue Oversight Committee, 1986 Interim Report, Montana Legislative Council.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-23-203. Definitions relating to taxes.

Compiler's Comments

Effective Date: Section 6, Ch. 531, L. 1999, provided that this section is effective April 30, 1999.

Retroactive Applicability: Section 7, Ch. 531, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

15-23-204. Assessment of railroads.

Compiler's Comments

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, inserted (21) concerning railroad cars.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Administrative Rules

ARM 42.22.105 Reporting requirements.

ARM 42.22.106 Additional reporting requirements for centrally assessed railroads.

ARM 42.22.122 Apportionment procedure.

Case Notes

Unitary Method Upheld: The unitary system, as applied by Department, was correctly imposed upon railroad running a spur line. Nonoperating property was mistakenly expressed in book value when it should have been expressed in fair market value. Dept. of Revenue v. Soo Lines, Inc., 172 M 1, 560 P2d 512 (1977).

Collateral References

Taxation *key* 390 through 393.

84 C.J.S. Taxation §§483, et seq., 535, et seq., 566 through 575.

71 Am. Jur. 2d State and Local Taxation §§406 through 415; 72 Am. Jur. 2d State and Local Taxation §§649 through 652.

15-23-205. Assessment — how made.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 531 substituted language in (1) through (6) regarding assessing and valuing railroad property and systems for former (1) that read: "(1) The department must assess the franchise, roadway, roadbed, rails, rolling stock, and all other operating properties of all railroads operated in more than one county or more than one state. All rolling stock must be assessed in the name of the person owning, leasing, or using the same. Assessment must be made to the person owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department." Amendment effective April 30, 1999.

Chapter 583 in first sentence in (1) before "roadway" deleted "franchise" (amendment rendered void by amendment by Ch. 531); and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 7, Ch. 531, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1985 Amendment: In (2) substituted "the department shall determine the percentage rate "R" provided for in 15-6-145" for "the department may modify the percentage multiplier provided for in 15-6-141". Amendment effective January 1, 1986.

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1981 Amendment: Inserted (2) that reads: "In determining the taxable value of railroad property, the department may modify the percentage multiplier provided for in 15-6-141 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended."

Statement of Intent: The statement of intent attached to HB 92 (Ch. 367, L. 1981) provided: "The intent of this bill is to allow the department to comply with the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended. This act places restrictions on the property taxation of railroads by state and local governments. Basically, the local taxing

jurisdictions may not tax railroads at a higher tax rate than that levied on commercial and industrial property in general (49 USC section 11503). This bill provides a mechanism to the department of revenue to adjust the percentage multiplier for converting market value to taxable value for railroad property. It is intended that the department may adjust the multiplier, if necessary, to achieve compliance with the federal requirements.

In making the adjustment the department may take into account both:

(1) differing percentages, as provided by statute, between various classes of property; and

(2) differences in the determination of market value between commercial and industrial property on one hand and railroad property on the other, if any such differences exist.

The language chosen is selected to afford the department reasonable latitude in developing a method of adjusting the multiplier."

Administrative Rules

ARM 42.22.110 Deductions for intangible personal property.

ARM 42.22.121 Allocation procedure.

Case Notes

Salvage Value as Measure: The Supreme Court rejected a method whereby the salvage value of rails, ties, and roadbed would be used to determine value when use of property was not abandoned. Dept. of Revenue v. Soo Lines, Inc., 172 M 1, 560 P2d 512 (1977).

Collateral References

Taxation *key* 390 through 393.

84 C.J.S. Taxation §§491, et seq., 535, et seq., 566 through 575.

71 Am. Jur. 2d State and Local Taxation §§406 through 415.

15-23-211. Definitions.

Compiler's Comments

1997 Amendment: Chapter 16 in definition of average levy substituted "95% of the average statewide mill levy for" for "average statewide rate of taxation on". Amendment effective February 11, 1997, and terminates December 31, 2002.

Effective Date — Retroactive Applicability: Section 2, Ch. 16, L. 1997, provided: "[This act] is effective on passage and approval [approved February 11, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1995."

Termination: Section 3, Ch. 16, L. 1997, provided: "[This act] terminates December 31, 2002."

1993 Amendment: Chapter 532 in definition of average levy, after "means the", inserted "average statewide" and after "taxation" substituted "on commercial and industrial property" for "determined under 15-24-103". Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 2, Ch. 532, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990." Approved April 24, 1993.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.
ARM 42.22.102 Centrally assessed property.
ARM 42.22.121 Allocation procedure.

15-23-212. Annual report.

Compiler's Comments

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Administrative Rules

ARM 42.22.105 Reporting requirements.

15-23-213. Assessment — allocation — taxable value.

Compiler's Comments

1992 Statement of Intent: The statement of intent attached to Ch. 10, Sp. L. July 1992, provided: "The intent of [this act] is to ensure that the taxation of property belonging to railroad car companies is within the requirements of the Railroad Revitalization and Regulatory Reform Act of 1976."

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Administrative Rules

ARM 42.22.121 Allocation procedure.

15-23-214. Determination of tax — payment — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (3) at end substituted "as provided in 15-1-216" for "under that section"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

15-23-215. Deposit of taxes.

Compiler's Comments

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be

credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

15-23-216. Lien — collection actions.

Compiler's Comments

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Part 3
Public Utilities

Part Case Notes

Relationship to Other Statutes:

This act (Ch. 49, L. 1919) does not repeal existing statutes on the subject of assessment, but is to be treated as a supplement to them. The various sections of the act, and of existing acts, are, therefore, in pari materia, and are to be construed together. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

This act (Ch. 41, L. 1919) does not affect 15-8-111, and that section is to be considered in connection with it. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Power to Assess Discretionary — Review by Courts: Since the State Board of Equalization (duty now performed by Department of Revenue) was an agency created by the constitution, with well-defined powers, discretionary in character, and this act (Ch. 49, L. 1919) does not attempt to direct the Board as to the method or means to be pursued by it in arriving at the actual value of the property of electric power corporations, the Supreme Court cannot, by Writ of Mandate, interfere and direct the Board how to make the assessment; so long as it is not guilty of fraud, and does not adopt a fundamentally wrong principle of assessment, the Supreme Court cannot interpose, or substitute its judgment for that of such Board. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Part Collateral References
Taxation *key* 367, 396.
84 C.J.S. Taxation §§478, et seq., 535, et seq.
71 Am. Jur. 2d State and Local Taxation §§392 through 401.

15-23-301. Officers of certain public utility companies to furnish statement to department.

Administrative Rules
ARM 42.22.105 Reporting requirements.

Collateral References
Taxation *key* 367, 396.
84 C.J.S. Taxation §§206, et seq., 483, et seq.
71 Am. Jur. 2d State and Local Taxation §§392 through 398; 72 Am. Jur. 2d State and Local Taxation §§649 through 652.

15-23-303. Assessment of property — apportionment to counties.

Compiler's Comments
1999 Amendment: Chapter 583 after "franchises" deleted "granted by the United States"; and made minor changes in style. Amendment effective May 10, 1999.
Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.
Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Administrative Rules
ARM 42.22.110 Deductions for intangible personal property.
ARM 42.22.121 Allocation procedure.

Case Notes
Actual Value: This section does not establish an arbitrary rule of assessment, but only requires that the total value of the plant and property, wherever situated, shall be taken into consideration in determining the actual cash value for taxation of that portion of the plant and property situated within this state. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Collateral References
Taxation *key* 916.
84 C.J.S. Taxation §§491 through 494, 547, et seq.
71 Am. Jur. 2d State and Local Taxation §§392 through 398.

Part 4
Airlines

Part Compiler's Comments
Section Not Codified: Section 84-6409, R.C.M. 1947, which is a severability section, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 9, Ch. 249, L. 1955.

Part Administrative Rules
Title 42, chapter 22, subchapter 1, ARM Centrally assessed companies.

Part Collateral References
84 C.J.S. Taxation §§478, et seq., 535, et seq.
71 Am. Jur. 2d State and Local Taxation §423.

15-23-401. Definitions.

Compiler's Comments
1999 Amendment: Chapter 140 inserted definitions of newly acquired aircraft and newly acquired equipment; and made minor changes in style. Amendment effective March 23, 1999.
Retroactive Applicability: Section 4, Ch. 140, L. 1999, provided "[This act] applies retroactively, within the meaning of 1-2-109, to newly acquired aircraft and equipment acquired after December 31, 1996, and to property tax years beginning after December 31, 1998."

Administrative Rules
ARM 42.22.101 Definitions.

15-23-402. Report by airline company.

Administrative Rules
ARM 42.22.105 Reporting requirements.

Collateral References
Taxation *key* 366 through 371.5.
84 C.J.S. Taxation §§483, et seq., 535, et seq.
72 Am. Jur. 2d State and Local Taxation §§649 through 652.

15-23-403. Determination of value — exception for new aircraft and supporting equipment — notice.

Compiler's Comments
1999 Amendment: Chapter 140 in (2) substituted "newly acquired aircraft and newly acquired equipment" for "new aircraft acquired and new equipment acquired"; and made minor changes in style. Amendment effective March 23, 1999.
Retroactive Applicability: Section 4, Ch. 140, L. 1999, provided "[This act] applies retroactively, within the meaning of 1-2-109, to newly acquired aircraft and equipment acquired after December 31, 1996, and to property tax years beginning after December 31, 1998."
1987 Amendment: At beginning of second sentence of (1), relating to ascertainment of valuation, inserted exception clause; inserted (2) creating valuation exception; in (3), relating to notice of assessment, after "assessment", inserted "as provided in subsection (1) or (2)"; and made minor changes in phraseology.
Applicability: Section 3, Ch. 520, L. 1987, provided: "This act applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 1986." The retroactivity applies to taxable valuation of new aircraft and supporting equipment acquired by certain scheduled airlines, which was added as an exception by subsection (2) of sec. 1.

Administrative Rules
ARM 42.22.105 Reporting requirements.
ARM 42.22.112 Cost indicator.
ARM 42.22.115 Notification.

Case Notes
Assessment to Be Based on Aircraft Used in This State: Under former statute providing that Board should determine valuation of all flight property used by scheduled airline in air commerce in state, assessment of airline using three types of aircraft but only one type in state was to be made only on that portion of airline's business arising directly from aircraft used in state, and depreciated value of aircraft used in state was the base for taxation. W. Air Lines, Inc., v. Michunovich, 149 M 347, 428 P2d 3 (1967), certiorari denied in Michunovich v. W. Air Lines, Inc., 389 US 952, 19 L Ed 2d 363, 88 S Ct 336 (1967).

Collateral References
Taxation *key* 375.
84 C.J.S. Taxation §§488 through 490, 547, et seq.
71 Am. Jur. 2d State and Local Taxation §423.

Part 5
Mines Net Proceeds

Part Compiler's Comments
Effective Date — Applicability: Section 2, Ch. 349, L. 1987, provided: "This act is effective on passage and approval and applies only to settlement proceeds received during calendar year 1993." Effective April 6, 1987.
Proceeds From Settlement of Disputed Taxes: Section 1, Ch. 349, L. 1987, provided: "Disputed mines net proceeds or metal mines gross proceeds taxes — characterization of proceeds of settlement. (1) Proceeds received by a municipality or county in settlement of an alleged tax obligation arising under the mines net proceeds tax in Title 15, chapter 23, part 5, or the metal mines gross proceeds tax in Title 15, chapter 23, part 8, do not constitute the payment of delinquent taxes or money arising from the taxation of property if all of the following conditions are met:
(a) there are no entries in the county's assessment book reflecting the disputed valuations;

(b) the proceeds are not apportioned to previous tax years in which the department through revised assessment determined taxes were owing;

(c) the payment schedule differs from that applicable to mines net proceeds and metal mines gross proceeds taxes with respect to time of payment;

(d) the settlement agreement provides for penalty and interest provisions that differ from relevant statutory provisions; and

(e) the county and the taxpayer are given the discretion to modify the time and amount of payments.

(2) After all mandatory distributions have been made to state and local taxing jurisdictions, remaining settlement proceeds satisfying all the conditions set forth in subsection (1) may be:

(a) allocated to a school district building fund established under 20-9-508; or

(b) used to provide additional security for bonds issued under Title 90, chapter 5, part 1, for financing of projects for local government facilities, including schools and local port authorities."

Part Administrative Rules

Title 42, chapter 25, subchapter 11, ARM Net proceeds tax on miscellaneous mines.

Part Attorney General's Opinions

Special Improvement District Assessed Valuation Option — Inclusion: Oil and gas net proceeds and royalty interests should not be included within the assessed value of land benefited from a rural special improvement district for purposes of assessment of costs under 7-12-2151. 42 A.G. Op. 5 (1987).

Legality of Independent Payment Procedure — Mine Proceeds Taxes — Revised Assessments: It is legal to allow the establishment of a payment procedure independent of the statutory scheme by a settlement agreement compromising alleged tax obligations under the mines net proceeds and metal mines gross proceeds taxes by authority in 15-8-601 to make revised assessments of taxable property which has escaped or been omitted from taxation or has been erroneously assessed. 41 A.G. Op. 67 (1986).

Part Law Review Articles

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Part Collateral References

84 C.J.S. Taxation §§95 through 98, 478, et seq., 535, et seq.

71 Am. Jur. 2d State and Local Taxation §§218 through 220.

15-23-501. Taxation of mines.

Compiler's Comments

2005 Amendment: Chapter 559 in (1) in second sentence after "machinery" inserted "equipment, and other personal property", after "mining" deleted "and all property and surface improvements upon", and inserted exception clause and inserted third sentence related to surface improvements taxed as other improvements; inserted (2) related to bentonite; and made minor changes in style. Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

Administrative Rules

ARM 42.25.1101 Net proceeds tax on miscellaneous mines — definitions.

Case Notes

Not Applicable Past Beneficiation Stage: The net proceeds tax does not apply to talc once it is past the beneficiation stage. The value of the mining product to be taxed is determined after initial processing of raw talc and the value should not include manufacturing processes which

further refine talc for use in sophisticated products. Pfizer, Inc. v. Madison County, 161 M 261, 505 P2d 399 (1973).

Operation of One or More Mines: The considerations of paramount importance in determining whether an operation constitutes one mine, or more than one, are ownership, location, integration of mining system, and single management. U.S. Gypsum Co. v. Schreiner, 135 M 312, 340 P2d 548 (1959).

Injunction Restraining Collection — Indian Land: When in 1936 the Supreme Court granted an injunction to an oil and gas company "forever" restraining and enjoining the State Board of Equalization (duty now performed by Department of Revenue) from levying or collecting certain taxes upon oil and gas produced under a lease of trust patent Indian land, but the Board in 1941 believing that a later decision of the Supreme Court of the United States superseded and overruled the former decision and took steps to collect the taxes, the oil company should have proceeded under 3-1-501 instead of instituting a new proceeding, which was properly dismissed. Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 224, 114 P2d 521 (1941).

Undeveloped Mine: Coal in place, found in lands granted by the government to the Northern Pacific Railway Company, which coal the company reserved to itself in deeds to portions of the lands sold by it, constitutes a mine, and as such, in its undeveloped condition, is not a proper subject for taxation. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Reservation of Right to Explore and Mine: When lands were sold by a railroad company, rights reserved in the deeds to that use of the surface of the land as may be necessary for the exploration, mining, and carrying away of the coal that may be found below, are a valuable interest in the land itself and are property subject to taxation. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Taxation of Net Proceeds:

Under the 1889 Montana Constitution and this section, the net proceeds of all mines and mining claims are taxable the same as other personal property, and the Assessor need not follow up the mine proceeds, the tax being a lien on the mine itself until paid. Tong v. Maher, 45 M 142, 122 P 279 (1912).

Under this section which is a reiteration of Art. XII, sec. 3, 1889 Mont. Const., the annual net proceeds of coal mines are liable to taxation "as other personal property". Mont. Coal & Coke Co. v. Livingston, 21 M 59, 52 P 780 (1898).

Burden of Proof When Claiming Exemption: One claiming an exemption from taxation has the burden of showing that he is entitled to it; but in an action under this section prior to its amendment in 1979, to enjoin the collection of taxes upon a ditch used solely in connection with placer mining operations, and therefore not subject to taxation, the burden was upon the State to show that the ditch has a value independent of the placer mining claim, so as to render it liable to taxation. Hale v. Jefferson County, 39 M 137, 101 P 973 (1909).

Machinery and Improvements: Machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, are properly assessed as personal property. Birney v. Warren, 28 M 64, 72 P 293 (1903).

Collateral References

Taxation *key* 63.

84 C.J.S. Taxation §§95 through 98.

71 Am. Jur. 2d State and Local Taxation §§218 through 220.

15-23-502. Net proceeds tax — statement of yield.

Compiler's Comments

2005 Amendment: Chapter 559 in introductory clause in first sentence after "vermiculite" deleted "bentonite" and in exception clause before "coal" inserted "bentonite". Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

1995 Amendment: Chapter 397 near end of introductory clause inserted reference to 15-23-518; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506, in third sentence of introductory clause inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 695 near end of introductory clause inserted reference to 15-23-516. Amendment effective April 27, 1991.

Chapter 700 in (1), near middle of first sentence after "coal", inserted "travertine, building stone". Amendment effective April 26, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

Section 3, Ch. 700, L. 1991, provided: "[This act] is effective on passage and approval [approved April 26, 1991] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 4, Ch. 700, L. 1991, provided: "[This act] terminates December 31, 1993."

1989 Amendment: At beginning of last sentence of introductory language inserted exception clause referring to 15-23-515; and made minor change in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1985 Amendment — Applicability: Inserted (15) that reads: "cost of mine reclamation". Applicable to taxable years beginning after December 31, 1985 (sec. 4, Ch. 623, L. 1985).

1983 Amendment: In (3), after "ore" deleted "barrels of petroleum, cubic feet of natural gas"; in (4) after "that is," deleted "barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other"; in (12) after "workers' compensation insurance" inserted "boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process"; inserted (13) relating to welfare and retirement fund payments; and inserted (14) relating to costs for safety testing, security, and other tests and services.

Earlier Enactments: Earlier acts were sections 1047 to 1050, Revised Statutes 1879; reenacted sections 1791 to 1794, Fifth Division Compiled Statutes 1887; sections 50 to 57, pp. 93 to 95, L. 1891; reenacted sections 3760 to 3768, Political Code 1895; reenacted sections 2563 to 2571, R.C.M. 1907.

Administrative Rules

ARM 42.22.105 Reporting requirements.
ARM 42.25.1102 Net proceeds tax return.
ARM 42.25.1104 Mining versus nonmining processes.
ARM 42.25.1105 Computation of gross value.
ARM 42.25.1119 Special deductions.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes

was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

Only Direct Costs and Expenses of Mineral Extraction Deductible: Section 15-23-503 does not allow the deduction of all mining-related costs necessary to the mining operation. What may be properly deducted from net proceeds is construed restrictively; therefore, only the direct costs and expenses of extracting the mineral are deductible. General overhead, office expenses, and administrative expenses are indirect costs and are not deductible regardless of the accounting system employed by the taxpayer. W.R. Grace & Co. v. Dept. of Revenue, 238 M 439, 779 P2d 470, 46 St. Rep. 1399 (1989). See also Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924), and Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Net Proceeds Tax Applies to Fluorspar Removed From Tailings: Fluorspar removed from tailings on land owned by Darby Spar is subject to the net proceeds tax despite the fact that 15-6-131 does not contain a reference to "dump or tailings". The reason for this discrepancy in the statutes is found in Foreman v. Beaverhead County, 117 M 557, 161 P2d 524 (1945). The decision in that case noted the absence of references to "dump or tailings" in holding they were not subject to the tax. The next Legislature specifically included those words in what is now 15-23-502. The Legislature clearly intended to impose the net proceeds tax on the yield from disposed tailings, and for 40 years that is what the Department of Revenue has done by administrative rule. Darby Spar, Ltd. v. Dept. of Revenue, 217 M 376, 705 P2d 111, 42 St. Rep. 1262 (1985).

Determination of Gross Value: In the determination of the valuation of the net proceeds of mines for the purpose of taxation, the bonus or premium paid by the federal government should be included in the "gross value" of the product which is the basis for the computation of the tax. Minerals Eng'r Co. v. Greene, 131 M 119, 308 P2d 977 (1957), overruling Klies v. Linnane, 117 M 59, 156 P2d 183 (1945).

Tailings Dump: Tailings dump forming a definite and segregated body or mass classifiable as personal property was not a "mine" and hence prior to the 1947 amendment of this section proceeds of the sale of valuable minerals removed therefrom were not taxable as "net proceeds of a mine". Foreman v. Beaverhead County, 117 M 557, 161 P2d 524 (1945).

State's Power to Tax Production Under Lease of Trust Patent Indian Land:

The State Board of Equalization (duty now performed by Department of Revenue) is authorized to tax the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 101 M 268, 54 P2d 117 (1936), with exception of the royalty owner's net proceeds tax, for the reason that the federal Supreme Court overruled its holdings upon which the state court's former opinion was based.) Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 359, 116 P2d 1012 (1941).

Oil and gas leases on Indian lands held under trust patent, in which the oil and gas was reserved for the benefit of the tribe, created an estate in land distinct and separate from the interest held by the federal government, which estate was subject to operators' net proceeds tax and the gross production tax. British-American Oil Prod. Co. v. St. Bd. of Equalization, 101 M 293, 54 P2d 129 (1936), affirmed, 299 US 159, 81 L Ed 95, 57 S Ct 132 (1936).

Indian Royalty Interests Exempt: Royalty interests accruing to a Blackfeet Indian from an oil and gas lease on reservation lands allotted to and held by him under trust patent are not subject to state taxation under the royalty owner's net proceeds tax. Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 359, 116 P2d 1012 (1941); 101 M 268, 54 P2d 117 (1936).

Nature of Tax: Oil and gas in place is land, and a tax on the income of the oil and gas is a tax on land. A tax on the royalty, which only accrues as a result of the production of oil or gas, is a burden on the production of oil or gas and, therefore, a tax levied and assessed against the gas and oil produced. A tax on royalty is a part of the net proceeds tax arising out of the operation of mines, and the holder of royalty interest is liable for the tax in absence of contractual obligation to the contrary. N. Pac. Ry. v. Gas Dev. Co., 103 M 214, 62 P2d 204 (1936).

Nonresident Royalty Holder: The fact that the owner of a royalty interest in an oil well made taxable under sections 2096.1 and 2096.2, R.C.M. 1935 (now repealed), was a nonresident of the state did not render him immune from payment of a tax on the royalty. The tax imposed upon the royalty as a part of the net proceeds is in lieu of the ad valorem tax on the oil in the ground as a part of the realty and is not a personal property tax that depends upon the residence of the owner. Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Definition of Royalties: The consideration for certain assignments of rights in oil lands consisting of an agreement to convey to the assignees "as royalty payable in cash" 20% of all oil produced from the premises, constituted "royalties" within the meaning of this section and sections 2096.1 and 2096.2, R.C.M. 1935 (now repealed). Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Constitutionality: This section, as amended in 1927, and section 2096.2, R.C.M. 1935 (now repealed), are not unconstitutional as impairing the obligation of a contract when applied to royalty accruing under a contract executed before the enactment of the sections. Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Construction of "Royalty" Contracts: Within the meaning of this section and sections 2096.1 and 2096.2, R.C.M. 1935 (now repealed), the question whether payments required to be made to the lessee of oil lands by the oil well operator were "royalties", the provisions of the instrument calling for the payments must be construed for what they really are, regardless of designation in the contract. Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Nature of Royalty Interest: The owner of a royalty interest in an oil well made taxable under this part is the owner of property within the meaning of Art. XII, sec. 17, 1889 Mont. Const., which is taxable and assessable to the owner of such interest as net proceeds of mines under Art. XII, sec. 3, 1889 Mont. Const. regardless of the form of the lease under which the royalty is reserved. Byrne v. Fulton Oil Co., 85 M 329, 278 P 514 (1929).

Liability for Tax:

When several persons own separate divisible interests in a mine or oil well the interest of each is property taxable to each under the statute providing for taxation of net proceeds of mines. (Distinguishing instant case from N. Pac. Ry. v. Musselshell County, 74 M 81, 238 P 872 (1925), containing language intimating that statute contemplates assessment to but one person.) Homestake Exploration Corp. v. Schoregge, 81 M 604, 264 P 388 (1928).

Under this part the lessee of a (coal) mine, i.e., the person engaging in mining, and not the owner, is the proper party to whom net proceeds are assessable. N. Pac. Ry. v. Musselshell County, 74 M 81, 238 P 872 (1925).

Mine Rental: A tax cannot lawfully be levied against a person for property he does not own, and since property in the shape of net proceeds of a mine belongs to the lessee and not to the owner of it and the statute contemplates but one assessment of the proceeds and that to the lessee, it was error to assess to the owner, as part of the net proceeds of the mine, the rental received by him from the lessee. N. Pac. Ry. v. Musselshell County, 74 M 81, 238 P 872 (1925).

Assessment of Net Proceeds of Mines: The Legislature could properly add powers additional to those specifically conferred by Art. XII, sec. 15, 1889 Mont. Const., upon the State Board of Equalization (now Department of Revenue), as it did by Ch. 237, L. 1921, by imposing upon the Board the duty to assess net proceeds of mines. Butte & Superior Min. Co. v. McIntyre, 71 M 254, 229 P 730 (1924).

No Deduction for Taxes and Fire Insurance Premiums: Taxes and fire insurance premiums, (prior to the amendment of this section), paid upon milling and reduction works owned and operated by a mining company in connection with its mining operations are not deductible as a part of the cost of extracting the minerals and metals from ores taken from its mines in computing the net proceeds of mines for the purpose of arriving at the amount of license tax payable under sections 2344-2355, R.C.M. 1921 (now repealed), construed in the light of the provisions of this part relating to the taxation of mines and net proceeds. Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924).

Allowable Deductions: The State Board of Equalization (now Department of Revenue) is a special tribunal with limited powers and must, in making an assessment of net proceeds of mines, pursue the method of procedure prescribed by this part; in it is lodged no discretion to permit deductions from the gross proceeds other than those specifically provided for, or to allow reimbursement to the taxpayer for taxes paid by him by mistake in previous years, and mandamus lies to compel the Board to follow the law. State ex rel. Bourquin v. St. Bd. of Equalization, 67 M 340, 215 P 667 (1923).

Assessment by County Assessor: By the enactment of Ch. 237, L. 1921, making net proceeds of mines assessable by the State Board of Equalization (now Department of Revenue) and repealing sections 2563-2571, R.C.M. 1907, under which the duty of assessing such proceeds had been placed upon the county taxing officers, a County Assessor was without authority after the approval of Chapter 237 to assess net mine proceeds, and mandamus did not lie to compel him to obey an order of the County Board of Equalization (now County Assessor) that he do so. State ex rel. Bourquin v. St. Bd. of Equalization, 67 M 340, 215 P 667 (1923).

Collateral References

Taxation *key* 331, 368.
84 C.J.S. Taxation §§95 through 98, 483, et seq., 535, et seq.
72 Am. Jur. 2d State and Local Taxation §§649 through 652.

15-23-503. Net proceeds — how computed.

Compiler's Comments

1995 Amendment: Chapter 397 in introductory clause of (1) inserted reference to 15-23-518; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 in second sentence inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendment: In (1), near end of introductory clause, inserted reference to 15-23-516. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: In (1), at beginning of last sentence in introductory language, inserted exception clause; and made minor changes in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1985 Amendment — Applicability: In (1)(h) inserted "for the cost of reclamation at the site of the mine". Applicable to taxable years beginning after December 31, 1985 (sec. 4, Ch. 623, L. 1985).

1983 Amendment: In (1)(g), substituted "all moneys expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502" for "all moneys expended for fire insurance and workers' compensation insurance and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees."; and inserted (1)(h) relating to costs for safety testing, security, and other tests and services.

Administrative Rules

ARM 42.25.1103 Valuation.
ARM 42.25.1104 Mining versus nonmining processes.
ARM 42.25.1105 Computation of gross value.
ARM 42.25.1112 Expenses related to machinery.
ARM 42.25.1113 Labor costs.
ARM 42.25.1114 Cost of improvements and repairs.
ARM 42.25.1115 Cost of milling, smelter, and reduction works.
ARM 42.25.1116 Transportation expenses.
ARM 42.25.1117 Marketing, administrative, and other operational costs.
ARM 42.25.1118 General treatment of deductions.
ARM 42.25.1119 Special deductions.

Case Notes

Only Direct Costs and Expenses of Mineral Extraction Deductible: This section does not allow the deduction of all mining-related costs necessary to the mining operation. What may be properly deducted from net proceeds is construed restrictively; therefore, only the direct costs and expenses of extracting the mineral are deductible. General overhead, office expenses, and administrative expenses are indirect costs and are not deductible regardless of the accounting system employed by the taxpayer. W.R. Grace & Co. v. Dept. of Revenue, 238 M 439, 779 P2d 470, 46 St. Rep. 1399 (1989). See also Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924), and Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Value Added From Operations Beyond Point of Beneficiation Not Included in Value of Net Proceeds: Following the limitations set out in Pfizer, Inc. v. Madison County, 161 M 261, 505 P2d 399 (1973), the Supreme Court held that the net proceeds tax applies only to the mining stage of an operation. Once the mineral passes the beneficiation, or premanufacturing, phase of the mining process, the tax no longer applies. Value added to the mineral from operations undertaken beyond the point of beneficiation is not included in the value of net proceeds; therefore, deductions from such operations are not allowed. W.R. Grace & Co. v. Dept. of Revenue, 238 M 439, 779 P2d 470, 46 St. Rep. 1399 (1989).

Allocation Formula: When taxpayer calculated deductions for cost of marketing and conversion into money by an allocation formula, rather than a cost accounting basis, it failed to meet the test of definiteness and uniformity. Taxpayer failed to allocate actual costs incurred in mining when determining net proceeds. Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Taxes Not Deductible: Absent specific statutory language characterizing taxes as a deductible item, a taxpayer is not entitled to a deduction for taxes paid in the preceding year in determining its net proceeds of mines tax. Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Post-Beneficiation Deduction Disallowed: Taxpayer's allocation formula was rejected because it failed to meet the tests of definiteness and uniformity contemplated by this section. The formula contemplated expenses incurred outside the state and after the beneficiation stage of the manufacture of talc. Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Deduction for Expansion of Mining Operation: When the evidence as to ownership, location, integration of mining system, and single management pointed to one mining operation for the purpose of net proceeds taxation, extension of operations to a second ridge of two parallel ridges did not constitute opening of second mine and expenditures for the extension were tax deductible in connection with the first operation. U.S. Gypsum Co. v. Schreiner, 135 M 312, 340 P2d 548 (1959).

Determination of Gross Product: When producer received price of $63 a ton from General Services Administration while market price was only $35 a ton, the difference between the market price and the price received is not to be considered a government bonus or subsidy since the producer was free to sell to anyone and the entire price was to be included in determining the value of the gross product. Minerals Eng'r Co. v. Greene, 131 M 119, 308 P2d 977 (1957), overruling Klies v. Linnane, 117 M 59, 156 P2d 183 (1945).

Deduction for Employer's Health and Welfare Fund Contribution: Under this section, money paid by the employer to the union's health and welfare fund pursuant to a collective bargaining agreement is deductible as money expended for necessary labor, since under the N.L.R.A. the employees could strike to enforce such payments and therefore they are as necessary in order to obtain labor as agreeing and paying of a scale of wages. Brophy Coal Co. v. Matthews, 125 M 212, 233 P2d 397 (1951).

Deduction for Fire Insurance Premiums: Prior to amendment, this section did not allow a deduction for fire insurance premiums paid. Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924).

No Deduction for Taxes: Taxes paid on milling and reduction works owned and operated by a mining company in connection with its mining operation are not deductible as a part of the cost of extracting minerals and metals from ores taken from its mines in computing the net proceeds of mines for the purpose of arriving at the amount of license tax payable under sections 2344 through 2355, R.C.M. 1921 (now repealed), construed in the light of the provisions of this part relating to the taxation of mines and net proceeds. Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924).

Allowable Deductions — Mandamus: The State Board of Equalization (now Department of Revenue) is a special tribunal with limited powers and must, in making an assessment of net proceeds of mines, pursue the method of procedure prescribed by Ch. 237, L. 1921; in it is lodged no discretion to permit deductions other than those specifically provided for or to allow reimbursement to the taxpayer for taxes paid by him by mistake in previous years, and mandamus lies to compel the Board to follow the law. State ex rel. Bourquin v. St. Bd. of Equalization, 67 M 340, 215 P 667 (1923).

Collateral References

Taxation *key* 382.

84 C.J.S. Taxation §§95 through 98, 524, 525, 553.

15-23-504. Lien of tax and penalty.

Collateral References

Taxation *key* 501 through 514.5.
84 C.J.S. Taxation §824; 85 C.J.S. Taxation §824, et seq.
72 Am. Jur. 2d State and Local Taxation §§798 through 805.

15-23-505. Assessment of royalties.

Administrative Rules

ARM 42.25.1111 Treatment of royalties.

Case Notes

Constitutionality: The fact that a lessor's percentages of the net smelter returns paid under its lease are net proceeds as to it and taxable as royalties and hence classified as class one of sections 84-301 and 84-302, R.C.M. 1947 (since repealed) did not of itself contravene Art. XII, sec. 1 and 11, 1889 Mont. Const. (see Art. VIII, sec. 1 and 4, 1972 Mont. Const.). New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Profit or Loss in Operation of Mine Immaterial: It does not matter whether the mine is operated at a profit or at a loss by the operator, so far as the royalty holder is concerned. He must pay on the royalty yielded to him whether the operator of the mine operated it at a loss or not. Nor does it matter whether the operator deducted the royalties in making up its return for the computation of its net proceeds. The taxing authorities are required to tax the lessor's net smelter returns for what they are, not for what the parties may do with them. New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Money Paid Under Option to Purchase as Royalties: Under a lease and option to purchase whereby the lessor was to get a percentage of net smelter returns that were to be credited as purchase money, such payments were nevertheless royalties, although they were credited after receipt as purchase money. The lessor and the lessee can, by no contract between them, make royalties exempt from taxation by the expedient of calling them either purchase money or payments upon the lessor's corporate indebtedness. They are royalties between the lessor and the lessee, and the state, which is not party to the agreement, is not bound by it. New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Collateral References

84 C.J.S. Taxation §§95 through 98.
71 Am. Jur. 2d State and Local Taxation §220.
Solid mineral royalty as real or personal property for tax purposes. 68 ALR 2d 734.

15-23-506. False or fraudulent reports.

Collateral References

Taxation *key* 839.
84 C.J.S. Taxation §§488 through 490, 545.
72 Am. Jur. 2d State and Local Taxation §650.

15-23-507. Taxation and payment on royalty interests.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in first sentence, near beginning, substituted "computing" for "transmitting", after "shall also" substituted "determine" for "transmit", and after "schedules" deleted "to the county assessor"; at beginning of second sentence substituted "The department" for "Thereupon the county assessor"; at beginning of third sentence inserted "Upon furnishing the tax roll"; in fourth sentence substituted "department" for "county assessor" and "tax record" for "personal property assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.25.1111 Treatment of royalties.

Case Notes

Constitutionality:

The fact that a lessor's percentages of the net smelter returns paid under its lease are net proceeds as to it and taxable as royalties and hence classified as class one of sections 84-301 and 84-302, R.C.M. 1947 (now repealed) did not of itself contravene Art. XII, sec. 1 and 11, 1889

Mont. Const. (see Art. VIII, sec. 1 and 4, 1972 Mont. Const.). New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Since Ch. 140, L. 1927 (now repealed), making royalty interest taxable, applied to all such interests in mining property, it was not unconstitutional as discriminatory. Byrne v. Fulton Oil Co., 85 M 329, 278 P 514 (1929).

Profit or Loss in Operation of Mine Immaterial: It does not matter whether the mine is operated at a profit or at a loss by the operator, so far as the royalty holder is concerned. He must pay on the royalty yielded to him whether the operator of the mine operated it at a loss or not. Nor does it matter whether the operator deducted the royalties in making up its return for the computation of its net proceeds. The taxing authorities are required to tax the lessor's net smelter returns for what they are, not for what the parties may do with them. New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Money Paid Under Option to Purchase as Royalties: Under a lease and option to purchase whereby the lessor was to get a percentage of net smelter returns which were to be credited as purchase money, such payments were nevertheless royalties, although they were credited after receipt as purchase money. The lessor and the lessee can by no contract between them make royalties exempt from taxation by the expedient of calling them either purchase money or payments upon the lessor's corporate indebtedness. They are royalties between the lessor and the lessee, and the state, which is no party to the agreement, is not bound by it. New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Not Retroactive: Chapter 140, L. 1927 (now repealed), making royalty interests in mines and oil wells taxable and ordaining that the act should become effective as of January 1, 1927, was not retroactive, not expressly being made so, and therefore did not include royalties accruing prior to January 1, 1927. Byrne v. Fulton Oil Co., 85 M 329, 278 P2d 514 (1951), distinguished in Mills v. St. Bd. of Equalization, 97 M 13, 33 P2d 563 (1934); Anderson v. Sunburst Oil & Ref. Co., 89 M 175, 296 P 1108 (1931); Forbes v. Mid-Northern Oil Co., 90 M 297, 2 P2d 1018 (1931).

Collateral References

Taxation *key* 423, 515.

84 C.J.S. Taxation §§95 through 98.

71 Am. Jur. 2d State and Local Taxation §220.

Solid mineral royalty as real or personal property for tax purposes. 68 ALR 2d 734.

15-23-508. Lien of tax — enforcement of payment.

Collateral References

Taxation *key* 507, 575, 585, 617.

85 C.J.S. Taxation §§824, et seq., 846, 1050, 1113, et seq.

72 Am. Jur. 2d State and Local Taxation §§798 through 805.

15-23-515. Net proceeds for talc — statement — value.

Compiler's Comments

1991 Amendment: In (2)(a)(ii), after "first quarter of", inserted "the year previous to". Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

15-23-516. Net proceeds for vermiculite — statement — value.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

15-23-517. Net proceeds for limestone — statement — value.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-23-518. Net proceeds for industrial garnets and byproducts — statement — value — exemption.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section is effective on passage and approval (approved April 12, 1995) and applies retroactively to production years beginning after December 31, 1994.

15-23-521. Examination of records by department.

Compiler's Comments

1995 Amendment: Chapter 397 at end inserted "or 15-23-518"; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 at end inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendment: At end inserted reference to 15-23-516; and made minor changes in style. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: At end of second sentence inserted reference to 15-23-515; and made minor changes in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

Collateral References

Taxation *key* 382.

84 C.J.S. Taxation §§442, 443, 488 through 490, 553.

72 Am. Jur. 2d State and Local Taxation §652.

15-23-522. Surface ground and improvements not exempt.

Collateral References

Taxation *key* 63.

84 C.J.S. Taxation §§95 through 98.

15-23-523. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.

Collateral References

84 C.J.S. Taxation §535, et seq.

Part 7
Coal Gross Proceeds

Part Compiler's Comments

Study of 1989 and 1990 Special Session Amendments: Section 5(1), Ch. 3, Sp. L. May 1990, provided: "Revenue oversight study — reports by department of revenue. (1) The revenue oversight committee [now revenue and transportation interim committee] shall study the new methods of taxing coal, oil, and natural gas production that were mandated by House Bill No. 28.

Special Laws of June 1989, and amended by [this act]. The committee shall report its findings to the 52nd legislature."

Severability: Section 17, Ch. 525, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Part Administrative Rules

Title 42, chapter 25, subchapter 5, ARM Gross proceeds tax on coal production.

Part Case Notes

Absent Equal Protection Violation, No Constitutional Violation for Legislature to Tax or Exempt From Taxation Property Without First Classifying Property: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas while at the same time exempting those properties from a statewide mill levy for education were invalid because the statutes did not classify those properties as required by 15-6-101 and, in addition, created a partial exemption from school funding instead of creating a total exemption. The Supreme Court held that the Legislature is not constitutionally limited to a classification system and that the Legislature is not constitutionally limited to providing tax exemptions for property exclusively within a classification system. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

Conflicting Taxation Statutes Not Invalid: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas were invalid because the statutes did not classify those properties as required by 15-6-101. The Supreme Court held that the specific statutes providing for taxation of coal, oil, and natural gas were superior to and not invalidated by the more general classification statute. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Applicability of State Coal Taxes to Crow Coal — Crow Cases:

In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly

rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV).

Taxation and Tax Sale of Minerals in Place: Since minerals in place are corporeal, they are not taxable. Therefore, a tax lien could not be assessed against or attached to coal and mineral rights in property sold with a reservation of coal and mineral rights in grantors, and a tax sale could not sell and a tax deed could not convey the coal and mineral rights. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

Part Law Review Articles

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Part Collateral References

84 C.J.S. Taxation §§95 through 98, 478, et seq., 535, et seq.
71 Am. Jur. 2d State and Local Taxation §§218 through 220.

15-23-701. Reporting gross yield from coal.

Compiler's Comments

1987 Amendment: At end of (1)(d), relating to gross yield, deleted reference to subsection (1) of 15-35-102.

Administrative Rules

ARM 42.22.105 Reporting requirements.
Title 42, chapter 25, subchapter 5, ARM Gross proceeds tax on coal production.

Collateral References

Taxation *key* 331, 368.
84 C.J.S. Taxation §§483, et seq., 535, et seq.
72 Am. Jur. 2d State and Local Taxation §§649 through 652.

15-23-702. Entry of gross proceeds in property tax record.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 substituted present text concerning entry of valuation of gross proceeds of coal mines in property tax record for former text that read: "On or before July 1 each year, the department shall transmit to the county assessor of each county in which coal mines are situated the valuation of the gross proceeds of such mines for the purpose of taxation, as the same have been determined by the department. The county assessor shall immediately enter the same upon a suitable assessment roll, the form of which shall be prescribed by the department." Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.25.511 Determination of contract sales price.
ARM 42.25.512 Imputed valuation.
ARM 42.25.513 Taxable valuation.

Case Notes

Assessable to Mine Operator: Under former law, the lessee of a (coal) mine, i.e., the person engaged in mining, and not the owner, was the proper party to whom net proceeds were assessable. N. Pac. Ry. v. Musselshell County, 74 M 81, 238 P 872 (1925).

Undeveloped Mine: Coal in place, found in lands granted by the government to the Northern Pacific Railway Company, which coal the company reserved to itself in deeds to portions thereof sold by it, constitutes a mine, and as such, in its undeveloped condition, is not a proper subject for taxation. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Reservation of Right to Explore and Mine: When lands were sold by a railroad company, rights reserved in the deeds to such use of the surface of the land as may be necessary for the exploration, mining, and carrying away of the coal that may be found below, are a valuable interest in the land itself and as such, property subject to taxation. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Taxation of Coal Net Proceeds: Under 15-23-501, which is a reiteration of Art. XII, sec. 3, 1889 Mont. Const., the annual net proceeds of coal mines are liable to taxation "as other personal property". Mont. Coal & Coke Co. v. Livingston, 21 M 59, 52 P 780 (1898).

Collateral References

84 C.J.S. Taxation §§524, 525, 553.

15-23-703. Taxation of gross proceeds — taxable value for county classification and guaranteed tax base aid to schools.

Compiler's Comments

2003 Amendment: Chapter 114 in (1) near middle of third sentence after "full notice" deleted "as provided in 15-16-101"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 29 at beginning of (2) after "For" deleted "bonding"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 33, Ch. 29, L. 2001, was a saving clause.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

1997 Amendments: Chapter 22 in (4)(b), near middle, substituted "impact aid money, as provided in 20 U.S.C. 7701, et seq." for "Public Law 81-874 money". Amendment effective July 1, 1997.

Chapter 42 in (1), at end, substituted "shall proceed to give full notice as provided in 15-16-101 to each coal producer of the taxes due and shall collect the taxes" for "shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101". Amendment effective March 12, 1997.

1995 Amendment: Chapter 318 at end of (2) deleted reference to subsection (5) of 15-35-102. Amendment effective April 3, 1995, and terminates December 31, 2005.

Applicability: Section 4, Ch. 318, L. 1995, provided that this section applies to coal produced during calendar year 1995 and in subsequent years.

1993 Special Session Amendment: Chapter 27 in (1), in two places, substituted "department" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendments: Chapter 610 at beginning of (3) inserted exception clause; in (4)(a), after "mills", inserted "in fiscal year 1990", after "against" inserted "1988", and near end substituted "fiscal year 1990" for "the year 1989"; in (4)(b), near beginning after "mills", inserted "in school fiscal year 1990", after "against" inserted "1988", and near end substituted "school fiscal year 1990" for "1989"; inserted (6) allowing Board of County Commissioners to direct County Treasurer to reallocate the distribution of certain coal gross proceeds taxes; and inserted (7) allowing board of trustees of an elementary or high school district to reallocate coal gross proceeds taxes under certain conditions. Amendment effective July 1, 1991.

Chapter 641 inserted (3) requiring County Treasurer to calculate and distribute to state, county, and eligible school districts coal gross proceeds taxes based on unit value, except for taxes collected from mines beginning production after December 31, 1988; in (4) inserted exception clause and after "credit" substituted "the amount determined under subsection (3) and the amounts received under 15-23-706" for "all taxes collected under this part"; near end of (4)(a) substituted "fiscal year 1990" for "the year 1989"; near end of (4)(b) substituted "the 1990 school fiscal year" for "1989"; inserted (5)(a) establishing requirement for County Treasurer relating to redistribution when tax liability exceeds or is less than amount determined; inserted (5)(b) relating to taxing jurisdiction's entitlement to redistribution; and inserted (8) requiring County Treasurer to credit taxes collected from coal mines that began production after December 31, 1988, in proportions required by levies for state, county, and school district purposes in same manner as previous fiscal year's property tax distribution. Amendment effective July 1, 1991.

Chapter 711 in (3), in first sentence after "schools", inserted "and counties under the provisions of 20-9-366" (rendered void by Ch. 790). Amendment effective July 1, 1991.

Chapter 790 deleted former (3) that read: "(3) The taxable value of gross proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368". Amendment effective May 17, 1991.

Effective Date — Retroactive Applicability: Section 7, Ch. 641, L. 1991, provided: "[This act] is effective July 1, 1991, and applies retroactively, within the meaning of 1-2-109, to the

distribution and redistribution of coal gross proceeds taxes levied against coal produced after December 31, 1989."

Applicability: Subsection (2) of sec. 7, Ch. 790, L. 1991, provided: "(2) Except as provided in subsection (1), [this act] applies to school fiscal years beginning after June 30, 1991."

1989 Special Session Amendment: In (1) inserted second sentence providing for 5% tax on gross proceeds of coal in lieu of mill levies and at end substituted "of the taxes due and to collect the taxes as provided in 15-16-101" for "and to collect the taxes due within 60 days after mailing"; inserted (2) relating to taxable value of gross proceeds for bonding, county classification, and nontax purposes; inserted (3) relating to taxable value of gross proceeds for computing guaranteed tax base aid for schools; inserted (4) relating to crediting taxes to taxing jurisdictions that levied mills against production or used other revenue in lieu of levying mills against production; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

Case Notes

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Applicability of State Coal Taxes to Crow Coal — Crow Cases:

In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV).

Levy Against 1988 Coal Production — Distribution of Coal Tax Revenue: There were only five children in the Decker school district, and by arrangement the children were sent to school in Wyoming. A group of electors in the Decker district filed a petition to transfer the Decker district from Lodge Grass to Hardin, and the petition was granted in 1991. Since then, the gross proceeds coal tax revenue from mines in the Decker district were distributed to both Hardin and Lodge Grass. The portion sent to Lodge Grass was to cover bonded indebtedness that Lodge Grass incurred while serving the Decker district. Lodge Grass sought declaratory relief, alleging that

revenue was being distributed to Hardin in violation of this section. The Supreme Court found that a plain reading of this section revealed that a school district only had to levy against 1988 production in 1990 and did not require a school district in 1990 to levy against a specific territory in order to receive tax revenue from that territory; however, if a school district levied against any mine in 1990, that district was entitled to receive coal tax revenue. Because Hardin levied against 1988 production in 1990, Hardin was entitled to the distribution of the revenue. Lodge Grass High School District v. Hamilton, 264 M 290, 871 P2d 890, 51 St. Rep. 282 (1994).

Transfer of School District Property to Another District — Distribution of Flat Tax Proceeds: In 1989, the method of taxing coal gross proceeds with a property tax was replaced with a flat tax of 5% on production. The final clause of subsection (4)(b) of this section (1991) directs that the flat tax be distributed in accord with the property tax distribution scheme of 1990. The Decker school district was transferred from Lodge Grass to Hardin in 1991. Thus, under the 1990 property tax scheme, Hardin would have been entitled to property tax revenue from the Decker district after that territory was transferred to Hardin. When read in conjunction with 20-6-412, subsection (4)(b) of this section (1991) entitled Hardin to distribution of the Decker district coal tax revenue under the flat tax distribution scheme. Lodge Grass High School District v. Hamilton, 264 M 290, 871 P2d 890, 51 St. Rep. 282 (1994).

Applicability of Tax to Adjustment Portion of Coal Sales Price — Commerce Clause: The contract sales price for coal was adjusted when the actual BTU content of the coal was different from the BTU content warranted by seller. The warranted BTU content determined the base price of the coal. The adjustment formula took railroad shipping charges into account and was part of the contract sales price. The coal severance and gross proceeds taxes were based on the contract sales price, and the resource indemnity tax was based on the value of the coal at the time of extraction. It was proper for the state to apply the coal severance, gross proceeds, and resource indemnity trust taxes to amounts seller received on upward price adjustments caused by higher BTU content, after deducting from the contract sales price, for purposes of the resource indemnity trust tax, the costs of hauling the coal from the mine to the railroad and preparing the coal for shipment. Seller's claim that it was taxed on the revenue received pursuant to the transportation costs component of the adjustment formula was properly denied in the lower court. Transportation costs were paid by the buyer, not the seller, the transportation cost component of the formula was based on the average transportation rate per ton and did not vary. The adjustment formula did nothing to alter the actual transportation costs. The claim that the commerce clause of the United States Constitution was violated was properly denied in the lower court because seller did not receive, and thus was not taxed on, any transportation revenue. Westmoreland Resources v. Dept. of Revenue, 263 M 303, 868 P2d 592, 51 St. Rep. 67 (1994).

Collateral References

84 C.J.S. Taxation §§530, 534.

15-23-704. Lien of tax — enforcement of payment.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near end substituted "15-16-119" for "15-16-113"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: At end substituted "15-17-911" for "chapter 17, part 9, or by suit under 15-16-501 and 15-16-502".

Collateral References

Taxation *key* 501 through 514.5.

85 C.J.S. Taxation §824, et seq.

72 Am. Jur. 2d State and Local Taxation §§798 through 805.

15-23-705. Department to calculate unit value.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 7, Ch. 641, L. 1991, provided: "[This act] is effective July 1, 1991, and applies retroactively, within the meaning of 1-2-109, to the distribution and redistribution of coal gross proceeds taxes levied against coal produced after December 31, 1989."

15-23-706. Department to determine redistribution of coal gross proceeds to taxing jurisdictions.

Compiler's Comments

1997 Amendment: Chapter 42 in four places corrected subsection references to 15-23-703; and made minor changes in style. Amendment effective March 12, 1997.

Effective Date — Retroactive Applicability: Section 7, Ch. 641, L. 1991, provided: "[This act] is effective July 1, 1991, and applies retroactively, within the meaning of 1-2-109, to the distribution and redistribution of coal gross proceeds taxes levied against coal produced after December 31, 1989."

15-23-707. Coal gross proceeds redistribution account.

Compiler's Comments

1997 Amendment: Chapter 42 in (2) substituted "15-23-703(5)(a)" for "15-23-703(6)(a)". Amendment effective March 12, 1997.

Effective Date — Retroactive Applicability: Section 7, Ch. 641, L. 1991, provided: "[This act] is effective July 1, 1991, and applies retroactively, within the meaning of 1-2-109, to the distribution and redistribution of coal gross proceeds taxes levied against coal produced after December 31, 1989."

Part 8
Metal Mines Gross Proceeds

Part Compiler's Comments

Effective Date — Applicability: Section 2, Ch. 349, L. 1987, provided: "This act is effective on passage and approval and applies only to settlement proceeds received during calendar year 1993." Effective April 6, 1987.

Proceeds From Settlement of Disputed Taxes: Section 1, Ch. 349, L. 1987, provided: "Disputed mines net proceeds or metal mines gross proceeds taxes — characterization of proceeds of settlement. (1) Proceeds received by a municipality or county in settlement of an alleged tax obligation arising under the mines net proceeds tax in Title 15, chapter 23, part 5, or the metal mines gross proceeds tax in Title 15, chapter 23, part 8, do not constitute the payment of delinquent taxes or money arising from the taxation of property if all of the following conditions are met:

(a) there are no entries in the county's assessment book reflecting the disputed valuations;

(b) the proceeds are not apportioned to previous tax years in which the department through revised assessment determined taxes were owing;

(c) the payment schedule differs from that applicable to mines net proceeds and metal mines gross proceeds taxes with respect to time of payment;

(d) the settlement agreement provides for penalty and interest provisions that differ from relevant statutory provisions; and

(e) the county and the taxpayer are given the discretion to modify the time and amount of payments.

(2) After all mandatory distributions have been made to state and local taxing jurisdictions, remaining settlement proceeds satisfying all the conditions set forth in subsection (1) may be:

(a) allocated to a school district building fund established under 20-9-508; or

(b) used to provide additional security for bonds issued under Title 90, chapter 5, part 1, for financing of projects for local government facilities, including schools and local port authorities."

Part Case Notes

Taxation and Tax Sale of Minerals in Place: Since minerals in place are corporeal, they are not taxable. Therefore, a tax lien could not be assessed against or attached to coal and mineral rights in property sold with a reservation of coal and mineral rights in grantors, and a tax sale could not sell and a tax deed could not convey the coal and mineral rights. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

Part Attorney General's Opinions

Legality of Independent Payment Procedure — Mine Proceeds Taxes — Revised Assessments: It is legal to allow the establishment of a payment procedure independent of the statutory scheme by a settlement agreement compromising alleged tax obligations under the mines net proceeds and metal mines gross proceeds taxes by authority in 15-8-601 to make revised assessments of taxable property which has escaped or been omitted from taxation or has been erroneously assessed. 41 A.G. Op. 67 (1986).

Part Law Review Articles

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Part Collateral References

84 C.J.S. Taxation §§95 through 98, 478, et seq., 535, et seq.

71 Am. Jur. 2d State and Local Taxation §§218 through 220.

Taxation of Metal Mines, 1977-78 Interim Report, Montana Legislative Council.

15-23-801. Definitions.

Compiler's Comments

2003 Amendment: Chapter 342 inserted definition of basic treatment and refinery charges; and made minor changes in style. Amendment effective April 15, 2003.

Applicability: Section 4, Ch. 342, L. 2003, provided: "[This act] applies to metal mine production occurring after December 31, 2003."

1999 Amendment: Chapter 524 deleted definition of department that read: ""Department" means the department of revenue"; in definition of receipts received inserted (b) pertaining to cost of transporting mineral product and in (f) deleted second and third sentences that read: "Deductions are not allowed, either directly or indirectly as an offset to payments, for the cost of transportation from the mine or mill to the smelter, roaster, or refinery. Demurrage, storage, interest, or any other miscellaneous costs related to transporting the mineral product are considered transportation and are not deductible"; and made minor changes in style. Amendment effective April 30, 1999.

Effective Date — Retroactive Applicability: Section 2, Ch. 524, L. 1999, provided: "[This act] is effective on passage and approval [approved April 30, 1999] and applies retroactively, within the meaning of 1-2-109, to metal mine production occurring after December 31, 1998."

1989 Amendment: In definition of gross proceeds or gross metal yield inserted "or gross value of product", substituted "receipts" for "revenue", and at end substituted "extraction and sale of metals or concentrate containing metals" for "extraction of metals, determined by multiplying the quantity produced by the merchantable value"; deleted definition of market value; in definition of merchantable value, after "means the", substituted "receipts" for "average market value" and at end substituted "is the receipts received for these metals after processing" for "shall be the average market value of these metals after this processing"; and inserted definition of receipts received. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

15-23-802. Metal mines — ad valorem taxation — reports and sampling.

Compiler's Comments

1981 Amendment: Substituted "any mine or mining property located within this state" for "whatever source" in the first sentence of (1); inserted "or mining property" after "each mine" in the middle of (1) and after "operator of the mine" in (1)(a); deleted former (3) and (4) that read "(3) the tons of ore extracted from the mine during the taxable period; (4) the merchantable value in dollars and cents of all metals extracted"; inserted (1)(c) through (1)(f) requiring itemization of tonnage extracted, smelter used, gross yield, and gross value; inserted (2) relating to location of smelter; and inserted (3) requiring sampling, testing or assaying to be done within the state.

Administrative Rules

ARM 42.25.201 Metal mines tax — reporting requirements.

Collateral References

Taxation *key* 331, 368.

84 C.J.S. Taxation §§483, et seq., 535, et seq.

72 Am. Jur. 2d State and Local Taxation §§649 through 652.

15-23-803. Valuation — gross proceeds.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 substituted second sentence concerning recording of merchantable value in property tax record for former sentence that read: "The department shall transmit to its agent in each county where metals are produced the merchantable value as has been determined by the department for placement on the assessment

roll after subtracting such portion of the proceeds as may be exempt from property taxation." Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Collateral References

Taxation *key* 382.

84 C.J.S. Taxation §§95 through 98, 524, 525, 553.

15-23-804. Taxation of merchantable value.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near beginning substituted "department" for "department's agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Collateral References

84 C.J.S. Taxation §§530, 534.

15-23-805. Imputed value — procedure for metals.

Collateral References

84 C.J.S. Taxation §§524, 525, 553.

15-23-806. Lien of tax.

Collateral References

Taxation *key* 501 through 514.5.

85 C.J.S. Taxation §824, et seq.

72 Am. Jur. 2d State and Local Taxation §§798 through 805.

CHAPTER 24
SPECIAL PROPERTY TAX APPLICATIONS

Chapter Collateral References

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 2
Mobile Homes

Part Collateral References

71 Am. Jur. 2d State and Local Taxation §211.

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation. 7 ALR 4th 1016.

15-24-201. Definitions.

Compiler's Comments

1997 Amendment: Chapter 200 in definition of dealer, after "mobile homes", inserted "or manufactured homes"; in definition of housetrailer, near end, increased length from 32 feet to 45 feet; inserted definition of manufactured home; in definition of mobile home, near middle, increased length from 32 feet to 45 feet and at end, after "connected", substituted "to the mobile home or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence" for "thereto"; and made minor changes in style. Amendment effective January 1, 1998.

Case Notes

Restrictive Covenant Prohibiting Mobile Homes — Application to Manufactured Home — "Mobile Home" Used in Ordinary and Popular Sense: Wittmers purchased a 26- by 60-foot manufactured home that was capable of being put on wheels and moved it to a subdivision in Gallatin County. The plaintiffs brought an action to restrain Wittmers from maintaining the home within the subdivision because it was in violation of a restrictive covenant that prohibited the use of "mobile homes". The Supreme Court held that the covenant was not ambiguous and that the term "mobile home", which was undefined in the covenants, should be understood in its

ordinary and popular sense. The Supreme Court noted that other statutory definitions of the term "mobile home" could be looked to for guidance in determining the meaning of the term for the purposes of the covenants and that those other definitions include structures such as Wittmers'. The Supreme Court held that the District Court correctly construed the term "mobile home" to include the Wittmers' manufactured home because their home fell within other definitions of the term "mobile home", because the Supreme Court had previously construed the term to include homes such as the Wittmers' in two other cases before the court, and because the Wittmers' home had the characteristics of a mobile home. (Case decided prior to 1997 amendment of this section defining "manufactured home".) Newman v. Wittmer, 277 M 1, 917 P2d 926, 53 St. Rep. 516 (1996), followed in Toavs v. Sayre, 281 M 243, 934 P2d 165, 54 St. Rep. 155 (1997), followed in Fox Farm Estates Landowners Ass'n v. Kreisch, 285 M 264, 947 P2d 79, 54 St. Rep. 1142 (1997).

15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.

Compiler's Comments

2005 Amendment: Chapter 587 in (1)(a) near end inserted "10-1-606 or"; and made minor changes in style. Amendment effective October 1, 2005.

1997 Amendment: Chapter 200 in (1)(a), near beginning after "mobile home", inserted "manufactured home"; in (1)(b), after first "due", inserted "on or before May 31 or" and after second "due" inserted "whichever is later"; in (1)(c) substituted "November 30" for "September 30"; in (2), in first sentence of (3), in (4), in five places, and in (5), in two places after "mobile home", inserted "manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

1991 Amendment: Inserted (2) requiring Treasurer to notify a lienholder who has requested notification that taxes have not been paid; in (4), near beginning, inserted "Except as provided in 15-24-206 and 15-24-209"; inserted (4)(b) relating to the exceptions in 15-24-206(3) or 15-24-209; and made minor changes in style.

1989 Amendment: In (3), in second and third sentences, substituted language requiring issuance of tax-paid sticker for mobile home or trailer only when moved for former language that required issuance in all instances if taxes, penalty, and interest were paid; deleted (4) that read: "(4) The tax-paid sticker and receipt are not required for mobile homes which are classified as improvements to land, but payment of the assessed property taxes and display of a mobile home movant declaration of destination are required before moving the mobile home"; and made minor change in form.

1987 Amendments: Chapter 360 inserted (1)(d) relating to delinquent payment; and deleted former (2) that read: "(2) Tax, other than the prorated tax described in subsection (1), due on a mobile home or housetrailer not taxed as an improvement that is not paid on or before September 30 of the year that the property is assessed is delinquent and is subject to the same interest and penalty as delinquent property taxes under 15-16-102. Interest begins to accrue as of September 30 of the year the property is assessed."

Chapter 419 in (3), in last sentence, substituted "declaration of destination" for "permit"; inserted (4) relating to mobile homes classified as improvements to land; and inserted (5) relating to the procedure for collecting taxes on mobile homes moved in violation of section.

1985 Amendment: In (1) changed "15-24-206(2)" to "15-24-206" at end of first sentence and inserted last two sentences relating to proration of taxes assessed after second payment date; and near beginning of (2) after "Tax", inserted exclusion clause referring to subsection (1).

1981 Amendment: Inserted subsection (2) relating to delinquent tax on mobile homes not taxed as improvements; inserted "and any interest and penalty owed" after "if the taxes" in the second sentence of (3).

Case Notes

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Attorney General's Opinions

Mobile Home Not Improvement — Lienholder to Pay Personal Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home not classified as an

improvement to real property must pay the personal property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Seizure of Mobile Home Upon Delinquency of First-Half Taxes: If the owner of a mobile home that is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of 15-16-102 apply, and the mobile home may be seized and sold for delinquent taxes pursuant to 15-16-113 (now repealed) and/or 15-17-911. 42 A.G. Op. 95 (1988).

15-24-203. Tax receipt — when production required.

Compiler's Comments

1997 Amendment: Chapter 200 near middle, after "mobile home", inserted "manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

1989 Amendment: Changed "patrolman" to "patrol officer".

15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty.

Compiler's Comments

1997 Amendment: Chapter 200 in (2), near beginning after "mobile home", inserted "manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

1989 Amendment: Near beginning of (2) inserted "while in the process of moving a mobile home or house trailer".

1987 Amendment: In (1) inserted "display or" before "produce a declaration"; and in (2) deleted last sentence that read: "The sticker and receipt are not required for mobile homes which are classified as improvements to land."

15-24-205. Sections limited to taxable trailers and manufactured homes.

Compiler's Comments

1997 Amendment: Chapter 200 near middle, after "mobile home", inserted "manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

15-24-206. Declaration of destination on imported mobile homes and manufactured homes — display — tax receipt — exemptions.

Compiler's Comments

1997 Amendment: Chapter 200 in (1), in three places, in (2), near beginning, in (3), in (3)(a), in (3)(b)(i), in (4), in introductory clause, and in (4)(d), after "mobile home", inserted "or manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

1991 Amendment: Inserted (3)(b)(ii) requiring a receipt showing payment of property taxes provided for in 15-24-209; inserted (4)(d) providing that subsection (3)(b) does not apply when a person moves a mobile home after he repossesses it unless Treasurer has given the lienholder or secured party timely notice of delinquent taxes; and made minor changes in style.

Case Notes

Invalid Application — Flathead Reservation Indians: Subsection (2) of this section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Attorney General's Opinions

Writ of Execution Issuable to Sheriff of Any County: The provisions of 15-16-401 and 15-24-206 do not apply exclusively to the county where the original tax was assessed, and a Writ of Execution against a delinquent personal property taxpayer may be issued by the County Treasurer to the Sheriff of any county in the state. 35 A.G. Op. 79 (1974).

15-24-208. Penalty for moving mobile home or manufactured home on which taxes due.

Compiler's Comments

1997 Amendment: Chapter 200 after "mobile home" inserted "or manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

Attorney General's Opinions

Mobile Home as Improvement — Lienholder to Pay Delinquent Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home classified as an

improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

15-24-209. Limit on delinquent mobile home or manufactured home taxes chargeable to security interest holder.

Compiler's Comments

1997 Amendment: Chapter 200 in four places, after "mobile home", inserted "manufactured home". Amendment effective January 1, 1998.

15-24-210. Notice of impending sale to certain lienholders.

Compiler's Comments

2005 Amendment: Chapter 189 at beginning of first sentence after "notation" substituted "by a county treasurer" for "under 15-16-115(2)". Amendment effective April 8, 2005.

1997 Amendment: Chapter 200 in four places, after "mobile home", inserted "or manufactured home". Amendment effective January 1, 1998.

Part 3
Migratory Personal Property

Part Administrative Rules

ARM 18.8.426 Custom combines.

Part Collateral References

84 C.J.S. Taxation §85.

71 Am. Jur. 2d State and Local Taxation §649.

15-24-301. Personal property brought into state — assessment — exceptions — custom combine equipment.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (4) substituted "61-3-321(2)" for "61-3-560 and 61-3-561"; and made minor changes in style. Amendment effective January 1, 2006. The Ch. 596 amendment rendered this amendment void.

Chapter 596 in (4) near beginning after "vehicle" deleted "subject to the registration fee imposed by 61-3-560 and 61-3-561" and at end substituted "under 61-3-701" for "fees as follows:

(a) The motor vehicle fee is imposed by the county in which it is located.

(b) One-fourth of the annual fee of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly fees are due the first day of the quarter"; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, at beginning of (4) after exception clause substituted "motor vehicle subject to the registration fee imposed by 61-3-560 and 61-3-561" for "motor vehicle not subject to a fee in lieu of tax" and near end substituted "registration fees" for "taxation and assessment for taxes"; in (4)(a) substituted "fee is imposed" for "is taxed"; in (4)(b) substituted "fee" for "tax liability"; in (4)(c) substituted "fees" for "taxes"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 246 at beginning of (4) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 285 at beginning of (1)(a) substituted "personal property, excluding livestock, brought into this state" for "any personal property (including livestock) brought, driven, or coming into this state"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1987 Amendment: In (4), after "vehicle", substituted "not subject to a fee in lieu of tax" for "not subject to the light vehicle license fee or a fee in lieu of tax"; and deleted (6) that read: "(6) The provisions of this part do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less, motorcycles, or quadricycles. These vehicles are subject to the fee provided for in 61-3-532 or 61-3-541."

1985 Amendment: In (4) near beginning after "license fee", inserted "or a fee in lieu of tax"; and in (6), in first sentence, after "or less", inserted "motorcycles, or quadricycles", and at end of second sentence inserted "or 61-3-541" (effective January 1, 1986).

1983 Amendment: In (5), substituted "the calendar year in which the fee is collected" for "a 60-day period".

1981 Amendments: Chapter 598 in (4) substituted "Any motor vehicle not subject to the light vehicle license fee brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter" for "This section does not apply to any motor vehicle brought, driven, or coming into this state by any nonresident person temporarily employed in Montana for a period not exceeding 90 days if the motor vehicle is used exclusively for transportation of such person."

Chapter 613 deleted "in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date" from the end of (3) in the version to be effective January 1, 1983.

Chapter 614 added "Except as provided in subsections (2) through (6)" at the beginning of (1); and added subsection (6) relating to light vehicles subject to a fee which is effective January 1, 1982.

Coordination: Section 15-24-301 appeared in HB 389 (Ch. 598, L. 1981) twice. It appeared in section 1 and 6. Section 6, Ch. 598, L. 1981, was a coordination section; it provided, in part: "If Senate Bill 355 [Ch. 614, L. 1981], providing a license fee system for light vehicles, is passed and approved then section 1 of this act is void and section 15-24-301, MCA, is amended to read:...." Because SB 355 was passed and approved the 1981 amendments of Ch. 598, L. 1981 to 15-24-301 are those contained in sec. 6, Ch. 598, L. 1981.

Administrative Rules

ARM 18.8.426 Custom combines.

ARM 42.21.162 Personal property taxation dates.

Case Notes

Motor Vehicle Inventory: State Board of Equalization (now Department of Revenue) would be enjoined from assessing cars or trucks brought into state as dealer's inventory after assessment date since dealer would be taxed thereby in violation of proviso in former statute limiting subsequent tax assessments to material increases in inventory only. Hardin Auto Co. v. Alley, 149 M 1, 422 P2d 346 (1967).

Purchase From Dealer: When new truck was brought into the state subsequent to the first day of January as replacement to a dealer's stock and therefore exempt from taxation under this section, and under former law truck was not subject to personal property taxation to the purchaser of the vehicle at the time of purchase, since he was not the owner of the truck on the date fixed by law for the assessment of property. Swartz v. Berg, 147 M 178, 411 P2d 736 (1966).

Attorney General's Opinions

Assessment of Airplane — Where Assessable: A county may not assess an aircraft owned by a Montana resident but located in Montana for not more than 30 days in a taxable year. 30 A.G. Op. 20 (1963).

15-24-302. Collection procedure.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 189 after "15-8-408" deleted "15-16-115"; and made minor changes in style. Amendment effective April 8, 2005.

Chapter 596 deleted former (1) that read: "(1) the imposition of registration fees on motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section"; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, near end of introductory clause after citations deleted "as amended"; and at beginning of (1) substituted "the imposition of registration fees on" for "taxation of". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1993 Special Session Amendment: Chapter 27 in introductory clause substituted reference to 15-16-119 for reference to 15-16-111 through 15-16-114; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In introductory clause substituted "15-17-911" for "chapter 17, part 9".

1981 Amendments: Chapter 159 substituted "15-24-202" for "15-24-202(1)".

Chapter 598 added subsection (1) relating to taxation of motor vehicles under 15-24-301.

15-24-303. Proration of tax on personal property — refund.

Compiler's Comments

2001 Amendment: (Temporary version) Chapter 574 in (1) in last sentence substituted "livestock for which a fee is imposed under 15-24-902(2)" for "livestock assessed under 15-24-902(2)". Amendment effective July 1, 2001.

(Version effective January 1, 2003) In (1) in last sentence substituted "per capita fee" for "per capita levy".

1999 Amendment: Chapter 285 at end of (1) substituted "livestock subject to the per capita levy under 15-24-921" for "livestock assessed under 15-24-902(2)". Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (1), at end, inserted "or to livestock assessed under 15-24-902(2)".

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Amendment: Chapter 587 in (1), near beginning after "into", substituted "or otherwise located in the state on or" for "any county" and inserted second sentence concerning nonapplicability to motor vehicles; inserted (2) concerning prorated refund; and made minor changes in style. Amendment effective April 28, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 587, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved April 28, 1993.

1989 Amendment: Substituted "The tax on personal property brought, driven, or coming into any county after the assessment date must be prorated according to the ratio which the remaining number of months in the year bears to the total number of months in the year" for "If such personal property is brought or driven or comes into any county before the assessment date, the tax shall be the full amount of the tax computed as provided above, but if brought, driven, or coming into the county after the assessment date, the tax shall be prorated according to the ratio which the number of months the property has its taxable situs in the county bears to the total number of months in said year." Amendment effective April 21, 1989.

Effective Date — Retroactive Applicability: Section 4, Ch. 615, L. 1989, provided: "[This act] is effective on passage and approval [approved April 21, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Administrative Rules

ARM 42.21.162 Personal property taxation dates.

15-24-304. Prorated fee in lieu of tax — aircraft.

Compiler's Comments

1987 Amendment: In (1) changed reference to subsection (7) to reference to subsection (6) and deleted second sentence that read: "The county assessor shall prorate the personal property tax due on the aircraft for the remaining portion of the year in the manner provided in 15-24-303"; inserted (2) relating to proration of fee; inserted (3) relating to penalty; and inserted (4) relating to migratory aircraft. Amendment applicable to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

1983 Amendment: Substituted "(7)" for "(6)"; and changed registration date from June 1 to March 1.

1981 Amendment: Substituted "June 1" for "March 1".

Attorney General's Opinions

Assessment of Airplane — Where Assessable: A county may not assess an aircraft owned by a Montana resident but located in Montana for not more than 30 days in a taxable year. 30 A.G. Op. 20 (1963).

15-24-305. Taxation of motion picture and television commercial property.

Compiler's Comments

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated this section effective December 31, 1993. Repealer effective February 18, 1993.

1989 Statement of Intent: The statement of intent attached to Ch. 525, L. 1989, provided: "A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property."

Preamble: The preamble attached to Ch. 525, L. 1989, provided: "WHEREAS, Montana has abundant scenery, resources, and accommodations that are uniquely suited to the filming of motion pictures and television commercials; and

WHEREAS, the motion picture industry and the television commercial filming industry are increasingly recognizing Montana's intrinsic beauty and character that enhance the products produced by both industries; and

WHEREAS, the State of Montana and her citizens welcome the filming industry to this beautiful state.

THEREFORE, the Legislature of the State of Montana finds it appropriate to extend the state's inherent hospitality to these industries by exempting from taxation certain property used in the production of motion pictures and television commercials."

Effective Date — Retroactive Applicability: Section 10, Ch. 525, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 13, 1989.

Part 7
Production Credit Associations

Part Collateral References

84 C.J.S. Taxation §§188, et seq., 559 through 562.

71 Am. Jur. 2d State and Local Taxation §§436, 437.

Part 8
Building and Loan Associations

Part Collateral References

84 C.J.S. Taxation §§188, et seq., 559 through 562.

71 Am. Jur. 2d State and Local Taxation §437.

15-24-801. Savings and loan associations — taxation.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in second sentence, after "department", deleted "of revenue or its agent in the county in which the principal office of the association is located"; in third and fourth sentences, after "department", deleted "or its agent"; in fourth sentence substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Part 9
Livestock

Part Case Notes

Seizure and Sale of Cattle: When nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960, county had a lien for the tax under 15-16-401 and 15-16-402, and properly seized and noticed up for sale on May 7, 1963, as the lien was not limited to 1960 cattle by 15-17-901 (now repealed), as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Part Collateral References

Taxation *key* 70, 261.

84 C.J.S. Taxation §§121, 413, 414, 478, et seq., 535, et seq.

71 Am. Jur. 2d State and Local Taxation §§658, 660; 72 Am. Jur. 2d State and Local Taxation §§629 through 652, 667 through 672.

15-24-902. Number of livestock.

Compiler's Comments

2001 Amendment: (Temporary version) Chapter 574 in (1) in first sentence substituted "determine the number of" for "assess" and in second sentence substituted "assigned" for "assessed"; and in (2) in three places substituted "have a fee imposed on nonexempt livestock" for "have nonexempt livestock assessed". Amendment effective July 1, 2001.

(Version effective January 1, 2003) In first sentence substituted "determine the number of" for "assess" and substituted "per capita fee" for "per capita levy" and in second sentence substituted "assigned" for "assessed".

1999 Amendment: Chapter 285 at beginning of section deleted "Except as provided in subsection (2)" and substituted "assess livestock for the purposes of the per capita levy imposed under 15-24-921" for "assess all nonexempt livestock"; deleted former (2) that read: "(2) An owner of livestock may elect to have nonexempt livestock assessed on the average inventory basis as provided in 15-24-927. The owner shall file an election with the department on the statement required under 15-24-903. An owner of livestock making an election to have nonexempt livestock assessed on the average inventory basis is bound by that election for 6 years. After 6 years, the election to have nonexempt livestock assessed on the average inventory basis remains in effect unless the owner otherwise notifies the department before February 1"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (1), at beginning, inserted exception clause and after "department" inserted "of revenue"; and inserted (2) concerning assessment on average inventory basis.

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 after "department" deleted "or its agent" and in two places substituted "February 1" for "March 1"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

1989 Amendment: Substituted language (see 1989 Session Law for text) for former section that read: "Livestock belonging to a permanent resident of the state must not be listed or assessed while such stock is in transit or until it arrives in the county where the person owning the same resides and must be listed and assessed in such county. If such livestock runs at large in a county other than the one in which such owner resides, it must be listed and assessed in such county."

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

Case Notes

Control Sufficient for Taxation: Under former law, when a feedlot owner exercised control but not ownership over cattle, taxes on the cattle assessed against the feedlot owner were valid. Possessory control of property was held sufficient to authorize its assessment to the possessor or keeper of it. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

Taxes on Cattle as Personal Property: Unpaid taxes previously and properly assessed on cattle under the control of a cattle feedlot owner could not be assessed against a new owner of the

feedlot. Such taxes are taxes on personal property. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

Collateral References

Taxation *key* 261.
84 C.J.S. Taxation §493.
71 Am. Jur. 2d State and Local Taxation §§658, 660.

15-24-903. Duty of owner to assist in assessment.

Compiler's Comments

1999 Amendment: Chapter 285 in (1) at beginning deleted "Except as provided in subsection (1)(b)" and substituted "as defined in 15-24-921" for "as defined in 15-24-901"; deleted former (1)(b) that read: "(b) If the owner of livestock is assessed on the average inventory basis, as provided in 15-24-927, the owner or the owner's agent shall, in the manner and timeframe provided in subsection (1)(a), report to the department the county or counties where the livestock were located in the prior tax year and show the months during the prior tax year that the livestock were within the county or counties"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (1)(a), at beginning, inserted exception clause and after "department" inserted "of revenue"; and inserted (1)(b) concerning assessment on average inventory basis.

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 in (1), after "department", deleted "or its agent" and substituted "February 1" for "March 1"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

1989 Amendment: Near middle of (1), after "located", substituted "on March 1" for "since the last assessment date" and at end, after "brands", deleted "and showing the times during that period that his livestock were within the county or counties".

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

Section Not Codified: Section 84-5201.2, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 507, L. 1975.

Collateral References

84 C.J.S. Taxation §§483, et seq., 535, et seq.
72 Am. Jur. 2d State and Local Taxation §§649 through 652.

15-24-904. Penalty for violation of law.

Compiler's Comments

2001 Amendments — Composite Section: (Version effective January 1, 2003) Chapter 7 near end after "15-8-309" substituted "on the" for "[on the]". Amendment effective October 1, 2001.

(Version effective January 1, 2003) Chapter 574 near end substituted "per capita fee" for "per capita levy"; and made minor changes in style.

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 285 near end substituted "increase the per capita levy, as provided in 15-24-921, by 10%" for "increase the assessment by 10%"; and made minor changes in style. Amendment effective January 1, 2003.

Chapter 427 substituted "shall" for "may"; at end substituted "assess the penalty provided in 15-8-309" for "increase the assessment by 10% as a penalty"; and made minor changes in style. Amendment effective January 1, 2000.

In the version effective January 1, 2003, the code commissioner added the bracketed material. The section was amended two times, and the bracketed material is necessary to effectuate both amendments.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1993 Special Session Amendment: Chapter 27 substituted "department" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Section Not Codified: Section 84-5201.2, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 507, L. 1975.

Collateral References

Taxation *key* 571.

85 C.J.S. Taxation §§1020, 1579, et seq.

72 Am. Jur. 2d State and Local Taxation §§759 through 770.

15-24-905. Livestock brought into state — notice to department.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in first sentence, near beginning, substituted "supervisor" for "foreman", substituted "February 1" for "March 1", after "department" deleted "of revenue or its agent in the county into which the livestock are moved", before "certified" deleted "or registered", and at end inserted "and the county or counties into which the livestock are moved"; in second sentence, after "department", deleted "of revenue or its agent in the county into which such livestock are moved" and after "moved" inserted "into each county"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

1989 Amendment: Near beginning substituted "March 1" for "January 1"; deleted former (2) and (3) that read: "(2) The tax due on livestock brought into this state must be paid within 30 days after receiving the tax notice.

(3) Livestock on which tax is owed under this section may not be removed from the county until the taxes have been paid"; and made minor changes in phraseology.

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

Collateral References

Taxation *key* 328.

84 C.J.S. Taxation §85.

71 Am. Jur. 2d State and Local Taxation §663.

15-24-906. Collection of fee on livestock.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near beginning, after "department", deleted "or its agent", after "letter" inserted "provided for in 15-24-905", and substituted "February 1" for "January 1"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

15-24-921. Per capita fee to pay expenses of enforcing livestock laws.

Compiler's Comments

2002 Amendment: Chapter 13 inserted (2) relating to when the fee is due and penalty and interest provisions; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2001 Amendment: Chapter 574 in (1) near beginning substituted "per capita fee is authorized and directed to be imposed" for "per capita tax is authorized and directed to be levied". Amendment effective July 1, 2001.

1995 Amendment: Chapter 206 in (2) inserted "ostriches, rheas, emus".

Applicability: Section 14, Ch. 206, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 in (1) substituted "department" for "county assessor" and at end substituted "provided in 81-7-104" for "hereinafter specified"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 417 in (2) inserted "alpacas"; and made minor changes in style.

1991 Amendment: At end of (2) inserted "llamas, domestic bison, and domestic ungulates"; and made minor change in style. Amendment effective April 24, 1991.

Retroactive Applicability: Section 6, Ch. 627, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1987 Amendment: In (1), before "tax", inserted "per capita", after "levied" inserted "by the county assessor", after "on all" substituted language referring to poultry, bees, swine, and livestock for "livestock in", and near end, before "laws", changed "stock" to "livestock"; and inserted (2) defining livestock. Amendment effective January 1, 1988.

Administrative Rules

ARM 42.21.113 Leased and rental equipment.
ARM 42.21.123 Farm machinery and equipment.
ARM 42.21.124 Per capita livestock tax reporting procedure.

Collateral References

Taxation *key* 70.
84 C.J.S. Taxation §§121, 423, et seq.
71 Am. Jur. 2d State and Local Taxation §196.

15-24-922. Board of livestock to prescribe per capita fee — refunds.

Compiler's Comments

2001 Amendment: Chapter 574 throughout section substituted references to fee for references to levy and tax; in (2) near middle of second sentence substituted "department" for "counties"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 285 near beginning of (3)(a) substituted "livestock owner who moves livestock between states" for "livestock owner taxed under 15-24-920"; at beginning of (3)(b) deleted "Except as provided in subsection (3)(c)"; deleted former (3)(c) that read: "(c) A taxpayer whose livestock are taxed on the average inventory basis for property tax purposes must also be taxed on an average inventory basis for the purposes of 15-24-921 and this section. All other livestock subject to the per capita tax levy must be reported on February 1 of each year"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (2), at end of first sentence after "years", deleted "beginning with revenue generated by 81-7-104 and this section in the taxable years 1985, 1986, and 1987"; in (3)(b), at beginning, inserted exception clause; inserted (3)(c) concerning assessment on average inventory basis; and made minor changes in style.

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1991 Amendment: Inserted (3) concerning refund of per capita levy. Amendment effective April 24, 1991.

Retroactive Applicability: Section 6, Ch. 627, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1987 Amendment: In beginning of (1) substituted "board of livestock shall" for "department of revenue is hereby empowered and it is made its duty to", before "levy" inserted "amount of the per capita", after "purpose" deleted "above", and after "indicated" substituted "in 15-24-921" for "and the board of livestock has the right to recommend to said department the amount of such levy"; and inserted (2) relating to 110% cap. Amendment effective January 1, 1988.

1983 Amendment: Changed "various boards herein named" to "board of livestock".

Administrative Rules

ARM 42.21.113 Leased and rental equipment.
ARM 42.21.123 Farm machinery and equipment.
ARM 42.21.124 Per capita livestock tax reporting procedure.

Collateral References

84 C.J.S. Taxation §§426 through 428, 431.
72 Am. Jur. 2d State and Local Taxation §638.

15-24-925. Reimbursement to department — transmission of fees to state.

Compiler's Comments

2005 Amendment: Chapter 12 in (2) inserted last sentence requiring interest earned on money in the account to be deposited in the account. Amendment effective March 15, 2005.

2002 Amendment: Chapter 13 at end of (1) inserted "unless a different percentage of money to be withheld is mutually agreed upon by the department and the department of livestock on an annual basis". Amendment effective August 16, 2002.

2001 Amendments — Composite Section: Chapter 257 throughout section substituted references to department (of revenue) for references to state treasurer. Amendment effective July 1, 2001.

Chapter 574 in (1) near beginning substituted "department" for "county treasurer", after "reimbursement" deleted "to the county", and near end substituted "fee" for "levy"; and in (2) deleted former first sentence that read: "Except for the amount withheld under subsection (1), the taxes levied and the money collected pursuant to the provisions of 15-24-922 must be transmitted to the state treasury by the county treasurer of each county, as provided in 15-1-504, but not later than July 1 following assessment", in first sentence near beginning substituted "department" for "county treasurer", in two places substituted "fee imposed" for "tax levied", and at end substituted "department of livestock" for "state treasurer", and in second sentence substituted "department" for "state treasurer". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1995 Amendment: Chapter 509 in (2), in third sentence, inserted "in an account in the special revenue fund" and inserted fourth sentence concerning keeping money in the account separate from other money received by the Department of Livestock; and made minor changes in style. Amendment effective July 1, 1995.

1987 Amendment: Inserted (1) relating to county reimbursement; at beginning of (2) inserted exception clause, after "provisions of" changed "15-24-923" to "15-24-922", after "transmitted" deleted "with other taxes for state purposes", after "15-1-504" inserted "but not later than July 1 following assessment", in third sentence, after "shall be", substituted "deposited" for "placed", after "credit of the" substituted "department of livestock" for "funds as provided in 15-24-924", and made minor changes in phraseology. Amendment effective January 1, 1988.

1983 Amendments: Chapters 100 and 444 both deleted "annually" following "transmitted" in the first sentence; and added "as provided in 15-1-504" at the end of the first sentence.

Administrative Rules

ARM 42.21.113 Leased and rental equipment.
ARM 42.21.123 Farm machinery and equipment.
ARM 42.21.124 Per capita livestock tax reporting procedure.

Collateral References

85 C.J.S. Taxation §1656.
72 Am. Jur. 2d State and Local Taxation §788.

Part 11
Leasehold and Other Interests in U.S. Property

Part Attorney General's Opinions

Tax Lien — Delinquent Tax, Penalty, Interest Secured — No Priority Over SBA Mortgage: The tax lien provided in 15-16-403 secures both the delinquent tax and any penalties and interest. The lien for penalties and interest does not enjoy statutory priority over an SBA (Small Business Administration) mortgage but is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure. A county may not enforce a lien for penalties and interest under 15-16-403 through the tax sale procedure under Title 15, ch. 17, if there are other prior security interests in the property. 39 A.G. Op. 69 (1982).

Part Collateral References

Taxation *key* 175 through 180.
84 C.J.S. Taxation §§242, 243, 292.
71 Am. Jur. 2d State and Local Taxation §§221 through 228, 336, 337.
Availability of tax exemption to property held on lease from exempt owner. 54 ALR 3d 402.

15-24-1102. Federal property held under contract of sale.

Compiler's Comments

1989 Special Session Amendment: Near middle substituted reference to Title 15, ch. 6, part 1, for reference to 15-6-131 through 15-6-149. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1987 Amendment: Near middle of first sentence changed "15-6-131 through 15-6-140" to "15-6-131 through 15-6-149".

15-24-1103. Federal property held under lease.

Compiler's Comments

1993 Amendment: Chapter 80 inserted third sentence holding lessor liable for property taxes when the property interest is acquired through foreclosure; and made minor changes in style. Amendment effective February 25, 1993.

Effective Date — Applicability: Section 4, Ch. 80, L. 1993, provided: "[This act] is effective on passage and approval and applies to any foreclosures occurring after [the effective date of this act]." Effective February 25, 1993.

1989 Special Session Amendment: Near middle substituted reference to Title 15, ch. 6, part 1, for reference to 15-6-131 through 15-6-149. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1987 Amendment: Near middle of first sentence changed "15-6-131 through 15-6-140" to "15-6-131 through 15-6-149".

15-24-1104. Collection of taxes on interests in United States lands.

Case Notes

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Part 12
State and Other Exempt Property

Part Attorney General's Opinions

Tax Lien — Delinquent Tax, Penalty, Interest Secured — No Priority Over SBA Mortgage: The tax lien provided in 15-16-403 secures both the delinquent tax and any penalties and interest. The lien for penalties and interest does not enjoy statutory priority over an SBA (Small Business Administration) mortgage but is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure. A county may not enforce a lien for penalties and interest under 15-16-403 through the tax sale procedure under Title 15, ch. 17, if there are other prior security interests in the property. 39 A.G. Op. 69 (1982).

Part Collateral References

Taxation *key* 175 through 180, 197, 247.

84 C.J.S. Taxation §§244 through 248, 293, et seq.

71 Am. Jur. 2d State and Local Taxation §§339 through 345.

Availability of tax exemption to property held on lease from exempt owner. 54 ALR 3d 402.

15-24-1203. Privilege tax on industrial, trade, or other business use of tax-exempt property — exceptions.

Compiler's Comments

1997 Amendment: Chapter 49 in (1) deleted former second through fourth sentences that read: "The tax may not be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on public airport property are subject to tax. The tax may not be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates"; inserted (2)(c) prohibiting the

imposition of the tax on the possession or other beneficial use of public lands occupied under certain leases issued by the United States or Montana or upon any easement unless the lessee or permittee is entitled to exclusive possession of the land to which the lease, permit, or easement relates; inserted (2)(d) prohibiting the imposition of the tax on the possession or other beneficial use of buildings owned by public entities located upon public airports and providing that private buildings located on public airport property are subject to the tax; and made minor changes in style. Amendment effective March 13, 1997.

Effective Date — Retroactive Applicability: Section 3, Ch. 49, L. 1997, provided: "[This act] is effective on passage and approval [approved March 13, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1993 Amendments: Chapter 104 in first sentence, at beginning, deleted "After March 17, 1969" and near middle, after "beneficial use", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Chapter 427 inserted last sentence prohibiting imposition of tax on beneficial use of port authority property; and made minor changes in style. Amendment effective April 20, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 427, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1991 Amendment: Near end, after "track", inserted "owned by the United States or" and after "as long as the state" inserted "or the United States". Amendment effective April 24, 1991.

Retroactive Applicability: Section 2, Ch. 621, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

1989 Amendment: Near end substituted "right-of-way or track" for "right-of-way and track".

1987 Amendment: At end inserted sentence exempting certain state-owned tracks.

Severability: Section 5, Ch. 591, L. 1987, was a severability section.

1983 Amendment: Inserted last sentence that reads: "The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax."

Administrative Rules

ARM 42.22.101 Definitions.

ARM 42.22.105 Reporting requirements.

ARM 42.22.107 Additional reporting requirements for beneficial use of government-owned transmission lines.

Case Notes

State Beneficial Use Tax on Private Utility's Use of Power Lines Not Discriminatory: Five investor-owned utilities appealed a District Court order upholding Montana's assessment of beneficial use taxes on use of federally owned transmission lines within the state. The utilities argued that assessing the tax against users of federal property while exempting users of state-owned property violated the supremacy clause of the U.S. Constitution. In affirming the District Court decision upholding the tax, the Supreme Court ruled that allowing a tax exemption for users of two state-owned railroad lines designed to promote tourism while assessing the tax against users of federally owned property used to increase private revenues did not unconstitutionally discriminate against the utility owners. Pac. Power & Light Co. v. Dept. of Revenue, 246 M 398, 804 P2d 397, 48 St. Rep. 9 (1991).

Privilege of Using Power Lines Taxable: To advance its commercial activities and thereby increase profits, Portland General Electric Company (PGE) contracted for firm transmission capacity over the lines of the Bonneville Power Administration. Although PGE does not possess the lines, the power flowing through the lines remains under PGE's ownership. PGE pays for the use of the lines regardless of the actual transmission flow. The reservation of firm transmission demand grants PGE an exclusive right taxable under this section. Portland Gen. Elec. Co. v. Dept. of Revenue, 237 M 324, 773 P2d 1189, 46 St. Rep. 839 (1989).

Contract Right Constituting Beneficial Use: Several investor-owned utility companies contracted with a federal agency to use the agency's power lines located in Montana to transmit electricity to out-of-state users. The companies argued that they did not have the right to possession, control, or exclusive use of the lines and therefore did not have a taxable interest in the lines. The Supreme Court held that an enforceable contract right to use or enjoy property owned by another is subject to taxation. The court also held that the companies had reserved the right to transmit more power than the lines could handle and that until other parties were able

to reserve some of the lines' transmission capacity, the companies' use was exclusive. Pac. Power & Light Co. v. Dept. of Revenue, 237 M 77, 773 P2d 1176, 46 St. Rep. 636 (1989).

Collateral References

Sufficient nexus for state to require foreign entity to collect state's compensating, sales, or use tax — post-complete auto transit cases. 71 ALR 5th 671.

15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes.

Compiler's Comments

1993 Amendment: Chapter 427 near beginning, after "tax-exempt property", substituted "for industrial, trade, or other business purposes is on the separate private interest in the tax-exempt property. The amount of payments that are made in lieu of taxes must be" for "shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof, provided that there shall be" and in second sentence, at end after "government", deleted "the amount of payments which are made in lieu of taxes"; and made minor changes in style. Amendment effective April 20, 1993.

Coordination Instruction: Section 2, Ch. 427, L. 1993, a coordination section, provided that if House Bill No. 312, Senate Bill No. 325, and [this act] are passed and approved, then 15-24-1204 is amended as provided in this section (see 1993 Session Law for text). House Bill No. 312 was passed and approved March 18, 1993, and Senate Bill No. 325 was passed and approved March 31, 1993. Therefore, the amendment to 15-24-1204 contained in this section is effective.

The amendments made by Ch. 104 and Ch. 256 were:

Chapter 104 near beginning, after "tax-exempt property", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Chapter 256 at end of first sentence substituted "is on the separate private interest in the tax-exempt property" for "shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof"; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 3, Ch. 427, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

Case Notes

Due Process and Equal Protection Clause of U.S. Constitution Not Violated by Use Tax on Electric Transmission Lines: Several investor-owned utility companies contracted with a federal agency to use the agency's power lines located in Montana to transmit electricity to out-of-state users. The companies argued that the beneficial use tax imposed on them violated their rights under the 14th amendment in that the counties where the lines were located conferred no benefit on the companies, the counties had already been compensated through the impact-aid portions of the Montana Intertie Agreement, and the imposed tax was based on the full value of the facilities when the Agreement gave the companies far less than full ownership. The Supreme Court noted that state tax statutes normally are not set aside based upon due process clause violations. The court ruled that the companies had failed to show that their activities did not meet the two-prong test that, first, the object of the tax lacked a nexus within the state and, second, the tax failed to fairly reflect the taxpayer's activity in the taxing state. The court also ruled that the law did not deny equal protection simply because it did not tax users of lines of less than 500 kilovolts. Pac. Power & Light Co. v. Dept. of Revenue, 237 M 77, 773 P2d 1176, 46 St. Rep. 636 (1989).

Federal Supremacy Clause Not Violated by State Taxation of Private Users of U.S. Agency's Power Lines: Certain privately owned utility companies entered into an agreement with a federal agency to use the agency's power lines located in Montana to transmit electricity to out-of-state users. The companies argued that a beneficial use tax imposed on them was preempted by several federal laws, including 15 U.S.C. 391 that provides that a tax is discriminatory if it results in a greater tax burden on electricity that is generated and transmitted in interstate commerce than on electricity that is generated and transmitted in intrastate commerce. The Supreme Court held that the tax did not violate the federal law because it was applied at the same rate on both interstate and intrastate users. The companies also argued that the tax was preempted by 16 U.S.C. 839, which provides for impact-aid payments to the affected counties. The court ruled that an examination of the federal law showed that the payments were not in lieu of taxes. In addition, the companies argued that the tax was preempted because the legal incidence of the tax fell on the federal government. The court found that the tax was levied directly on the companies for their beneficial use of the federal

government's facilities and that there was no transfer of liability to the government. Pac. Power & Light Co. v. Dept. of Revenue, 237 M 77, 773 P2d 1176, 46 St. Rep. 636 (1989).

15-24-1207. Reporting requirements — penalty — rules.

Compiler's Comments

1999 Amendment: Chapter 427 inserted (2) relating to penalty for failure to file a statement; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1993 Amendment: Chapter 104 in (1), near beginning of first sentence after "property", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Statement of Intent: The statement of intent attached to HB. 747 (Ch. 683, L. 1983) provided: "A statement of intent is required for this bill because section 1 [15-24-1207] grants rulemaking authority to the Department of Revenue.

It is the legislature's intent that the rules promulgated by the Department of Revenue shall insure compliance by all affected private parties with the provisions of Title 15, chapter 24, part 12, MCA, including producers of electrical energy who use tax-exempt high voltage transmission lines to make bulk power transfers. The rules enacted by the department shall provide a mechanism whereby private users or possessors of tax-exempt property, including producers of electrical energy who use tax-exempt high voltage transmission lines for bulk power transfers, are required to report the value of such tax-exempt property in order that ad valorem taxes may be levied and collected. Any energy producer using a transmission line owned by the federal government and therefore not subject to state and local property taxes shall be subject to this tax. If the line is made available to private producers, the private producers who own power being transmitted over such lines shall be subject to the tax at the rates and in the manner prescribed in 15-24-1204. The allocation among several users shall be allocated according to the charge by the federal government for such use to the maximum extent possible. The rules shall provide that if a private party fails to report the value of tax-exempt property used or possessed by it, the department shall determine the value of the tax-exempt property and order the taxpayer to show cause why such value should not be used in computing the tax and why tax computed from that value should not be levied against and collected from the taxpayer. It is the legislature's intent that no rules other than those necessary to effectuate the provisions of section 1 [15-24-1207] of this act as set forth in this statement of intent shall be promulgated by the Department of Revenue."

Administrative Rules

ARM 42.22.101 Definitions.

ARM 42.22.105 Reporting requirements.

ARM 42.22.107 Additional reporting requirements for beneficial use of government-owned transmission lines.

15-24-1208. Apportionment of tax-exempt property.

Administrative Rules

ARM 42.19.502 Exemptions involving ownership test.

ARM 42.19.506 Exemptions involving use test.

Part 14
New Industry — Real Property Improvements

15-24-1401. Definitions.

Compiler's Comments

2003 Amendment: Chapter 405 in definition of industry at end of (f) substituted "15-6-225" for "90-4-102". Amendment effective October 1, 2003.

2001 Amendment: Chapter 591 in definition of industry inserted (f) concerning electrical energy production from an alternative renewable energy source. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

1999 Amendment: Chapter 51 in (2)(a) after "manufacturing in the" substituted "North American Industry Classification System Manual" for "1972 Standard Industrial Classification Manual"; and made minor changes in style. Amendment effective March 15, 1999.

1991 Amendment: In definition of expansion decreased from $250,000 to $50,000 the worth of qualifying improvements or modernized processes; in definition of industry inserted (d) to include a firm that transports, warehouses, or distributes commercial products if 50% or more of gross sales or receipts are earned from outside the state and inserted (e) to include a firm that earns 50% or more of annual gross income from out-of-state sales; in definition of new, near beginning of first sentence, substituted "firm" for "industry", changed subsection reference to 15-24-1402, and near middle decreased from $500,000 to $125,000 the worth of qualifying improvements or modernized processes; and made minor changes in style. Amendment effective April 27, 1991.

Effective Date — Applicability: Section 5, Ch. 694, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies to taxable years beginning after December 31, 1991."

1987 Amendment: In (1) substituted definition of expansion for definition of new or expanding that read: ""New or expanding" means that the manufacturing industry is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) or that the manufacturing industry has added qualifying improvements to its property within the same jurisdiction since July 1, 1981"; in (2) substituted ""Industry" includes but is not limited to a firm" for ""Manufacturing industry" means an industry"; and inserted (2)(b) and (2)(c) that read: "(b) extraction or harvesting of minerals, ore, or forestry products; or

(c) processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products"; in (3) inserted definition of new; and in (4) inserted definition of qualifying.

Applicability: Section 4, Ch. 574, L. 1987, provided: "This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986." Effective April 20, 1987.

Administrative Rules

ARM 42.19.1235 Tax incentive for new and expanding industry.

Case Notes

New or Expanding Industry Tax — Discretionary Tax Break Held Not to Violate Substantive Due Process: After granting new or expanding industry tax reductions to several applicants whose property also received a tax break pursuant to another program, the Board of County Commissioners of Yellowstone County amended its resolution implementing the new or expanding industry tax reduction to provide that applicants were to no longer be entitled to a reduction but that reductions would be granted in the discretion of the Board and would not be granted if the property of the applicant was already subject to a tax break through some other program. Pursuant to these changes, the County Commissioners denied Cenex's application for a tax reduction under 15-24-1402 on pollution control equipment that had already received a different tax reduction from the state. Cenex brought a declaratory judgment action against the Board, claiming that the statute under which the Board had acted violates Cenex's right to substantive due process of law. Citing Plumb v. District Court, 279 M 363, 927 P2d 1011 (1996), the Supreme Court held that the statute does not violate the company's right to substantive due process of law. Cenex, Inc. v. Yellowstone County Bd. of Comm'rs, 283 M 330, 941 P2d 964, 54 St. Rep. 695 (1997).

Statute Held to Grant Discretion to Approve or Deny Tax Reduction — County Immunity Not Implicated by Declaratory Judgment Action: After granting new or expanded industry tax reductions to several applicants whose property also received a tax break pursuant to another program, the Board of County Commissioners of Yellowstone County amended its resolution implementing the new or expanded industry tax reduction to provide that applicants were to no longer be entitled to a reduction but that reductions would be granted in the discretion of the Board and would not be granted by the Board if the property of the applicant was already subject to a tax break through some other program. Pursuant to these changes, the County Commissioners denied Cenex's application for a tax reduction under 15-24-1402 on pollution control equipment that had already received a different tax reduction from the state. Cenex brought a declaratory judgment action against the Board, claiming that the Board had illegally withheld the tax reduction. Noting the construction previously given to the statutory use of the term "approval" in McCarten v. Sanderson, 111 M 407, 109 P2d 1108 (1941), the Supreme Court held that 15-24-1402 clearly gives the County Commissioners discretion over whether or not to grant approval of the tax reduction and does not require that approval to be granted. The

Supreme Court also held that the Board could change its position as to whether the tax reductions would be granted for property subject to other tax breaks and was not required to continue to grant the tax reductions under 15-24-1402 after the Board discovered the fiscal effect of granting a reduction on property that already received a tax break under another program. The Supreme Court held that because Cenex sought a declaratory judgment, the Board's liability wasn't an issue and that for that reason, the Supreme Court would not address the Board's claim of immunity under 2-9-111. Cenex, Inc. v. Yellowstone County Bd. of Comm'rs, 283 M 330, 941 P2d 964, 54 St. Rep. 695 (1997).

15-24-1402. New or expanding industry — assessment — notification.

Compiler's Comments

2005 Amendment: Chapter 597 inserted (2)(d) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1999 Amendment: Chapter 584 in (1) and (2)(b) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Special Session Amendment: Chapter 27 in (3), near beginning after "apply to the", deleted "county assessor on a form provided by the" and near end substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendments: Chapter 694 inserted (5) requiring notification prior to approval of the resolution. Amendment effective April 27, 1991.

Chapter 767 in (4), near end, inserted reference to 20-9-360; and made minor changes in style. Amendment effective May 15, 1991.

Effective Date — Applicability: Section 5, Ch. 694, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies to taxable years beginning after December 31, 1991."

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1987 Amendment: In (1), after "is issued", inserted "qualifying", after "improvements" inserted "or modernized processes", after "processes" deleted "to real property", after "new" deleted "manufacturing", after "industry" deleted "construction", after "existing" deleted "manufacturing", and after "industry" inserted "as designated in the approving resolution"; in (2)(a), after "approved by", inserted "separate", after "resolution" inserted "for each project", after "following" inserted "due notice as defined in 76-15-103 and", and inserted last two sentences concerning tax payment; in (2)(c), after "improvements", inserted "or modernized processes" and inserted second sentence concerning property designated in resolution; and inserted (4) containing limits on applicability of tax benefit.

Applicability: Section 4, Ch. 574, L. 1987, provided: "This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986." Effective April 20, 1987.

Administrative Rules

ARM 42.19.1235 Tax incentive for new and expanding industry.

Case Notes

New or Expanding Industry Tax — Discretionary Tax Break Held Not to Violate Substantive Due Process: After granting new or expanding industry tax reductions to several applicants whose property also received a tax break pursuant to another program, the Board of County Commissioners of Yellowstone County amended its resolution implementing the new or expanding industry tax reduction to provide that applicants were to no longer be entitled to a reduction but that reductions would be granted in the discretion of the Board and would not be granted if the property of the applicant was already subject to a tax break through some other program. Pursuant to these changes, the County Commissioners denied Cenex's application for a tax reduction under this section on pollution control equipment that had already received a different tax reduction from the state. Cenex brought a declaratory judgment action against the Board, claiming that the statute under which the Board had acted violates Cenex's right to

substantive due process of law. Citing Plumb v. District Court, 279 M 363, 927 P2d 1011 (1996), the Supreme Court held that the statute does not violate the company's right to substantive due process of law. Cenex, Inc. v. Yellowstone County Bd. of Comm'rs, 283 M 330, 941 P2d 964, 54 St. Rep. 695 (1997).

Statute Held to Grant Discretion to Approve or Deny Tax Reduction — County Immunity Not Implicated by Declaratory Judgment Action: After granting new or expanded industry tax reductions to several applicants whose property also received a tax break pursuant to another program, the Board of County Commissioners of Yellowstone County amended its resolution implementing the new or expanded industry tax reduction to provide that applicants were to no longer be entitled to a reduction but that reductions would be granted in the discretion of the Board and would not be granted by the Board if the property of the applicant was already subject to a tax break through some other program. Pursuant to these changes, the County Commissioners denied Cenex's application for a tax reduction under this section on pollution control equipment that had already received a different tax reduction from the state. Cenex brought a declaratory judgment action against the Board, claiming that the Board had illegally withheld the tax reduction. Noting the construction previously given to the statutory use of the term "approval" in McCarten v. Sanderson, 111 M 407, 109 P2d 1108 (1941), the Supreme Court held that this section clearly gives the County Commissioners discretion over whether or not to grant approval of the tax reduction and does not require that approval to be granted. The Supreme Court also held that the Board could change its position as to whether the tax reductions would be granted for property subject to other tax breaks and was not required to continue to grant the tax reductions under this section after the Board discovered the fiscal effect of granting a reduction on property that already received a tax break under another program. The Supreme Court held that because Cenex sought a declaratory judgment, the Board's liability wasn't an issue and that for that reason, the Supreme Court would not address the Board's claim of immunity under 2-9-111. Cenex, Inc. v. Yellowstone County Bd. of Comm'rs, 283 M 330, 941 P2d 964, 54 St. Rep. 695 (1997).

Part 15
Remodeling of Buildings or Structures

15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations.

Compiler's Comments

2005 Amendment: Chapter 597 inserted (5) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Special Session Amendment: Chapter 27 in first sentence of (1), after "department", deleted "or its agents"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1989 Amendment: In (1), at beginning, inserted "Subject to the authority contained in subsection (4)" and in two places inserted reference to subsection (4); in (2), at end, inserted "or a schedule adopted pursuant to subsection (4)"; inserted (4) allowing a local government to modify the tax benefits percentages for the first through fourth years following construction; and made minor changes in phraseology.

1985 Amendment: In (1) substituted "Remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 ½% as determined by the department of revenue or its agents, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) and (3) and the following schedule. The percentages shall be applied only as provided in subsection (3) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion" for "Remodeling of existing buildings or structures may receive tax benefits during the construction period and for the following 5 years in accordance with the following schedule. The percentages shall be applied to any increase in taxable value caused by the remodeling"; in (2) substituted

present language for "In order to receive the tax benefits described in subsection (1), the governing body of a county or incorporated city or town must have approved by resolution the use of the schedule provided for in subsection (1) for their respective jurisdiction"; and inserted (3) limiting tax benefit to school district levies.

Administrative Rules

ARM 42.20.103 Tax benefits for the remodeling, reconstruction, or expansion of existing buildings or structures.

ARM 42.20.106 Definitions.

15-24-1502. Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property — approval.

Compiler's Comments

2005 Amendment: Chapter 597 inserted (3) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

Effective Date: Section 4, Ch. 135, L. 2001, provided that this section is effective on passage and approval. Approved March 27, 2001.

Retroactive Applicability: Section 5, Ch. 135, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.20.110 Tax exemption and reduction for remodeling, reconstruction, or expansion of certain commercial property.

Part 16
Historic Properties

15-24-1601. Purpose.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1602. Definitions.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1603. Historic property tax abatement — levy limitations.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1604. Eligibility.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1605. Responsibilities of local governing bodies — local review board — design review process.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1606. Responsibilities of the state historic preservation office.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1607. Disqualification and penalty.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

Part 17
Commercial and Other Property

15-24-1701. Suspension and cancellation of collection of certain property taxes on commercial property — subordination of county tax lien — local government discretion.

Compiler's Comments

1991 Amendments: Chapter 16 near end of (2) substituted "suspension" for "cancellation"; and made minor change in style.

Chapter 77 inserted (3) providing that a governing body may subordinate a county's tax lien to a purchaser's financing.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated this section December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Collateral References

Taxation *key* 236.

84 C.J.S. Taxation §§313 through 316.

15-24-1702. Resolution to suspend or cancel delinquent taxes.

Compiler's Comments

1993 Amendment: Chapter 422 in (2), near end after "owner", inserted "under 15-24-1701 or by the owner or purchaser under 15-24-1704". Amendment effective April 20, 1993, and terminates July 1, 1995.

Effective Date — Retroactive Applicability: Section 4, Ch. 422, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively to tax years beginning after December 31, 1987."

Termination: Section 5, Ch. 422, L. 1993, provided: "[This act] terminates July 1, 1995."

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated this section December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Collateral References

Taxation *key* 236.

84 C.J.S. Taxation §§313 through 316.

15-24-1703. Application of suspension or cancellation.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated this section December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Collateral References
Taxation *key* 236.
84 C.J.S. Taxation §§313 through 316.

Part 18
Business Incubators

15-24-1801. Definitions.

Collateral References
Taxation *key* 236.
84 C.J.S. Taxation §§313 through 316.

15-24-1802. Business incubator tax exemption — procedure.

Compiler's Comments
2005 Amendment: Chapter 597 inserted (5) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1993 Special Session Amendment: Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: In (1), near beginning after "owned", inserted "or leased" and before "property taxes" deleted "certain local"; in (2), near beginning of first sentence before "county", deleted "affected", after "school district" inserted "in which the property is located", and at end substituted "due notice as defined in 76-15-103" for "notice" and inserted second through fifth sentences concerning governing body approval of each business incubator by separate resolution and payment of taxes prior to approval; in (2)(c), at beginning after "owns", inserted "or leases"; inserted (3) concerning Assessor making assessment change for tax exemption upon receipt of governing body's approval; and in (4), at beginning of second sentence, substituted "If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments" for "The exemption may not apply to levies or assessments". Amendment effective April 26, 1991.

Retroactive Applicability: Section 2, Ch. 669, L. 1991, provided that the amendment applies retroactively to taxable years beginning after December 31, 1990.

Collateral References
Taxation *key* 236.
84 C.J.S. Taxation §§313 through 316.

Part 19
Industrial Parks

15-24-1901. Definitions.

Compiler's Comments
1995 Amendment: Chapter 277 in definition of industrial park inserted second sentence to include undeveloped land owned by a local economic development organization.

Collateral References
Taxation *key* 236.
84 C.J.S. Taxation §§313 through 316.

15-24-1902. Industrial park tax exemption — procedure — termination.

Compiler's Comments
2005 Amendment: Chapter 597 inserted (6) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1993 Special Session Amendment: Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: In (1), near end before "property", deleted "certain local"; in (2), in first sentence before "county", deleted "affected", after "town" inserted "or school district in which the property is located", before "notice" inserted "due", and after "notice" inserted "as defined in 76-15-103" and inserted second through fifth sentences regarding approval or disapproval of the tax exemption by the governing body; inserted (3) requiring assessor to make the assessment change upon receipt of approval; in (4), at beginning of second sentence, substituted "If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies" for "The exemption may not apply"; in (5) inserted third sentence regarding assessment upon termination of the exemption; and made minor changes in style. Amendment effective April 27, 1991.

Coordination Instruction: Section 2, Ch. 702, L. 1991, provided: "If House Bill No. 757 is not passed and approved, the bracketed [third] sentence in 15-24-1902(5) amended in section 1 [of Ch. 702, L. 1991] is void." House Bill No. 757 was approved April 23, 1991, as Ch. 570, L. 1991. Therefore, the third sentence of 15-24-1902(5), added by sec. 1, Ch. 702, L. 1991, is valid.

Effective Date — Retroactive Applicability: Section 3, Ch. 702, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Collateral References

Taxation *key* 236.

84 C.J.S. Taxation §§313 through 316.

Part 20
Local Economic Development Organizations

15-24-2002. Building and land tax exemption — procedure — termination.

Compiler's Comments

2005 Amendment: Chapter 597 inserted (6) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1993 Special Session Amendment: Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Coordination Instruction: Section 4, Ch. 693, L. 1991, provided: "If House Bill No. 757 is not passed and approved, the bracketed sentence in [section 2(4) of this act] [15-24-2002(5)] is void." House Bill No. 757 was approved April 23, 1991, as Ch. 570. During the legislative process, sec. 2(4) of Ch. 693 was renumbered sec. 2(5), a change not reflected in the coordination instruction. Therefore, the Code Commissioner has retained the third sentence of 15-24-2002(5) regarding assessment under 15-16-203 upon termination of the exemption, which constituted the original bracketed language.

Part 24
Value-Added Manufacturing

Part Compiler's Comments

Effective Date — Applicability: Section 7, Ch. 786, L. 1991, provided: "[This act] is effective on passage and approval [approved May 17, 1991] and applies to tax years beginning after December 31, 1991."

Part Administrative Rules

ARM 42.19.1240 Taxable rate reduction for value added property.

15-24-2402. Definitions.

Compiler's Comments

1999 Amendment: Chapter 51 in definition of industry in introductory clause after "manufacturing in the" substituted "North American Industry Classification System Manual" for "1987 Standard Industrial Classification Manual". Amendment effective March 15, 1999.

15-24-2404. Exclusion from other property tax reductions or exemptions — recapture.

Compiler's Comments

2005 Amendment: Chapter 597 inserted (2) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part; and made minor changes in style. Amendment effective October 1, 2005.

15-24-2405. Rules.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 786, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration of this bill.

The legislature contemplates that rules adopted by the department should, at a minimum, provide the following:

(1) guidelines for information that must be contained in the application for taxable value decrease;

(2) the forms to be used by a firm to apply for the taxable value decrease and to report employment associated with the use of qualifying property;

(3) the procedures to ensure that a taxpayer receiving a taxable value decrease under this bill does not receive any other property tax reduction for qualifying property;

(4) the definition of terms and establishment of procedures that are appropriate for the efficient administration of the taxable value decrease;

(5) procedures for the annual recomputation of numbers of existing employees and numbers of new employees;

(6) criteria the department intends to use to safeguard the faithful reporting of existing and new employees to deter taxpayers from using temporary measures or other artifices to deflate the number of existing employees or inflate the number of new employees contrary to the spirit of the program; and

(7) procedures for the department to review the specific responsibilities of each new employee to ensure that the employee is a qualifying employee."

Administrative Rules

ARM 42.19.1240 Taxable rate reduction for value added property.

Part 30
Electrical Generation and Delivery Facilities

Part Compiler's Comments

Effective Date: Section 7, Ch. 592, L. 2001, provided that this part is effective on passage and approval. Approved May 5, 2001.

Part Administrative Rules

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

15-24-3001. Electrical generation and transmission facility exemption — definitions.

Administrative Rules

ARM 42.4.4102 Electrical generation and transmission facility — qualification and publication.

ARM 42.4.4103 Electrical generation and transmission facility — reporting.

ARM 42.4.4104 Electrical generation and transmission facility — verification.

ARM 42.4.4112 Records required — audit.

ARM 42.4.4113 Request for information.

15-24-3004. Wind generation facility impact fee for local governmental units and school districts.

Compiler's Comments

Effective Date: Section 14, Ch. 563, L. 2005, provided: "[This act] is effective on passage and approval." Approved May 2, 2005.

Retroactive Applicability: Section 15(2), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

15-24-3005. Electrical generation facility impact fee for local governmental units and school districts — wind generation facility impact fee.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in (4) near end of first sentence after "pursuant to" deleted "the percentage allocation required in"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 563 in (2) near middle after "facility" inserted "or wind generation facility" and near end after "pursuant to" inserted "15-24-3004(1) or"; in (4) near beginning of first sentence after "if the" inserted "electrical generation" and after "facility" inserted "or wind generation facility" and in second sentence after "facility" inserted "or wind generation facility"; in (5) at beginning of first sentence after "purposes of" inserted "15-24-3004 and" and near beginning of second sentence and near end of third sentence after "facility" inserted "or wind generation facility"; in (6) near beginning of first sentence after "imposed under" inserted "15-24-3004(2)(b) or under"; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(2), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

Administrative Rules

ARM 42.4.4111 Deductibility of impact fee for local government and school districts.

15-24-3006. Electrical energy generation impact fee reserve account.

Compiler's Comments

2005 Amendment: Chapter 563 in (1) in first sentence before "15-24-3005(4)" inserted "15-24-3004(2)(b) or"; and in (2) in first sentence before "15-24-3005" inserted "15-24-3004 or". Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(2), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

15-24-3007. Electrical generation impact fund.

Compiler's Comments

2005 Amendment: Chapter 563 in (1) in first sentence before "15-24-3005(2)" inserted "15-24-3004(2)(a)"; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(2), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

CHAPTER 25
DANGEROUS DRUG TAX
(Repealed)

Chapter Compiler's Comments

Preamble: The preamble to Ch. 563, L. 1987, provided: "WHEREAS, dangerous drugs are commodities having considerable value, and the existence in Montana of a large and profitable dangerous drug industry and expensive trade in dangerous drugs is irrefutable; and

WHEREAS, the state does not endorse the manufacturing of or trading in dangerous drugs and does not consider the use of such drugs to be acceptable, but it recognizes the economic impact upon the state of the manufacturing and selling of dangerous drugs; and

WHEREAS, it is appropriate that some of the revenue generated by this tax be devoted to continuing investigative efforts directed toward the identification, arrest, and prosecution of individuals involved in conducting illegal continuing criminal enterprises that affect the distribution of dangerous drugs in Montana.

THEREFORE, the Legislature of the State of Montana does not wish to given credence to the notion that the manufacturing, selling, and use of dangerous drugs is legal or otherwise proper, but finds it appropriate in view of the economic impact of such drugs to tax those who profit from drug-related offenses and to dispose of the tax proceeds through providing additional anticrime initiatives without burdening law abiding taxpayers."

Chapter Case Notes

Dangerous Drug Tax — Prohibited as Double Jeopardy: The U.S. Supreme Court held that Montana's dangerous drug tax was barred under the double jeopardy doctrine of the fifth amendment to the U.S. Constitution. The tax is conditioned on the commission of a crime; the rate of the tax was eight times the drug's market value; and, although the tax purports to be a property tax, it is levied on goods that the taxpayer neither owns nor possesses when the tax is imposed. A tax on possession of goods that no longer exist and that the taxpayer never lawfully possessed has a punitive character. Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

Dangerous Drug Tax Not Double Jeopardy — Civil Remedy Versus Criminal Penalty — Constitutionality of Dangerous Drug Tax: The Department of Revenue assessed a dangerous drug tax on two men who were convicted of possession of dangerous drugs, sentenced, and fined under the criminal code. Two District Courts found that the tax was excessive and punitive rather than remedial and that it constituted a second criminal penalty imposed for the same crime in violation of the constitutional prohibition against double jeopardy. The Supreme Court disagreed, noting that the dangerous drug tax is an excise tax based on the quantity of drugs in the taxpayer's possession and does not impose any affirmative disability or restraint of liberty or privileges upon the taxpayer. Under Helvering v. Mitchell, 303 US 391, 82 L Ed 917, 58 S Ct 630 (1938), both a civil and criminal penalty are allowed for the same act or omission. Although the conduct of possessing dangerous drugs subjects a taxpayer to both a criminal penalty and a tax, the tax is not so punitive in purpose or effect that it negates the legislative intent to create a civil sanction. Rather, the tax is remedial and is collected through a separate administrative procedure. In distinction to U.S. v. Halper, 490 US 735, 104 L Ed 2d 487, 109 S Ct 1892 (1989), the tax does not serve the goal of punishment rather than its remedial purpose of compensating the government for its loss and needs no proof of remedial costs on the part of the state. The method of reporting the tax due and the method of collecting the tax do not transform it into a criminal penalty. After applying the factors in Kennedy v. Mendosa, 372 US 144, 9 L Ed 2d 644, 83 S Ct 554 (1963), the court held that the dangerous drug tax is not a criminal penalty and does not rest on a criminal conviction but constitutes a separate civil remedy and as such is not a multiple punishment that violates double jeopardy. The Dangerous Drug Tax Act is constitutional on its face. Sorensen v. Dept. of Revenue, 254 M 61, 836 P2d 29, 49 St. Rep. 624 (1992).

CHAPTER 30
INDIVIDUAL INCOME TAX

Chapter Compiler's Comments

Section Not Codified: Section 84-4936, R.C.M. 1947, which provided a construction for the terms "this act" for the purposes of Ch. 49, Title 84, R.C.M. 1947, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 28, L. 1941.

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Part of Section Not Codified: A part of section 84-4902.1, R.C.M. 1947, which temporarily set the surtax at 40%, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 10, Ex. L. 1969, as amended by sec. 40, Ch. 9, Ex. L. 1971.

Sales Tax Referendum Defeated: Chapter 9, 2nd Ex. L. 1971, provided for a sales tax and use tax in lieu of a portion of the surtax on the income tax, subject to referendum at a special general election held on November 2, 1971. The measure failed by a vote of 154,680 against and 66,967 for.

Chapter Case Notes

Test for Determining Whether Taxpayer Engaged in Nonprofit Activity — Applicability of Federal Code: The determination of a taxpayer's Montana income tax liability is primarily based on the federal Internal Revenue Code. The question of whether a taxpayer is engaged in an

activity with the requisite intention of making a profit is based on the surrounding facts and circumstances evaluated using the nine-part test listed in Treasury Regulation 1.183-2(b): (1) the manner in which the taxpayer carries on the activity; (2) the expertise of the taxpayer or the taxpayer's advisers; (3) the time and effort expended in carrying on the activity; (4) the expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar or dissimilar activities; (6) the taxpayer's history of income or losses with respect to the activity; (7) the amount of occasional profits earned, if any; (8) the financial status of the taxpayer; and (9) elements of personal pleasure or recreation. Although no one factor is conclusive, a record of substantial losses over many years and the unlikelihood of achieving a profitable operation are important factors bearing on the taxpayer's true intention. On judicial review of the present case, the District Court properly considered the factors in concluding that Leahys' horsetraining operation was not engaged in for profit. Leahy v. Dept. of Revenue, 266 M 94, 879 P2d 653, 51 St. Rep. 665 (1994).

State Right to Tax Nonresident Income: Appellant residents of the Montana portion of Yellowstone Park contended Montana's income tax was unconstitutional because appellants did not enjoy all the same benefits as state residents. The Supreme Court affirmed the state's right to tax income of nonresidents earned within this state, citing Shaffer v. Carter, 252 US 37, 64 L Ed 445, 40 S Ct 221 (1920). The court found that appellants enjoyed substantial residential benefits and that alleged denial of certain benefits was not sufficient reason to prevent the state from levying the income tax. Olson v. Dept. of Revenue, 223 M 464, 726 P2d 1162, 43 St. Rep. 1916 (1986).

State Taxing Jurisdiction Acquired Through 1940 Federal Act — Applicable to Montana Portion of Yellowstone Park: The Supreme Court affirmed a District Court finding that the right to tax persons living in the Montana portion of Yellowstone Park was acquired by Montana in 1940 by virtue of the federal Buck Act, specifically 4 U.S.C. 106(a). The court further found no requirement of any formal state legislative action to reclaim jurisdiction over the former federal area before taxation could begin. Olson v. Dept. of Revenue, 223 M 464, 726 P2d 1162, 43 St. Rep. 1916 (1986).

Constitutionality of Graduated Surtax: A former subsection of 15-30-103, as amended by Ch. 40, Ex. L. 1933, providing for a graduated and progressive surtax, in addition to the normal tax, was unconstitutional since it resulted in arbitrary discriminations between individual taxpayers. Mills v. St. Bd. of Equalization, 97 M 13, 33 P2d 563 (1934).

Chapter Law Review Articles

Tax Consequences of Divorce and Legal Separation, Peete & Coffee, 55 Mont. L. Rev. 359 (1994).

Income Tax Consequences of Dividing Marital Property in a Marriage Dissolution, Munson, 44 Mont. L. Rev. 175 (1983).

Estate Planning for Farmers and Ranchers, Dietrich, 40 Mont. L. Rev. 189 (1979).

Developing Theories of State Jurisdiction Over Indians: The Dominance of Preemption Analysis, Lynaugh, 38 Mont. L. Rev. 64 (1977).

Post-Death Tax Options, Forbes, 30 Mont. L. Rev. 19 (1968).

Incorporated Professional Group Treated as Corporation for Federal Tax Purposes, 29 Mont. L. Rev. 229 (1968).

A Tax-Trap for the Unwary: The Disposition of Installment Obligations, Jones, 29 Mont. L. Rev. 43 (1967).

Barter-Equation Method to Value Block of Listed Stock, 28 Mont. L. Rev. 268 (1967).

Leasebacks in Commercial and Family Transactions, Thomas, 28 Mont. L. Rev. 25 (1966).

Taxpayer Who Generates Income and Designates Recipient Not Taxable When He Has No Right to Receive It, 24 Mont. L. Rev. 183 (1963).

Montana Legislative Summary: 1961, 22 Mont. L. Rev. 103 (1961).

The Income Tax Basis of Land Acquired by Homestead, Rusoff, 22 Mont. L. Rev. 60 (1960).

Montana Legislative Summary: 1959, 20 Mont. L. Rev. 133 (1959).

Gifts to Minors, Forbes, 19 Mont. L. Rev. 106 (1958).

Taxation of "Income in Respect of a Decedent", 19 Mont. L. Rev. 33 (1957).

Income Tax Aspects of Partnership Operation, Crawford, 18 Mont. L. Rev. 159 (1957).

Constitutional Questions Raised by 1955 Amendments to Income Tax Law, 17 Mont. L. Rev. 203 (1956).

Contingent Liabilities From Capital Transactions—Is Payment Capital or Ordinary Loss?, Coad, 14 Mont. L. Rev. 64 (1953).

Multiple Taxation: The Supreme Court Lets Down the Bars, 1 Mont. L. Rev. 89 (1940).

Chapter Collateral References

Taxation *key* 931 through 1104.

85 C.J.S. Taxation §1693, et seq.

71 Am. Jur. 2d State and Local Taxation §§443 through 611.

Construction and effect of will provisions relied on as affecting payment of real or personal property taxes or income taxes. 70 ALR 3d 726.

What is an "income tax" within deduction provisions of income tax statute. 151 ALR 983.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Year as of which interest should be returned by taxpayer who makes return on accrual basis. 150 ALR 754.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

Computation of losses or profits on sale of securities. 149 ALR 988.

Income tax in respect of amount of property returned to donor, or applied for his benefit, by donee, pursuant to terms of gift. 149 ALR 638.

Trustor as subject to income tax in respect of income of irrevocable trust for charitable purposes. 148 ALR 1236.

Income tax of corporate employee or officer in respect of stock of corporation sold to him at less than its value. 146 ALR 1391, supplemented in 72 ALR 2d 1352.

Year as of which amounts received by lessor in advance from lessee are subject to income tax. 146 ALR 995.

Income tax in respect of amounts paid by third persons to trustee in bankruptcy of the taxpayer or garnished by his creditors. 146 ALR 62.

Exemption of charitable organization from income taxes. 108 ALR 302.

Constitutionality of taxation of grantor on income of revocable trust and trust income distributable to him. 106 ALR 798, supplemented in 132 ALR 785 and 143 ALR 1116.

Domicile of taxpayer within state for only part of the taxable year as affecting computation of income tax. 93 ALR 1199, supplemented in 126 ALR 455.

Retroactive effect of income tax. 11 ALR 518, supplemented in 109 ALR 523 and 118 ALR 1153.

Income tax as "property" tax within constitutional limitations on taxation. 11 ALR 313, supplemented in 70 ALR 468 and 97 ALR 1488.

Income Tax Indexing, 1977-78 Interim Report, Montana Legislative Council.

Comparative Individual Tax Burdens in the Fifty States, 1977-78 Interim Report, Montana Legislative Council.

Montana's State Income Tax, 1975-76 Interim Report, Montana Legislative Council.

Income Taxation, 1969-70 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 1
Rate and Return of Tax

Part Compiler's Comments

Transition — Suspension: Section 21, Ch. 634, L. 1993 (House Bill No. 671), provided: "(1) Notwithstanding the provisions of 15-30-111, the adjusted gross income of an individual includes refunds of federal income tax received for tax years prior to December 31, 1992, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of 15-30-122, all itemized deductions allowed pursuant to 26 U.S.C. 161 and 211 that may be carried forward, including but not limited to the contributions carryover, investment interest expense carryover, home mortgage interest amortization, bond premium amortization, and deduction for income in respect of a decedent, may be continued to be carried forward for a period not to exceed 5 years." The provisions of House Bill No. 671 were suspended subject to a referendum on the bill to be held in November 1994.

Section Not Codified: Section 84-4941, R.C.M. 1947, which is a severability clause that applies to several sections in this part, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 260, L. 1955.

Part Administrative Rules

Title 42, chapter 15, subchapter 1, ARM Income tax — general provisions.

Title 42, chapter 15, subchapter 2, ARM Income tax — Montana additions and subtractions.

Title 42, chapter 15, subchapter 3, ARM Income tax — tax returns.
Title 42, chapter 15, subchapter 4, ARM Income tax — personal and dependent exemptions.
Title 42, chapter 15, subchapter 5, ARM Income tax — deductions.

Part Collateral References

85 C.J.S. Taxation §1693, et seq.
71 Am. Jur. 2d State and Local Taxation §§443 through 595.

15-30-101. Definitions.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 225 inserted definition of foreign C. corporation; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 544 in definition of consumer price index after "items" inserted "for all urban consumers (CPI-U)" and substituted "1982-84 base" for "1967 base"; in definition of inflation factor at end substituted "June 2005" for "June 1980"; in definition of tax year deleted "Taxable year" as optional defined term; and made minor changes in style. Amendment effective January 1, 2005.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(2), Ch. 544, L. 2003, provided: "(2) [Sections 40 and 42 through 45] [15-30-183, 15-30-101, 15-30-103, 15-30-112, and 15-30-121] apply to tax years beginning after December 31, 2004."

2001 Amendment: Chapter 143 inserted definitions of corporation, disregarded entity, internal revenue code, limited liability company, limited liability partnership, Montana source income, nonresident, partner, partnership, pass-through entity, and S. corporation; in definition of dividend in (a) before "corporation" inserted "C." and substituted "earnings and profits" for "earnings or profits" and inserted (b) regarding distribution made by S. corporation; in definition of lottery winnings in introduction at beginning substituted "Lottery winnings" for "Montana lottery winnings" and substituted "periodic payments" for "annual payments"; in definition of taxpayer near beginning after "includes any person" inserted "entity", after "tax" inserted "or other obligation", near middle after "this chapter and" inserted "unless otherwise specifically provided", and at end substituted "a C. corporation" for "corporations"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1999 Amendment: Chapter 31 inserted definition of Montana lottery winnings; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 42 in definition of foreign government deleted reference to foreign country; in definition of gross income, in two places, and in definition of pension and annuity income, in two places, inserted parenthetical references to United States Code sections of the Internal Revenue Code; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (1)(b) substituted reference to subsection (6) of 15-30-112 for "subsections (7) and (8) of 15-30-112". Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1991 Amendment: Inserted definition of pension and annuity income. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

1991 Statement of Intent: The statement of intent attached to Ch. 823, L. 1991, provided: "A statement of intent is required for this bill because the public employees' retirement board and the teachers' retirement board must establish a percentage rate to provide a uniform adjustment payment rate to all members of public retirement systems as provided in [section 4] [19-15-101, now repealed]."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1989 Amendment: In definition of information agents inserted "brokers, real estate brokers".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1981 Amendment: Chapter 548, L. 1981, inserted ", but unadjusted by subsection (2) of 15-30-103" and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(a); inserted ", but unadjusted by subsections (7) and (8) of 15-30-112," and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(b); inserted "but unadjusted by subsection (2) of 15-30-122" and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(c).

1980 Initiative Amendment: Initiative No. 86 inserted definitions of base year structure, consumer price index, and inflation factor.

Part of Section Not Codified: Subsection (a) of section 84-4942, R.C.M. 1947, which defines "department" and is redundant with 15-30-101, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 246, L. 1955, as amended by sec. 185, Ch. 516, L. 1973.

Administrative Rules

ARM 42.15.107 Definitions.
ARM 42.15.112 Nonresident military personnel.
ARM 42.15.214 Resident military salary exclusion.
ARM 42.15.220 Exemption of certain income of enrolled tribal members.
ARM 42.19.405 Definitions.
ARM 44.10.331 Inflation factor applied to limits on receipts from political committees.

Attorney General's Opinions

Servicepersons — Registration to Vote — Tax Liability: The fact that a member of the military service has registered to vote in Montana is evidence, though not conclusive proof, that he is a Montana resident and is thus not exempt, under the federal Soldiers' and Sailors' Civil Relief Act of 1940, from property and income taxation by Montana. Montana's election law requires one to be a resident of Montana before voting in the state's elections, so a serviceperson who has registered to vote in Montana (thereby claiming to be a resident) may not claim tax exemption under the federal Act without offering convincing evidence that he is in fact not a Montana resident after all. However, to claim he is not in fact a resident after having registered to vote in Montana would subject him to prosecution for the misdemeanor of fraudulent registration. 41 A.G. Op. 2 (1985).

Collateral References

Power of state to extend its taxing power by its definition of residence. 100 ALR 1216.
Inhabitancy or residence within income tax provisions as equivalent of domicile. 82 ALR 982.

15-30-102. Construction of net income.

Case Notes

Proceeds of Multistate Lottery Ticket Purchased and Redeemed in Montana Taxed as "Income Earned in Montana" — Residency of Winner Not Determinative: The Sharps won $47 million in the multistate lottery game known as Lotto America. The Sharps, who were Montana residents when they won the lottery but later moved to Washington, challenged taxation of their earnings by the Montana Department of Revenue in a declaratory judgment action. The District Court held that all of the annual lottery payments made to the Sharps by the Montana Lottery on behalf of Lotto America were taxable as income earned in Montana. Before the Supreme Court, the Sharps argued that: (1) the version of 15-30-105 in effect in 1991 governs their situation; (2) their annual payments from the lottery are payments in the nature of an annuity that are exempt under the 1991 version of 15-30-131(1); and (3) ARM 42.16.1113(1), exempting from taxation income from intangible personal property, applies to their situation. In beginning its analysis, the Supreme Court noted that pursuant to the statement of legislative intent in this section, no statute or administrative rule defines the proceeds of the lottery paid to the Sharps as income from intangible personal property or exempts the winnings from taxation. The Supreme Court also noted that the Department administrative rule relied upon by the Sharps cannot change a state statute and that the annual payments won by the Sharps are not an annuity or other income but are the prize itself. The Supreme Court then addressed the issue of which statute applied, holding that under the rationale of Couchot v. St. Lottery Comm'n, 659 NE 2d 1225 (Ohio 1996), certiorari denied, 519 US 810, 136 L Ed 2d 18, 117 S Ct 55 (1996), the statute in effect at the time of the annual distribution of the prize money, in this case, the 1992 version of 15-30-105, governs the Sharps' situation. Relying upon Couchot, Harvester Co. v. Dept. of Taxation, 322 US 435 (1944), and Stark v. Comptroller, 554 A2d 458 (Md. App. 1989), the Supreme Court held that under the version of 15-30-105, as amended by a 1992 special session of the Legislature, the Sharps' lottery winnings constitute "income earned in Montana" because they were "earned" in the state in which they were won and are therefore taxable in 1992 and subsequent years. (See 2001 amendment to 15-30-101.) Sharp v. Dept. of Revenue, 284 M 424, 945 P2d 38, 54 St. Rep. 949 (1997).

Taxation of Reservation Employment: Indians who reside off the Crow Reservation are subject to state income tax for their income earned on the reservation. If the taxpayer is an Indian who resides on a reservation set aside for the exclusive use of the Indians, such as the Crow Reservation, under joint federal-tribal control, the income earned on the reservation is beyond the state's taxing power whether the taxpayer is enrolled on the reservation or not. "Indian" includes one who: (1) has a quantum of Indian blood; (2) is recognized as an Indian by his community and has not had his wardship status terminated; and (3) is an enrolled member of a federally recognized Indian tribe or eligible to be an Indian ward. Dillon v. St., 451 F. Supp. 168 (D.C. Mont. 1978), reversed at 634 F2d 463 (9th Cir. 1980).

Collateral References

Taxation *key* 1079.

85 C.J.S. Taxation §1715, et seq.

71 Am. Jur. 2d State and Local Taxation §§475 through 511.

15-30-103. Rate of tax.

Compiler's Comments

2003 Amendment: Chapter 544 in (1) substituted "tax year" for "taxable year commencing on or after December 31, 1968"; substituted (1)(a) through (1)(g) establishing tax percentage for income brackets for former text that read: "as adjusted under subsection (2) at the following rates:

(a) on the first $1,000 of taxable income or any part thereof, 2%;
(b) on the next $1,000 of taxable income or any part thereof, 3%;
(c) on the next $2,000 of taxable income or any part thereof, 4%;
(d) on the next $2,000 of taxable income or any part thereof, 5%;
(e) on the next $2,000 of taxable income or any part thereof, 6%;
(f) on the next $2,000 of taxable income or any part thereof, 7%;
(g) on the next $4,000 of taxable income or any part thereof, 8%;
(h) on the next $6,000 of taxable income or any part thereof, 9%;
(i) on the next $15,000 of taxable income or any part thereof, 10%;

(j) on any taxable income in excess of $35,000 or any part thereof, 11%"; in (2) in two places substituted "tax year" for "taxable year"; and made minor changes in style. Amendment effective January 1, 2005.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(2), Ch. 544, L. 2003, provided: "(2) [Sections 40 and 42 through 45] [15-30-183, 15-30-101, 15-30-103, 15-30-112, and 15-30-121] apply to tax years beginning after December 31, 2004."

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1980 Initiative Amendment: Inserted "on the following brackets of taxable income as adjusted under subsection (2)" after "a tax" near the end of the lead-in to subsections (1)(a) through (1)(j); and added subsection (2) relating to an inflation factor adjustment.

Administrative Rules

ARM 42.4.501 Definitions.

ARM 42.4.502 Capital gain credit.

Case Notes

Ad Valorem Tax on Bank Shares Not Repealed: Property or ad valorem tax on bank shares (now repealed) was not recoverable on the theory that national bank shares had been taxed under the income tax law, and that the Legislature had impliedly repealed the ad valorem method of taxing them and substituted the tax on dividends, since no such substitution was made or intended, and ad valorem tax was not repealed by income tax on dividends. Johnson v. Meagher County, 116 M 565, 155 P2d 750 (1945), appeal dismissed 326 US 679, 90 L Ed 397, 66 S Ct 31 (1946).

No Retroactive Application: In the absence of any express provision in Ch. 181, L. 1933, making the income tax law retrospective, this act may not be given retrospective action to deduct losses sustained on an investment in bonds before the act became operative, under statutory rule of construction set forth in 1-2-109. State ex rel. Whitlock v. St. Bd. of Equalization, 100 M 72, 45 P2d 684 (1935).

Constitutionality:

The income tax law does not violate the Equal Protection of the Law Clause of the federal constitution. O'Connell v. St. Bd. of Equalization, 95 M 91, 25 P2d 114 (1933); Mills v. St. Bd. of Equalization, 97 M 13, 33 P2d 563 (1934), affirmed in St. v. Toomey, 135 M 35, 335 P2d 1051 (1958).

The income tax law, being an excise tax, did not violate Art. XII, sec. 1, 9, or 17, 1889 Mont. Const., relating to the assessment of property for taxation. O'Connell v. St. Bd. of Equalization, 95 M 91, 25 P2d 114 (1933), explained in Poorman v. St. Bd. of Equalization, 99 M 543, 45 P2d 307 (1935); Mills v. St. Bd. of Equalization, 97 M 13, 33 P2d 563 (1934).

Collateral References

Taxation *key* 959, 1061, 1062.

85 C.J.S. Taxation §1698.

71 Am. Jur. 2d State and Local Taxation §§468, 469.

15-30-105. Tax on nonresident.

Compiler's Comments

2001 Amendment: Chapter 143 in (1)(a) substituted text imposing tax on nonresident for former text that read: "A tax on income earned in Montana is imposed upon each person not a resident of this state. The tax must be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to the nonresident's entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana. Income derived from Montana lottery winnings is considered income earned in Montana"; inserted (1)(b) prohibiting double counting in determining Montana source income and authorizing department to adopt rules; in (2) in second sentence at end inserted "and subsection (1)(a) of this section"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1999 Amendment: Chapter 31 in (1) near beginning inserted "on income earned in Montana" and inserted last sentence concerning Montana lottery winnings; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (1), at end of first sentence, deleted "as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state" and inserted last two sentences relating to calculating the tax based upon income ratio and consideration of interest income from installment sales of certain property. Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1981 Amendment: In the second sentence of subsection (2), substituted "tax" for "taxes" before "imposed" and deleted "and 15-30-104" after "15-30-103".

Administrative Rules

ARM 42.4.501 Definitions.

ARM 42.4.502 Capital gain credit.

ARM 42.15.119 Alternative tax.

Case Notes

Proceeds of Multistate Lottery Ticket Purchased and Redeemed in Montana Taxed as "Income Earned in Montana" — Residency of Winner Not Determinative: The Sharps won $47 million in the multistate lottery game known as Lotto America. The Sharps, who were Montana residents when they won the lottery but later moved to Washington, challenged taxation of their earnings by the Montana Department of Revenue in a declaratory judgment action. The District Court held that all of the annual lottery payments made to the Sharps by the Montana Lottery on behalf of Lotto America were taxable as income earned in Montana. Before the Supreme Court, the Sharps argued that: (1) the version of this section in effect in 1991 governs their situation; (2) their annual payments from the lottery are payments in the nature of an annuity that are exempt under the 1991 version of 15-30-131(1); and (3) ARM 42.16.1113(1), exempting from taxation income from intangible personal property, applies to their situation. In beginning its analysis, the Supreme Court noted that pursuant to the statement of legislative intent in 15-30-102, no statute or administrative rule defines the proceeds of the lottery paid to the Sharps as income from intangible personal property or exempts the winnings from taxation. The Supreme Court also noted that the Department administrative rule relied upon by the Sharps cannot change a state statute and that the annual payments won by the Sharps are not an annuity or other income but are the prize itself. The Supreme Court then addressed the issue of which statute applied, holding that under the rationale of Couchot v. St. Lottery Comm'n, 659 NE 2d 1225 (Ohio 1996), certiorari denied, 519 US 810, 136 L Ed 2d 18, 117 S Ct 55 (1996), the statute in effect at the time of the annual distribution of the prize money, in this case, the 1992 version of this section, governs the Sharps' situation. Relying upon Couchot, Harvester Co. v. Dept. of Taxation, 322 US 435 (1944), and Stark v. Comptroller, 554 A2d 458 (Md. App. 1989), the Supreme Court held that under the version of this section, as amended by a 1992 special session of the Legislature, the Sharps' lottery winnings constitute "income earned in Montana" because they were "earned" in the state in which they were won and are therefore taxable in 1992 and subsequent years. (See 2001 amendment to 15-30-101.) Sharp v. Dept. of Revenue, 284 M 424, 945 P2d 38, 54 St. Rep. 949 (1997).

Common Carrier Employee Tax Information to Be Supplied to Department of Revenue: While 49 U.S.C. 11504 fixes the mandatory duties of employers engaged in interstate commerce to withhold taxes and to file reports respecting earnings in any particular state, that section does not prohibit the furnishing of earnings information at the request of the state or under a properly issued administrative subpoena. Therefore, the Department of Revenue may by administrative subpoena obtain information relating to Montana earnings from an interstate rail carrier respecting its employees, even though the carrier is not obliged to withhold Montana state income tax. Burlington N., Inc. v. Dept. of Revenue, 239 M 458, 781 P2d 1121, 46 St. Rep. 1830 (1989).

State Right to Tax Nonresident Income: Appellant residents of the Montana portion of Yellowstone Park contended Montana's income tax was unconstitutional because appellants did not enjoy all the same benefits as state residents. The Supreme Court affirmed the state's right to tax income of nonresidents earned within this state, citing Shaffer v. Carter, 252 US 37, 64 L Ed 445, 40 S Ct 221 (1920). The court found that appellants enjoyed substantial residential benefits and that alleged denial of certain benefits was not sufficient reason to prevent the state from levying the income tax. Olson v. Dept. of Revenue, 223 M 464, 726 P2d 1162, 43 St. Rep. 1916 (1986).

Collateral References

Taxation *key* 1012.
85 C.J.S. Taxation §1702.
71 Am. Jur. 2d State and Local Taxation §467.

15-30-106. Tax on lump-sum distributions.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 114 in (2) at end substituted "26 U.S.C. 402(e)" for "of 1954, as amended, or as section 402(e) may be renumbered or amended"; and made minor changes in style. Amendment effective October 1, 2003. The amendment by Ch. 159 rendered the amendment by Ch. 114 void.

Chapter 159 at end of (1) substituted "that portion of a lump-sum distribution for which a deduction was allowed by section 62(a)(8) of the Internal Revenue Code (now repealed)" for "lump-sum distributions"; at end of (2) substituted "section 402(d) of the Internal Revenue Code that was in effect and applicable to a distribution before amendment by section 1401 of Public Law 104-188" for "section 402(e) of the Internal Revenue Code of 1954, as amended, or as section 402(e) may be renumbered or amended"; and made minor changes in style. Amendment effective March 28, 2003.

Retroactive Applicability: Section 6(1), Ch. 159, L. 2003, provided: "[Section 1] [15-30-106] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1999."

15-30-107. Taxable liability on termination of independent liability fund.

Compiler's Comments

2001 Amendment: Chapter 111 substituted "33-27-119(3)" for "33-27-119(2)". Amendment effective October 1, 2001.

Administrative Rules

ARM 42.2.401 Small business liability funds.

15-30-110. Exemption for gain on sale or exchange of certain capital assets.

Compiler's Comments

Effective Date — Applicability: Section 11, Ch. 666, L. 1987, provided: "(1) This act, except section 8, is effective on passage and approval [approved May 22, 1987].

(2) Section 8 is effective July 1, 1987.

(3) Unless otherwise specified or required by a particular section of this act, sections 1 through 7 [15-1-501, 17-5-408, now repealed, 20-9-318, now repealed, 20-9-319, now repealed, 20-9-343, 15-30-108, now terminated, and 15-30-110] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986."

Administrative Rules

ARM 42.15.218 Capital gain exclusion for pre-1987 sales.

15-30-111. Adjusted gross income.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in (1)(d) substituted "33-25-105" for "33-25-105(15)"; in (9)(a) near beginning after "exclude" substituted "the amount of the loan payment received pursuant to subsection (9)(a)(iv), not to exceed" for "up to"; in (9)(a)(iv) near beginning after "payment" inserted "during the tax year"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 595 inserted (2)(r) related to refundable credit under 33-22-2006; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

Contingent Effective Date: Section 19(2), Ch. 272, L. 2001, provided that the version effective on occurrence of contingency is "effective on the date that the secretary of state receives certification from the department of administration pursuant to [section 13] [not codified] that the commissioner of internal revenue has determined that the plan established pursuant to [sections 1 through 10] [Title 2, chapter 18, part 13] is qualified for a tax exemption pursuant to section 501(c)(9) of the Internal Revenue Code." On August 1, 2003, the Department of Administration certified to the Secretary of State that the Commissioner of Internal Revenue had determined that Montana's Voluntary Employees' Beneficiary Plan is exempt from federal income tax under section 501(a) of the Internal Revenue Code. Section 501(a) exempts organizations described in section 501(c) so the contingency, which referred to section 501(c)(9), was met.

2003 Amendments — Composite Section: Chapter 114 in (1) in introductory clause after "federal" deleted "income tax" and substituted "Internal Revenue Code, 26 U.S.C. 62" for "Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended"; in (1)(a)(ii) and (2)(a)(ii) substituted "Internal Revenue Code, 26 U.S.C. 852(b)(5)" for "Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered"; in (1)(c) after "Internal Revenue Code" deleted "of 1954"; in (2) in introductory clause substituted "Internal Revenue Code" for "federal Internal Revenue Code of 1954, as labeled or amended"; in (4) in first sentence substituted "Internal Revenue Code, 26 U.S.C. 38 and 51(a)" for "Internal Revenue Code of 1954, as those sections may be labeled or amended"; and in (6) in second sentence after "before this exclusion" deleted "and before application of the two-earner married couple deduction". Amendment effective October 1, 2003.

Chapter 519 inserted (1)(g) including certain dividend income in Montana adjusted gross income; and made minor changes in style. Amendment effective April 25, 2003.

Chapter 545 inserted (9) providing adjustment to adjusted gross income for licensed health care professionals practicing in certain areas of Montana. Amendment effective April 30, 2003.

Retroactive Applicability: Section 3, Ch. 519, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years commencing after December 31, 2002."

Applicability: Section 3, Ch. 545, L. 2003, provided: "[This act] applies to tax years beginning after December 31, 2002."

2001 Amendments — Composite Section: Chapter 262 inserted (2)(o) excluding deposits, not exceeding the amount set forth in 15-30-603, in an account provided for in 15-30-601 through 15-30-605 in any tax year for which a deduction is not prohibited for federal income tax purposes. Amendment effective October 1, 2001, and terminates on occurrence of contingency.

Chapter 272 inserted (2)(q) regarding principal and income deposited in or withdrawn from health care expense trust account; and made minor changes in style. Amendment effective on occurrence of contingency.

Chapter 468 deleted former (2)(l) that read: "(l) money, not exceeding $3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201"; at beginning of (2)(l) substituted "contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account" for "principal withdrawn from an account" and at end after "beneficiary" deleted "of the taxpayer"; inserted (8) regarding reduction of adjusted gross income by an individual who contributes to one or more accounts established under the Montana family education savings program; and made minor changes in style. Amendment effective April 30, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Saving Clause: Section 17, Ch. 272, L. 2001, was a saving clause.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 327 inserted (7) allowing married taxpayers to file separate income tax returns to defer from Montana adjusted gross income the conversion amount from a traditional IRA to a Roth IRA. Amendment effective April 14, 1999.

Chapter 447 inserted (1)(f) providing that the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period is considered adjusted gross income if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust; inserted (2)(o) providing that the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period is not considered adjusted gross income if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust; and made minor changes in style. Amendment effective April 22, 1999.

Retroactive Applicability: Section 3, Ch. 327, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1997."

Section 3, Ch. 447, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendments: Chapter 42 in (1), (1)(a)(ii), (2)(a)(ii), (2)(f), and (3) inserted parenthetical references to United States Code sections of the Internal Revenue Code (parentheses removed during codification to conform to amendments in Ch. 540); in (4) substituted "sections 38 and 51(a)" for "section 44B"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 123 inserted (2)(o) concerning income of dependent child; and made minor changes in style. Amendment effective March 20, 1997.

Chapter 540 in (1), near beginning after "1954", inserted "26 U.S.C. 62"; in (1)(a)(ii) and (2)(a)(ii), after "1986", inserted "26 U.S.C. 852(b)(5)"; in (2)(f), after "1954", inserted "26 U.S.C. 3402(k) or 3401"; inserted (2)(l) and (2)(m) pertaining to a tax exemption for money contributed to a family education savings program account and an exemption for money withdrawn from the account for a designated beneficiary; in (3), after "Code", inserted "26 U.S.C. 995"; in (4), in first sentence near middle after "elected under", substituted reference to sections 38 and 51(a) for reference to section 44B; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 544 inserted (2)(k) relating to the first-time home buyer savings accounts; and made minor changes in style. Amendment effective January 1, 1998.

Retroactive Applicability: Section 8, Ch. 123, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendments: Chapter 278 in (1)(a)(i), at end, inserted "except to the extent that the interest is exempt from taxation by Montana under federal law"; inserted (1)(a)(ii) allowing the inclusion of certain exempt-interest dividends as adjusted gross income; in (2)(a)(i), at end, inserted "and any other interest income that is exempt from taxation by Montana under federal law"; inserted (2)(a)(ii) disallowing the inclusion of certain exempt-interest dividends as adjusted gross income; and made minor changes in style. Amendment effective March 29, 1995.

Chapter 295 inserted (2)(j) exempting principal and income in or withdrawn from a medical care savings account established under 15-61-201 from computation as adjusted gross income; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 399 inserted (1)(e) relating to recovery in the tax year of an amount that was deducted in a prior year and that reduced the Montana tax in the year deducted; inserted (2)(k) relating to recovery in the tax year of an amount deducted in a prior year that did not reduce the Montana tax in the year deducted; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 479 in (2)(f), after "tips", inserted "or gratuities that are" and after "3402(k)" inserted "or service charges that are covered by section 3401"; and made minor changes in style. Amendment effective April 15, 1995.

Effective Date — Applicability: Section 5, Ch. 278, L. 1995, provided: "[This act] is effective on passage and approval [approved March 29, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Section 3, Ch. 399, L. 1995, provided that this section applies retroactively to tax years beginning after December 31, 1994.

Section 5, Ch. 479, L. 1995, provided that this section applies to contracts entered into on or after April 15, 1995.

Contingent Voidness: Section 12, Ch. 295, L. 1995, provided: "In order to maintain a balanced budget, because [this act] [House Bill No. 560] reduces revenue, it may not be transmitted to the governor unless a corresponding identified reduction in spending is contained in House Bill No. 2. If a corresponding identified reduction in spending is not contained in House Bill No. 2, [this act] is void." The boilerplate language of sec. 13 of House Bill No. 2 stated that a corresponding spending reduction had been accounted for in House Bill No. 2; therefore, the enactment of Ch. 295, L. 1995, was effective as approved.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1991 Amendments: Chapter 807 deleted former (3) that read: "(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income

tax adjusted gross income by reason of the election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect". Amendment effective December 31, 1991.

Chapter 823 at beginning of (2)(c) deleted "all benefits, not in excess of $3,600, received:

(i) under the Federal Employees' Retirement Act;

(ii) under the public employee retirement laws of a state other than Montana; or

(iii) as an annuity, pension, or endowment under any private or corporate retirement plan or system" and inserted language concerning reducing exemption for first $3,600 annuity or pension income by $2 for every $1 of federal adjusted gross income in excess of $30,000; deleted former (2)(d) that read: "(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706"; deleted former (2)(e) that read: "(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105"; deleted former (2)(f) that read: "(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705"; deleted former (2)(h) that read: "(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans or specified as exempt from taxation by 19-13-1003"; deleted former (2)(i) that read: "(i) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005"; deleted (2)(n) that read: "(n) all benefits paid under an optional retirement program that are specified as exempt from taxation by 19-21-212"; deleted (8) that read: "(8) A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c) from adjusted gross income unless the benefits received under subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than $3,600, in which case the person may combine benefits to exclude up to a total of $3,600 from adjusted gross income"; and made minor change in style. Amendment effective May 24, 1991.

Conditional Grandfather Clause for Certain Montana Shareholders of Foreign Corporations That Have Elected Subchapter S. Corporation Status for Federal Tax Purposes: Section 11, Ch. 807, L. 1991, provided: "A Montana taxpayer who is a shareholder in a corporation that is not doing business in Montana and that has elected subchapter S. corporation status for federal tax purposes may apply 15-30-111(3) as it read in 1989 for all tax years beginning on or before December 31, 1996, if the following conditions are met:

(1) The taxpayer can establish by substantial, credible evidence that the department of revenue gave the taxpayer advice concerning the application of 15-30-111(3) to the taxpayer's facts and circumstances.

(2) The taxpayer can establish by substantial, credible evidence that he relied on that advice to his detriment."

Effective Dates — Applicability: Section 12, Ch. 807, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purpose of promulgating administrative rules to implement [sections 1 through 10] [15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161 (now repealed), 15-31-201 (renumbered 15-30-1101), 15-31-202 (now repealed), 15-31-204 (now repealed), and 90-8-202], [this act] is effective on passage and approval." Approved May 17, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

1991 Statement of Intent: The statement of intent attached to Ch. 823, L. 1991, provided: "A statement of intent is required for this bill because the public employees' retirement board and the teachers' retirement board must establish a percentage rate to provide a uniform adjustment payment rate to all members of public retirement systems as provided in [section 4] [19-15-101, now repealed]."

Study of Taxation of Retirement Benefits: Section 19, Ch. 823, L. 1991, requested the Revenue Oversight Committee (now Revenue and Transportation Interim Committee) to study the taxation of retirement benefits and report its finding and recommendations to the 53rd Legislature.

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1989 Amendments: Chapter 532 inserted (2)(o) exempting "agent orange" payments; and made minor change in phraseology.

Chapter 617 inserted (1)(d) including depreciation or amortization taken on title plant as defined in 33-25-105(15).

Retroactive Applicability: Section 3, Ch. 532, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Applicability: Section 6, Ch. 617, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1987 Amendments: Chapter 370 at end of (2)(h) inserted "or specified as exempt from taxation by 19-13-1003".

Chapter 494 inserted (2)(n) that reads: "all benefits paid under an optional retirement program that are specified as exempt from taxation by 19-21-212".

Chapter 657 in (2)(c) made $3,600 limit formerly applicable to federal benefits applicable to all benefits received under (2)(c); inserted (2)(c)(ii) relating to public employee retirement laws of another state; at beginning of (2)(c)(iii), relating to annuity, pension, or endowment, deleted "all benefits, not in excess of $360, received"; inserted (8) relating to combining retirement benefits for $3,600 cap; and made minor changes in phraseology.

Applicability: Section 4, Ch. 657, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1986."

1985 Amendments — Applicability: Chapter 198 inserted (1)(c) relating to shareholder's subchapter S. income.

Chapter 364 inserted (7) relating to retirement disability benefits. Amendment applies retroactively to taxable years beginning after December 31, 1983.

Chapter 464 in (2)(j), after "all benefits paid", substituted "under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005" for "by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9".

Chapter 682 inserted (2)(m) relating to workers' compensation benefits; inserted (2)(n) relating to certain health insurance premiums; and inserted (6) relating to splitting of federal base in calculation of federal taxable Social Security benefits.

1983 Amendments: Chapter 13 inserted (5) relating to deductions for IRC section 44B wages and salaries.

Chapter 634 inserted (2)(l) relating to tips.

1981 Amendments: Chapter 483 added subsection (2)(k) relating to gain of liquidating corporation.

Chapter 537 added subsection (4) relating to DISC earnings.

Chapter 546 inserted "Notwithstanding the provisions of the Federal Internal Revenue Code of 1954, as labeled or amended" at the beginning of (2); inserted "all" at the beginning of (2)(a); and inserted subsection (2)(b) relating to interest income of taxpayers age 65 or older.

Chapter 550 added subsection (2)(d) relating to private retirement plan benefits.

Interim Committee Bill: Chapter 546, L. 1981 (HB 18), was introduced at the request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See the Committee's Miscellaneous Reports on Taxes, Legislative Council, 1980.

1981 Statement of Intent: The statement of intent attached to HB 415 (Ch. 483, L. 1981) provided: "House Bill 415 is intended to address a problem that arises under the Montana

individual income tax laws and corporation license and income tax laws due to the relationship between the Montana adjusted gross income under the federal income tax laws. Under present law the liquidation of a corporation holding property in Montana can cause gain on the sale of the property to pass through to the stockholders of the corporation. If the stockholders are not subject to Montana tax on this gain passing through, the state loses the revenue on what is essentially a state transaction, namely the sale of Montana property. This result occurs because of operation of the federal tax laws relating to corporation liquidations. House Bill 415 addresses this situation by requiring the liquidating corporation to recognize that portion of the gain from a corporate liquidation under sections 331 or 337 [331 through 337] of the Internal Revenue Code that passes through to stockholders, either individual or corporate, who are not subject to Montana tax, either individual income tax or corporate license tax, on the gain passed through pursuant to federal law. Because the provisions of House Bill 415 require recognition of gain at the corporate level, it is also necessary to remove this gain from the income of the stockholders, in order to avoid the possibility of double taxation.

For the example we have a corporation L that owns property in Montana. The stockholders of L are an out-of-state corporation, S; an out-of-state individual, I; and a resident individual, R, each with an equal interest. Corporation L sells the property with a gain of $3,000,000 and liquidates pursuant to sections 331 through 337 of the Internal Revenue Code. Under present law, R, as a resident, would pay tax on $1,000,000, but S and I would not be subject to Montana tax on the $1,000,000 passing through to them pursuant to federal law. Corporation L would not be subject to Montana tax. Under House Bill 415, R would remain subject to tax on $1,000,000, but Corporation L would now become subject to tax on the $2,000,000 (that portion of the gain passing through to persons not subject to Montana income or license tax)."

Administrative Rules

ARM 42.4.404 Deductions not allowed when credit claimed.

ARM 42.4.4111 Deductibility of impact fee for local government and school districts.

ARM 42.9.402 S. corporation addition to Montana adjusted gross income.

ARM 42.15.215 Senior interest income exclusion.

ARM 42.15.216 Exclusion of interest on obligations of United States government and U.S. possessions.

ARM 42.15.217 Disability income exclusion.

ARM 42.15.218 Capital gain exclusion for pre-1987 sales.

ARM 42.15.219 Pension and annuity income exclusion.

ARM 42.15.221 Dependent child unearned income exclusion.

ARM 42.15.222 Railroad retirement and Social Security benefit exclusion.

Title 42, chapter 15, subchapter 8, ARM Family Education Savings Act.

Case Notes

No Basis for Denying Alimony Payment Deduction to Nonresident Taxpayer: Dray, a Texas resident, paid his ex-wife $10,000 a month alimony. Dray paid taxes in Montana on royalty income and agricultural income. In tax years 1984 through 1988, Dray claimed an alimony payment deduction for Montana taxes based on the deduction of alimony used in arriving at adjusted gross income for federal tax purposes. The Department of Revenue disallowed the deduction on the basis that 15-30-131 does not expressly provide for an alimony deduction for nonresidents and that deductions exist only by express grant of the Legislature. The Supreme Court held that although it agreed that a deduction existed only if granted by the Legislature, Montana's adoption of the federal definition of adjusted gross income in this section gives no basis for denying the deduction to nonresident taxpayers. Dept. of Revenue v. Dray, 266 M 89, 879 P2d 651, 51 St. Rep. 756 (1994).

Phaseout of $3,600 Tax Exemption for Retirement Income Not Violation of Federal Law: After the Legislature enacted Ch. 823, L. 1991, to tax retirement pension benefits that had previously been untaxed, the retirees sued, claiming that the phaseout of the $3,600 tax exemption violated section 4 of the Public Salary Tax Act of 1939 (4 U.S.C. 111). Citing Davis v. Mich. Dept. of Treasury, 489 US 803 (1989), the Supreme Court held that the phaseout would result in a larger tax burden for federal retirees because their pensions were generally larger than state pensions of state retirees. The Supreme Court held that this was a difference based upon the amount of the pension rather than the source of the pension and was specifically allowed by Davis. Sheehy v. Pub. Employees Retirement Div., 262 M 129, 864 P2d 762, 50 St. Rep. 1477 (1993).

Federal Employees' Retirement Act — Military Retirement Pay: Subsection (2)(b) (now (2)(c)) of this section allows taxpayer to exempt the first $3,600 of his military retirement pay from state income tax liability. The Legislature used "the Federal Employees' Retirement Act" in its

broad generic sense to include all federal legislation providing retirement benefits. Nice v. St., 161 M 448, 507 P2d 527 (1973).

Amendment Not Retroactive: In the absence of any language in the 1955 act warranting a retrospective application the court could not decide a 1951 tax case in accordance with federal statutes and decisions. In re Armstrong's Estate, 133 M 328, 323 P2d 595 (1958).

Law Review Articles

Montana's Adoption of the Federal Definition of Income, Bennett, 23 Mont. L. Rev. 105 (1961).

Collateral References

Taxation *key* 1079.

85 C.J.S. Taxation §1721, et seq.

33 Am. Jur. 2d Federal Taxation §1100; 71 Am. Jur. 2d State and Local Taxation §§483 through 511.

Divorce and separation: consideration of tax consequences in distribution of marital property. 9 ALR 5th 568.

Consideration of tax liability or consequences in determining alimony or property settlement provisions. 51 ALR 3d 461.

Mutual mistake as to tax consequences as grounds for relief against property settlement. 39 ALR 3d 1376.

Distribution by corporation to its stockholders of stock of other corporation as taxable income. 56 ALR 2d 474.

Constitutionality, construction, and application of provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation. 42 ALR 2d 797.

Capital gain or loss on failure to exercise an option or privilege. 36 ALR 2d 1391.

Rules concerning "application of payments" as affecting computation of income or excess profits tax. 28 ALR 2d 607.

Illegal business as subject to tax on gross rather than net income. 27 ALR 2d 518.

Exchange of property in connection with sale and lease-back transactions. 26 ALR 2d 708.

Market value as ascribable to agreement to pay a life annuity to another for purpose of determining capital gain or loss. 12 ALR 2d 589.

Tips as taxable income. 10 ALR 2d 191.

Cancellation of debt upon debtor's payment of less than amount due, or purchase by debtor of own obligation at discount as taxable income. 7 ALR 2d 871.

Premiums paid by employer for insurance or annuity payable to employee as taxable income. 7 ALR 2d 766.

Dividend in kind or stock dividend as affecting corporation's income tax. 7 ALR 2d 750.

Taxpayer's reliance on doctrine of constructive receipt to defeat assertion of tax in later year. 7 ALR 2d 735.

Employee's acquisition of employer's commodities at discount or without cost as within gross income tax statute. 1 ALR 2d 1020.

Year as of which interest should be returned by taxpayer who makes return on accrual basis. 150 ALR 754.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

Computation of losses or profits on sale of securities. 149 ALR 988.

Income tax in respect of property returned to donor or applied to his benefit pursuant to terms of gift. 149 ALR 638.

Provisions of income tax statutes as to inclusion of interest as applicable to interest on tax refunds. 147 ALR 846.

Income tax with respect to stock of corporation sold to officer or employee at less than value. 146 ALR 1391, supplemented in 72 ALR 2d 1352.

Year in which amounts received by lessor in advance from lessee are subject to income tax. 146 ALR 995.

Income tax in respect of amounts paid by third persons to trustee in bankruptcy of the taxpayer or garnished by his creditors. 146 ALR 62.

Collection on debt which had been deducted as a bad debt in a previous year. 143 ALR 338.

Taxation of income distributable or distributed to trust beneficiary as affected by assignment or disclaimer. 141 ALR 1112.

Construction and application of statutory provisions taxing legatees, heirs, or trust beneficiaries on income distributable or distributed to them. 141 ALR 1055.

State income tax in respect of income from national bank stock. 127 ALR 941.

Question whether gift is valid or a mere sham, as regards income tax of donor. 125 ALR 779.

Time when dividends become taxable as income to a taxpayer making his returns on a cash basis. 120 ALR 1280, supplemented in 143 ALR 596, 158 ALR 1432, and 167 ALR 303.

Construction and applicability of provision of income tax statute regarding exclusion from gross income of proceeds of insurance on life received on death of insured. 119 ALR 1195, supplemented in 133 ALR 413 and 170 ALR 315.

Premium or discount at which a corporation issues or sells corporate stock, bonds, or other obligations as income subject to tax. 112 ALR 186.

Payment to one performing services as compensation subject to income tax or gift exempt therefrom. 110 ALR 285.

Corporate earnings returned to stockholding customers in proportion to business transacted as taxable income. 109 ALR 969.

Income tax in respect of interest accrued on purchase of mortgaged property by mortgagee. 108 ALR 441.

Constitutionality of taxation of grantor on income of revocable trust income distributable to him. 106 ALR 798, supplemented in 132 ALR 785 and 143 ALR 1116.

Income tax in relation to stock dividends (including character of corporate distributions as stock dividends). 105 ALR 761, supplemented in 130 ALR 408, 143 ALR 230, 144 ALR 1337, and 167 ALR 554.

Validity and construction of state statutes imposing tax on income derived from dividends on stock of foreign corporation. 102 ALR 77, supplemented in 143 ALR 147.

Income tax in respect of exchange of properties. 102 ALR 6.

Amount received on account of profits made by another or lost to taxpayer because of the other's tort or breach of fiduciary duty as subject to income tax. 101 ALR 1453.

Liability of settlor for income tax in respect of income of trust applied to relieve him of financial obligation or burden. 101 ALR 397, supplemented in 109 ALR 1048, 132 ALR 819, and 158 ALR 1315.

Income tax in respect of that part of extraordinary cash dividend on stock held by trustee that is allocated to corpus as regards respective rights of life beneficiary and remainderman. 99 ALR 518.

Income tax on difference between cost to donor of securities or other property and value at time of gift. 99 ALR 468.

Interest on bonds or other obligations issued by political unit of state as subject of state income tax in absence of express exemption. 98 ALR 1346.

Lessor as subject to income tax in respect of improvements or additions by lessee. 98 ALR 1207, supplemented in 138 ALR 238.

Income tax in respect of compensation for services rendered to governmental or political body under contract by one not an officer or employee. 93 ALR 190.

Liability for income tax in respect of amount of tax paid by another. 91 ALR 1270.

State income tax on resident in respect of income earned outside the state. 87 ALR 380.

Assignment of right to future earnings, commissions, or benefits as affecting income tax of assignor. 83 ALR 88, supplemented in 131 ALR 661 and 151 ALR 1401.

Stockholder's gain in event of reorganization, merger, or consolidation of corporations as subject to tax. 78 ALR 677.

Income tax in respect of royalties or other revenue from oil and gas or mineral lands. 74 ALR 183.

Applicability, construction, and effect of provision of income tax act excluding from income subject to tax the value of property acquired by gift, devise, bequest, or descent. 73 ALR 1536, supplemented in 119 ALR 415.

Power to tax profits on sale of securities or other property, the interest or income from which is exempt from income tax. 71 ALR 1268.

Income tax in respect of amounts received by stockholder upon liquidation of corporation. 65 ALR 148.

Income tax in case of sale of property acquired by gift. 64 ALR 367.

Income tax in respect of benefits other than those dependent on death from life insurance policy. 61 ALR 912, supplemented in 160 ALR 1096.

What gains are to be treated as "dividends" within income tax law. 56 ALR 383.

Bequest to executor or trustee in lieu of commissions as subject to income tax. 50 ALR 1402.

Gains from unlawful business or transaction as subject of income tax. 43 ALR 799, supplemented in 51 ALR 1026 and 166 ALR 891.

Computation of income tax in event of reorganization, merger, or consolidation of corporations. 33 ALR 523, supplemented in 78 ALR 677.

Income tax in respect of salaries of public officers and employees. 11 ALR 532, supplemented in 82 ALR 989, 108 ALR 1439, 114 ALR 1190, 120 ALR 1477, 122 ALR 1393, and 125 ALR 1421.

15-30-112. Exemptions.

Compiler's Comments

2003 Amendment: Chapter 544 throughout section increased exemption from $800 to $1,900, after "allowed" deleted "for taxable years beginning after December 31, 1978", and substituted "tax year" for "taxable year"; and made minor changes in style. Amendment effective January 1, 2005.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(2), Ch. 544, L. 2003, provided: "(2) [Sections 40 and 42 through 45] [15-30-183, 15-30-101, 15-30-103, 15-30-112, and 15-30-121] apply to tax years beginning after December 31, 2004."

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (1), near beginning, substituted reference to subsection (6) for reference to subsections (7) and (8) and near end substituted reference to subsections (2) through (5) for references to subsections (2) through (6); deleted former (6) and (7) that read: "(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981"; and in (6), at beginning, deleted reference to taxable years beginning after December 31, 1980, and after "provided in this section" deleted "unadjusted by subsection (7)". Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1981 Amendment: Chapter 548, L. 1981, added "as amended by section 4, Chapter 548, Laws of 1981" to (7).

1980 Initiative Amendment: Initiative No. 86 inserted "and (8)" after "subsections (7)" in subsection (1); added subsection (8) relating to exemption inflation adjustments.

Amendment to Deductions for Exemptions in 1979 and 1980: Section 4, Ch. 548, L. 1981, amended sec. 9, Ch. 698, L. 1979, to read:

"Section 9. **Deductions for exemptions in 1979 and 1980.** The exemption amounts allowed in 15-30-112 are increased for taxable years beginning after December 31, 1978, and before January 1, 1980, by $250 and for taxable years beginning after December 31, 1979, and before January 1, 1981, by $450."

Administrative Rules

ARM 42.15.401 Definitions.

ARM 42.15.402 Personal exemption.

ARM 42.15.403 Exemption for dependent.

ARM 42.15.605 Medical savings accounts — definitions.

Case Notes

Federal Retirees Not Entitled to Retroactive Tax Refunds: Applying the U.S. Supreme Court's decision in Davis v. Mich. Dept. of the Treasury, 489 US 803, 103 L Ed 2d 891, 109 S Ct 1500 (1989), the District Court adopted a stipulation that the state income tax assessed on benefits received by federal retirees under 4 U.S.C. 111 that were in excess of $3,600 was unconstitutional and invalid for tax years after 1988. The District Court denied plaintiffs' summary judgment motion that Davis be applied retroactively, thus entitling retirees to refunds for previous tax years. On appeal, the Montana Supreme Court affirmed, ruling that it would be inequitable to refund taxes to retirees because the refunds would be made at the expense of all state taxpayers. Sheehy v. St., 250 M 437, 820 P2d 1257, 48 St. Rep. 1008 (1991).

Attorney General's Opinions

Personal Tax Exemption Under Initiative 86: Under Initiative 86, the 1980 tax indexing initiative, the personal exemption for state income tax purposes was $1,250 because the Initiative defined "base year structure" as the exemptions in effect on January 1, 1980, which, because of a temporary law, was increased from the $800 permanent amount. 39 A.G. Op. 9 (1981).

Collateral References

Taxation *key* 1048.
85 C.J.S. Taxation §§1736, 1737.
71 Am. Jur. 2d State and Local Taxation §545.

15-30-113. General definition of dependent.

Collateral References

85 C.J.S. Taxation §§1736, 1737.
71 Am. Jur. 2d State and Local Taxation §545.

15-30-114. Additional exemption for dependent child with a disability.

Compiler's Comments

1997 Amendment: Chapter 472 throughout section substituted "disability" for "handicap"; in (1), after "is allowed", deleted "for taxable years beginning after December 31, 1976"; and made minor changes in style.

Exemptions for 1979 and 1980: For text of sec. 9, Ch. 698, L. 1979, see compiler's comment under 15-30-112.

Collateral References

85 C.J.S. Taxation §1737.
71 Am. Jur. 2d State and Local Taxation §545.

15-30-115. Physician's verification of disability required.

Compiler's Comments

2003 Amendment: Chapter 123 at beginning inserted "For tax years beginning after December 31, 2002"; near middle of first sentence substituted "tax return" for "tax statement"; inserted second, third, and fourth sentences providing that documentation remains in effect in subsequent tax years unless dependent's physical circumstances affect qualification for exemption, requiring taxpayer to inform department of change in dependent's eligibility, and authorizing department to inquire by mail about occurrence of material change affecting dependent's eligibility; and made minor changes in style. Amendment effective October 1, 2003.

Retroactive Applicability: Section 2, Ch. 123, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002."

1997 Amendment: Chapter 472 substituted "disability" for "handicap"; and made minor changes in style.

15-30-116. Veterans' bonus or military salary — exemptions.

Compiler's Comments

2005 Amendment: Chapter 604 in (1) at end of first sentence substituted "this chapter" for "the income tax laws of the state of Montana"; inserted (3) providing that the amount received as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation; and made minor changes in style. Amendment effective May 6, 2005.

Effective Date — Applicability: Section 8, Ch. 604, L. 2005, provided: "[This act] is effective on passage and approval and applies to premiums paid after [the effective date of this act] for service members' life insurance by a service member serving on active duty in a contingency operation after [the effective date of this act]." Effective May 6, 2005.

Administrative Rules

ARM 42.15.214 Resident military salary exclusion.

Attorney General's Opinions

National Guard Salary Not Qualified: The salary earned by members of the National Guard employed under the Conversion Full Time Military (CFTM) program does not qualify for a tax exemption under 15-30-116(2). 39 A.G. Op. 43 (1981).

Income Tax — Special Military Exemption: Members of Air National Guard called to active duty in the Air Defense Alert program are entitled to Montana's statutory tax exemption for the salary received while serving in that program. 36 A.G. Op. 64 (1976).

Collateral References

85 C.J.S. Taxation §1737.

71 Am. Jur. 2d State and Local Taxation §508.

15-30-117. Net operating loss — computation.

Compiler's Comments

1999 Amendment: Chapter 487 substituted "the Internal Revenue Code of 1986" for "the Internal Revenue Code of 1954" and after "labeled or amended" substituted exception concerning net operating loss for former text that read: "and in accordance with the following:

(a) The net operating loss deduction for Montana purposes is increased by the following:

(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 that is attributable to income from a Montana trade or business; and

(ii) Montana wages and salaries allowed as a business deduction under 15-30-111(4).

(b) The net operating loss deduction for Montana purposes is decreased by the following:

(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);

(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as Montana business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 (26 U.S.C. 172) or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 (26 U.S.C. 63) or as that section may be labeled or amended"; and made minor changes in style. Amendment effective April 27, 1999.

Saving Clause: Section 3, Ch. 487, L. 1999, was a saving clause.

Retroactive Applicability: Section 5, Ch. 487, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 42 in (1), (2), and (2)(b) inserted parenthetical references to United State Code sections of the Internal Revenue Code; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1991 Amendments: Chapter 20 in (1), (1)(a)(i), (1)(a)(ii), and (1)(b)(ii) inserted "Montana"; at beginning of (1)(a) substituted "The net operating loss deduction for Montana purposes is increased by the following" for "Additions to loss include"; and at beginning of (1)(b) substituted "The net operating loss deduction for Montana purposes is decreased by the following" for "Reductions in the loss include". Amendment effective February 11, 1991.

Chapter 807 in (1)(a)(ii) changed subsection reference to 15-30-111. Amendment effective December 31, 1991.

Retroactive Applicability: Section 3, Ch. 20, L. 1991, provided: "[Section 1] [15-30-117] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Dates — Applicability: Section 12, Ch. 807, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purpose of promulgating administrative rules to implement [sections 1 through 10] [15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161 (now repealed), 15-31-201 (renumbered 15-30-1101), 15-31-202 (now repealed), 15-31-204 (now repealed), and 90-8-202], [this act] is effective on passage and approval." Approved May 17, 1991.

1989 Amendment: In (1)(a)(i) substituted "motor vehicle tax" for "motor vehicle fee".

Administrative Rules

ARM 42.15.318 Montana net operating losses.

15-30-121. Deductions allowed in computing net income.

Compiler's Comments

2005 Amendment: Chapter 542 in (1)(h) substituted "61-3-321(2) and" for "61-3-560 through". Amendment effective January 1, 2006.

2003 Amendments — Composite Section: Chapter 114 in (1)(a) near middle substituted "Internal Revenue Code, 26 U.S.C. 161 and 211" for "Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended"; in (1)(d) after "Internal Revenue Code" inserted "of 1954"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 482 inserted (1)(a)(v) regarding charitable gift annuities; and made minor changes in style. Amendment effective April 24, 2003.

Chapter 544 in (1)(b) at end inserted limits on federal deductibility of $5,000 for taxpayers filing singly and $10,000 for taxpayers filing jointly. Amendment effective January 1, 2005.

Applicability: Section 11, Ch. 482, L. 2003, provided: "[This act] applies to charitable contributions made after [the effective date of this act]." Effective April 24, 2003.

Section 62(2), Ch. 544, L. 2003, provided: "(2) [Sections 40 and 42 through 45] [15-30-183, 15-30-101, 15-30-103, 15-30-112, and 15-30-121] apply to tax years beginning after December 31, 2004."

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

2001 Amendment: Chapter 574 inserted (1)(i) concerning per capita livestock fees; and made minor changes in style. Amendment effective July 1, 2001.

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted (1)(i) concerning light vehicle registration fees; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendments: Chapter 42 in (1)(a) inserted parenthetical reference to United States Code section of the Internal Revenue Code; in (1)(c) substituted reference to subsection (3) for reference to subsection (9); in (1)(d), after "Internal Revenue Code", inserted "(now repealed)"; adjusted subsection references; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 218 in (3), after "(3)(c) and", substituted "(10)" for "(9)" (voided by Ch. 42 amendment); and in (1)(e) inserted reference to inorganic fertilizer produced as a byproduct.

Chapter 383 in (1)(a)(iii), at beginning, deleted "one-half of" and at end substituted "subsection (7)(a)" for "subsection (9)" (voided by Ch. 42 amendment); inserted (1)(a)(iv) regarding long-term care insurance premium payments; in (1)(g), at beginning of introductory clause, substituted "the entire amount of" for "one-half of", after "payments" inserted "made by the taxpayer", and after "income" inserted "or for which a credit was claimed under 15-30-128"; in (1)(g)(i), after "medical care", substituted "as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer" for "made directly by the taxpayer"; substituted (1)(g)(ii) regarding long-term care insurance policies or certificates for former language that read: "long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner"; deleted former (9) that read: "(9) For the purpose of subsection (7)(a), deductible medical insurance premiums are those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d)"; adjusted subsection references; and made minor changes in style. Amendment effective April 24, 1997.

Effective Date — Retroactive Applicability: Section 5, Ch. 218, L. 1997, provided: "[This act] is effective on passage and approval [approved April 8, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Section 2(3), Ch. 383, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 24, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

(2) [Section 1(7)(b)(i)] [amending 15-30-121(7)(b)(i)] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Coordination: Section 2, Ch. 383, L. 1997, provided: "If both House Bill No. 107 and [this act] are passed and approved, then:

(1) House Bill No. 107 is void;

(2) section 1 in [this act] is to read as follows [see 1997 Session Law for section text]."

House Bill No. 107 was approved as Ch. 111, L. 1997, on March 20, 1997; therefore, the version amending 15-30-121 contained in Ch. 111, L. 1997, is void and the amended version of 15-30-121 contained in the coordination section, sec. 2, Ch. 383, L. 1997, applies.

1995 Amendment: Chapter 284 inserted (1)(c) allowing an exemption for one-half of medical care premium payments; in (7), at beginning of introductory clause, inserted "one-half of" and after "payments" inserted "except premiums deducted in determining Montana adjusted gross income"; inserted (7)(a) regarding direct taxpayer medical care insurance; inserted (9) describing deductible medical insurance premiums; adjusted subsection references; and made minor changes in style. Amendment effective March 30, 1995.

Effective Date — Retroactive Applicability: Section 2, Ch. 284, L. 1995, provided: "[This act] is effective on passage and approval [approved March 30, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Contingent Voidness: Section 3, Ch. 284, L. 1995, provided: "In order to maintain a balanced budget, because [this act] [House Bill No. 202] reduces revenue, it may not be transmitted to the governor unless a corresponding identified reduction in spending is contained in House Bill No. 2. If a corresponding identified reduction in spending is not contained in House Bill No. 2, [this act] is void." The boilerplate language of sec. 13 of House Bill No. 2 stated that a corresponding spending reduction had been accounted for in House Bill No. 2; therefore, the amendment to 15-30-121 in Ch. 284, L. 1995, was effective as approved.

1993 Repeal — Rejected: The repeal of this section made by Ch. 634, L. 1993 (House Bill No. 671), was ineffective because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1993 Amendment: Chapter 565 in (3), in introductory clause, inserted reference to subsection (9); inserted (9) relating to deduction of day-care operator's employment-related expenses for own child; and made minor changes in style. Amendment effective April 28, 1993.

Coordination Instruction — Contingent Termination: Section 2, Ch. 565, L. 1993, provided: "(1) If House Bill No. 671 is passed and approved and it repeals 15-30-121, then [this act] is void.

(2) If Senate Bill No. 235 is passed and approved by the electors of Montana and it repeals 15-30-121 and if House Bill No. 671 is not passed and approved, then [this act] terminates December 31, 1993."

House Bill No. 671 was passed by the Legislature and approved by the Governor, but its operation was suspended pending approval of the electorate at the general election to be held in November 1994. Senate Bill No. 235 was not approved by the electors.

Effective Date — Retroactive Applicability: Section 3, Ch. 565, L. 1993, provided: "[This act] is effective on passage and approval [approved April 28, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

1991 Amendments: Chapter 613 inserted (7) allowing a deduction for premium payments for long-term care insurance with benefits at least equal to standards established by Insurance Commissioner; and made minor changes in style. Amendment effective April 24, 1991.

Chapter 670 in (1), near beginning after "sections 161", inserted "including the contributions referred to in 33-15-201(5)(b)". Amendment effective April 26, 1991.

Chapter 808 inserted (8) including as deductions allowed in computing net income contributions to the Montana drug abuse resistance education program, subject to certain conditions; and made minor changes in style. Amendment effective May 17, 1991.

Retroactive Applicability: Section 2, Ch. 613, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 4, Ch. 670, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Effective Date — Retroactive Applicability: Section 11, Ch. 808, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved May 17, 1991].

(2) [Section 6] [15-30-121] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

(3) [Sections 7 and 8] [15-30-158 and 15-30-159 (now both terminated)] apply to tax forms filed for taxable years beginning after December 31, 1990."

Contingent Termination: Section 12, Ch. 808, L. 1991, provided: "[Sections 6(7) and 7 through 9] [15-30-121(7) (now (1)(h)) and 15-30-158 through 15-30-160 (all now terminated)], concerning the voluntary income tax checkoff and allowable income tax deductions for contributions made to the D.A.R.E. program, terminate on January 1 of the first taxable year following the 2 immediately preceding taxable years in which the voluntary checkoff raises less

than $20,000 in each of those 2 taxable years." The contingency occurred and was implemented for tax year 1993.

1987 Amendments: Chapter 501 in (3)(f)(ii)(A), after "employed", substituted "in which case the expenses are deductible only to the extent that they are a direct result of the employment" for "on a substantially full-time basis".

Chapter 611 deleted former (6) and (7) that read: "(6) light vehicle license fees, as provided by 61-3-532, paid during the taxable year;

(7) fees in lieu of taxes on motorcycles and quadricycles, as provided by 61-3-541, paid during the taxable year".

Applicability: Section 3, Ch. 501, L. 1987, provided: "Section 1 [15-30-121] is applicable to taxable years beginning after December 31, 1986."

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated subsection (6) January 1, 1990.

1985 Amendments: Chapter 516 inserted (7) relating to fee in lieu of tax on motorcycles and quadricycles. Amendment effective January 1, 1986.

Chapter 610 inserted (8) relating to child abuse program contributions.

Chapter 613 substituted "(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and

(iii) a spouse who is unable to care for himself because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed on a substantially full-time basis; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable

under 15-30-112(5) are not deductible as employment-related expenses" for "(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974, except that:

(a) the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse;

(b) the limitation set forth in section 214(e)(1) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, does not apply when the taxpayers file separately on the same form; and

(c) the deduction for child and dependent care expenses shall be divided equally between the taxpayers".

1983 Amendment: At end of (3), substituted "except that" for "However"; inserted (3)(b) and (3)(c) that read: "(b) the limitation set forth in section 214(e)(1) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, does not apply when the taxpayers file separately on the same form; and

(c) the deduction for child and dependent care expenses shall be divided equally between the taxpayers"; and made minor changes in punctuation and phraseology.

1981 Amendments: Chapter 480 deleted former subsection (4) relating to energy investment credits deductible under 15-32-103.

Chapter 533 added (5) relating to organic fertilizer expense.

Chapter 614 added (6) relating to light vehicle license fees.

Statement of Intent: Section 6, Ch. 576, L. 1977, provides: "Legislative intent. It is the intent of the legislature that no deduction under this act be allowed for capital investment for an energy conservation practice in the new construction of a building if that capital investment would have been made under established standards of new construction. The department of revenue shall adopt rules to implement this legislative intent. Such rules shall be based on the best currently available methods of analysis, including those of the national bureau of standards, the department of housing and urban development, and other federal agencies and professional societies and materials developed by the department of revenue. Provisions shall be made for an annual updating of rules and standards as required."

Administrative Rules

ARM 42.4.4111 Deductibility of impact fee for local government and school districts.

ARM 42.15.427 Deduction for household and dependent care expenses.

ARM 42.15.525 Montana adjusted gross income to be used when calculating itemized deductions.

Case Notes

Federal Self-Employment Tax Not Considered Income Tax and Not Deductible in Calculating Montana Net Income — No Administrative Rule Required to Explain Denial of Tax Deduction When Deduction Not Explicitly Provided: The federal income tax and the federal self-employment tax are distinct entities, despite their colocation in the federal tax code and their conjoined collection procedures. The self-employment tax, although based on income, is in the nature of an employment tax and is a Social Security tax rather than an income tax as that term is commonly understood. Montana has the authority to interpret its own tax code without being bound by the vagaries of the federal tax code. Therefore, federal income tax, as used in subsection (1)(b) of this section, does not include federal self-employment taxes for purposes of calculating net income on Montana tax returns. Further, the Department of Revenue is not required to promulgate a rule explaining the denial of a tax deduction that is not explicitly provided for in the tax code. Baitis v. Dept. of Revenue, 2004 MT 17, 319 M 292, 83 P3d 1278 (2004).

Rule of Expressio Unius Not Applicable: The rule expressio unius est exclusio alterius not available to taxpayer to deduct, under subsection (5) of sec. 8, Ch. 181, L. 1933, losses on securities sustained prior to Jan. 1, 1933, the basic date set by subsection (7) for deduction of worthless debts, there being a special reason for the inclusion of the date in subsection (7). Expressio unius rule not to apply if there is some special reason for mentioning one thing and none for mentioning the other. State ex rel. Whitlock v. St. Bd. of Equalization, 100 M 72, 45 P2d 684 (1935).

Law Review Articles

Recent Developments in Montana Land Use Law, Goetz, 38 Mont. L. Rev. 97 (1977).

The Private Foundation Is Alive and Moderately Well, Johnson, 35 Mont. L. Rev. 53 (1974).

Purchaser of Leased Property May Depreciate Cost Allocable to Building Constructed by Lessee, 24 Mont. L. Rev. 61 (1962).

Voluntary Payments Made to Protect Attorney's Business Reputation as Ordinary and Necessary Business Expense, 23 Mont. L. Rev. 248 (1962).

Useful Life and Salvage Value Defined for Federal Income Tax Depreciation Purposes, 22 Mont. L. Rev. 94 (1960).

The Income Tax Basis of Land Acquired by Homestead, Rusoff, 22 Mont. L. Rev. 60 (1960).

Deducting the Expense of an Illegal Business, 19 Mont. L. Rev. 140 (1958).

Income Tax—Charitable Deductions, 18 Mont. L. Rev. 112 (1956).

Contingent Liabilities From Capital Transactions—Is Payment Capital or Ordinary Loss?, Coad, 14 Mont. L. Rev. 64 (1953).

Collateral References

Taxation *key* 1031 through 1046.

85 C.J.S. Taxation §§1719, 1738, et seq., 1756, et seq.

71 Am. Jur. 2d State and Local Taxation §§518 through 548.

Deduction by lessor for depreciation of leased property as affected by lessee's obligation to repair and maintain. 40 ALR 2d 440.

What constitutes transaction entered into for profit for purposes of income tax deduction. 39 ALR 2d 878.

What constitutes medical expenses deductible for federal income tax purposes. 37 ALR 2d 551.

Rules concerning "application of payments" as affecting computation of income or excess profits tax. 28 ALR 2d 683.

Public policy as ground for denying deduction for federal income tax purposes. 27 ALR 2d 498.

Deduction of depreciation after sale and lease back or gift and lease-back transactions. 26 ALR 2d 727.

Premiums paid on insurance or annuity contracts for benefit of employees. 9 ALR 2d 280.

Corporation's right to deduction in respect of stock of other corporation or other assets distributed in kind to stockholders. 7 ALR 2d 750.

When gain or loss to corporation in dealing in its own stock is taxable or deductible, for income tax purposes. 160 ALR 1085.

Right to deduct from taxable income as business expense share of profits of business which taxpayer has agreed to pay to another for property. 160 ALR 968, supplemented in 162 ALR 836.

When deduction for traveling and living expenses while away from home on business may be claimed. 159 ALR 1217.

Deductibility of expenses of one seeking public office or public or private employment. 155 ALR 128.

Interest deductible in computing income tax. 154 ALR 934.

Computation of deduction for depreciation, obsolescence, or depletion after change of basis or method thereof, as affected by amount of actual benefit from deductions for prior years. 152 ALR 876.

What is an "income tax" within deduction provisions of income tax statute. 151 ALR 983.

Deduction of salaries, commissions, or bonuses to officers or employees in computing income tax. 145 ALR 834.

Deductibility of commissions and other expenditures incident to the purchase or sale of securities. 142 ALR 1149.

Death of taxpayer during tax year as affecting method of computing income tax. 142 ALR 213.

Deduction of loss on sale or demolition of residential property. 139 ALR 815.

Sufficiency of "charge-off" to entitle taxpayer to "bad debt" deduction. 130 ALR 212.

Deductibility of penalties or interest paid or incurred by taxpayer on account of delinquent or deferred taxes. 121 ALR 1464.

Deductibility of loss on insurance policy as result of insurer's insolvency. 120 ALR 967.

"Obsolescence" for which deduction may be claimed. 120 ALR 446, supplemented in 160 ALR 1248.

Deductibility of succession, inheritance, or estate tax in computing state income tax. 108 ALR 1401.

Deductibility, in determining individual income tax of trustee or other fiduciary, of amount paid by him, or for which he is responsible, on account of an improper investment. 107 ALR 443.

Deductibility of amount paid or expense incurred by taxpayer on account of his liability for tort, crime, or statutory violation. 104 ALR 680, supplemented in 20 ALR 2d 600.

Right of one contracting to pay annuity for consideration to deduct annuity payments in making income tax return. 99 ALR 628.

Deductibility of loss incurred as corporate director, officer, or stockholder. 99 ALR 566.

Expenditures for entertainment of business or professional associates as "ordinary and necessary expenses" which may be deducted under provision of federal income tax statute. 92 ALR 985.

Deductions in respect of leasehold. 82 ALR 332.

Interest deductible in computing income tax. 80 ALR 214, supplemented in 154 ALR 934.

Voluntary assumption or payment of obligation as affecting right to deduction therefor. 79 ALR 977.

Sum set aside in connection with self-insurance against workmen's compensation liability as deductible in computing income tax. 76 ALR 1067.

What are charitable, religious, scientific, literary, or educational purposes within provisions of income tax law. 72 ALR 403.

Deduction of fixed periodical percentage ("straight-line method") as proper method of determining depreciation. 71 ALR 971.

Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income. 55 ALR 1280, supplemented in 67 ALR 1015, 121 ALR 697, and 135 ALR 1430.

Deduction for loss or depreciation of good will. 49 ALR 469.

Federal taxes as deductible in computing state income tax. 35 ALR 1457.

Deduction for "losses". 11 ALR 500, supplemented in 51 ALR 536.

Rental payments under "Clifford" trust and lease back or similar arrangements as deductible "ordinary and necessary business expenses" under section 162 of the Internal Revenue Code of 1954. 44 ALR Fed. 195.

Amount deductible for property contributed to charity under section 170 of the Internal Revenue Code as affected by nature of property or form of contribution — current cases. 40 ALR Fed. 192.

What kinds of legal costs incurred by taxpayer are deductible — current cases. 39 ALR Fed. 221.

Payments made in connection with placing person in home for aged operated by qualified charitable organization as constituting tax deductible charitable contribution under section 170 of the Internal Revenue Code of 1954. 34 ALR Fed. 840.

Payments made to qualified charitable organization in connection with education of taxpayer's children as constituting deductible charitable contribution under section 170 of the Internal Revenue Code of 1954 or nondeductible expense under section 262 of the Internal Revenue Code of 1954. 33 ALR Fed. 373.

Taxpayer's conveyance or dedication of land to or for use of governmental entity as charitable contribution qualifying for tax deduction. 30 ALR Fed. 796.

15-30-122. Standard deduction.

Compiler's Comments

2003 Amendment: Chapter 544 in (1) in third sentence increased minimum standard deduction from $665 to $1,580 and maximum standard deduction from $1,500 to $3,560 and in fourth sentence after "minimum standard deduction is" substituted "twice the amount of the minimum standard deduction for a single return" for "$1,330" and after "maximum standard deduction of" substituted "twice the amount of the maximum standard deduction for a single return" for "$3,000"; and in (2) deleted former second sentence that read: "The minimum and maximum standard deduction for joint returns and qualified head of household returns must be twice the amount of the minimum and maximum standard deduction for single returns." Amendment effective January 1, 2005.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

1995 Amendment: Chapter 435 at beginning of third sentence in (1) inserted "The minimum standard deduction is $665, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater" and in fourth sentence, after "return", inserted "the minimum standard deduction is $1,330, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater"; in first sentence in (2), after "multiply", inserted "both the minimum and" and at beginning of second sentence, after "The", inserted

"minimum and maximum" and after "amount" inserted "of the minimum and maximum standard deduction"; and made minor changes in style.

Applicability: Section 4, Ch. 435, L. 1995, provided: "[Section 1][15-30-122] applies to tax years beginning after December 31, 1995."

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (1), at beginning, deleted "In the case of a resident individual". Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1985 Amendment: In (2) in first sentence, after "single returns", deleted "and joint returns" and inserted second sentence that reads: "The standard deduction for joint returns and qualified head of household returns shall be twice the amount for single returns."

1983 Amendment: In third sentence of (1) inserted the language making a single head of household eligible for $3,000 maximum standard deduction.

1981 Amendment: Chapter 516 increased the standard deduction from "15%" to "20%" of adjusted gross income in (1); increased the maximum standard from "$1,000" to "$1,500, as adjusted under the provisions of subsection (2)" in the middle of (1); increased the maximum standard deduction for a husband and wife filing a joint return from "$2,000" to "$3,000, as adjusted under the provisions of subsection (2)" at the end of the third sentence of (1); and added (2) relating to standard deduction inflation adjustments.

1980 Initiative Amendment: Initiative No. 86 inserted "as adjusted under the provisions of subsection (2)" twice in (1); and added (2) relating to standard deduction inflation adjustments.

Administrative Rules

ARM 42.15.523 Standard deduction.

ARM 42.15.524 Itemized deductions of married taxpayers.

Collateral References

Taxation *key* 1031.

85 C.J.S. Taxation §1738, et seq.

71 Am. Jur. 2d State and Local Taxation §518.

15-30-123. Nondeductible items in computing net income.

Compiler's Comments

1995 Amendment: Chapter 399 inserted (5) relating to expenses incurred for the production of exempt or excludable income and stating that the subsection does not apply to deductibility of federal income taxes paid on income excludable or exempt for Montana income tax purposes; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 3, Ch. 399, L. 1995, provided that this section applies retroactively to tax years beginning after December 31, 1994.

Collateral References

Taxation *key* 1031.

85 C.J.S. Taxation §1738, et seq.

71 Am. Jur. 2d State and Local Taxation §§518 through 548.

15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries.

Compiler's Comments

2005 Amendment: Chapter 95 inserted (4) pertaining to extent a credit is allowed on taxes imposed by a foreign country; and made minor changes in style. Amendment effective October 1, 2005.

Applicability: Section 2, Ch. 95, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

2003 Amendment: Chapter 544 inserted (1)(c) concerning distributive share of income tax paid to another state or country; in (5) inserted reference to subsection (1)(c); in (5)(c) after "S. corporation" inserted "or partnership"; and made minor changes in style. Amendment effective April 30, 2003.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Retroactive Applicability: Section 62(3), Ch. 544, L. 2003, provided: "(3) [Section 47] [15-30-124] applies retroactively, within the meaning of 1-2-109, to years beginning after December 31, 2002."

2001 Amendment: Chapter 143 in (1) at beginning substituted "Subject to the conditions provided in subsections (2) through (5)" for "Subject to the following conditions"; inserted (1)(b) regarding resident's pro rata share of income tax imposed by and paid to another state; in (2) in two places after "state" inserted "or country"; in (3) after "state" inserted "or country"; inserted (5) providing definition, tax election, and conditions for application of tax credit; and made minor changes in style. Amendment effective March 29, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.4.401 Definitions.

ARM 42.4.402 Credit for income taxes paid to another state or country.

ARM 42.4.403 Computation of credit for tax paid to another state or country.

Collateral References

Taxation *key* 1005, 1047.

85 C.J.S. Taxation §§1718, 1719.

71 Am. Jur. 2d State and Local Taxation §549.

Validity and construction of provisions allowing use tax credit for tax paid in other state. 31 ALR 4th 1206.

Constitutionality of statute providing for credit for income tax paid to another state or country. 12 ALR 2d 359.

15-30-126. Small business corporation — deduction for donation of computer equipment to schools.

Compiler's Comments

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1991 Amendment: In first sentence substituted "as defined in 15-31-201" (renumbered 15-30-1101) for "electing to be taxed under the provisions of 15-31-202". Amendment effective December 31, 1991.

Effective Dates — Applicability: Section 12, Ch. 807, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purpose of promulgating administrative rules to implement [sections 1 through 10] [15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161 (now repealed), 15-31-201 (renumbered 15-30-1101), 15-31-202 (now repealed), 15-31-204 (now repealed), and 90-8-202], [this act] is effective on passage and approval." Approved May 17, 1991.

Administrative Rules

ARM 42.15.414 Deduction for small business donations of computer equipment to schools.

15-30-127. Tax deductibility.

Administrative Rules

ARM 42.2.401 Small business liability funds.

15-30-128. Credit for expense of caring for certain elderly family members.

Compiler's Comments

1995 Amendment: Chapter 546 in (4)(a) substituted "long-term care facility" for "long-term health care facility" and substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (2)(b)(i) decreased age of qualifying family member from 70 to 65; in (2)(b)(ii) substituted "has been determined to be disabled by the social security administration"

for "is diagnosed by a physician as having senile dementia of the Alzheimer type"; in (2)(c), after $15,000 or less", inserted "for an unmarried individual and $30,000 or less for a married individual"; in (3), in two places, substituted "gross income, including all nontaxable income" for "adjusted gross income"; in (4)(a), near beginning after "home health agency services", substituted "personal care attendant services and care in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences" for "provided by an organization certified by the federal health care financing administration"; and in (4)(b) substituted "premiums paid for long-term care insurance coverage for a qualifying family member" for "subject to the limitations in subsection (4)(a), payments by the taxpayer for nursing home care of an individual who is diagnosed by a physician as having senile dementia of the Alzheimer type". Amendment effective April 26, 1991.

Retroactive Applicability: Section 4, Ch. 670, L. 1991, provided that this section applies retroactively to taxable years beginning after December 31, 1990.

Effective Date — Retroactive Applicability: Section 4, Ch. 469, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 8, 1989.

Collateral References

71 Am. Jur. 2d State and Local Taxation §§545, 547.

15-30-129. Tax credit for providing disability insurance for employees.

Compiler's Comments

Retroactive Applicability: Section 9, Ch. 606, L. 1991, provided: "[Sections 6 and 7] [15-31-132 and 15-30-129] apply retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Date: Section 10(1), Ch. 606, L. 1991, provided: "[Sections 1 through 3 and 5 through 7] [33-22-1201 through 33-22-1203 (all repealed), 33-22-1205 (now repealed), 15-31-132, and 15-30-129] are effective July 1, 1991."

Administrative Rules

ARM 42.4.2802 Disability insurance premiums credit.

15-30-130. Credit for day-care facilities.

Compiler's Comments

Effective Date: Section 6, Ch. 540, L. 2001, provided: "[This act] is effective on passage and approval." Approved May 1, 2001.

Retroactive Applicability: Section 7, Ch. 540, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000."

15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income.

Compiler's Comments

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, at end substituted "as provided for in 15-30-111" for "from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state. Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in adjusted gross income. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department"; deleted (2) through (7) that read: "(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.

(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to

earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.

(4) A temporary resident shall be allowed those deductions and the credit under 15-32-109 allowed a resident to the extent that such deductions or credit were actually incurred or expended in the state of Montana during the course of his residency.

(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended.

(6) Notwithstanding the provisions of subsections (2) and (3), any contribution made after December 31, 1982, to the state of Montana or a political subdivision thereof shall be an allowable deduction in computing net income. The deduction is subject to the limitations set forth in section 170 of the Internal Revenue Code of 1954, as labeled or amended.

(7) For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments." Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1985 Amendment: In (1) included interest income from property installment sales in adjusted gross income; and inserted (7).

1983 Amendment: Inserted (6) relating to deductible contributions subject to IRC section 170 limitations.

1981 Amendment: Inserted "and the credit under 15-32-109" after "those deductions" and "or credit" after "such deductions" in (4).

Administrative Rules

ARM 42.15.120 Intent.

ARM 42.15.218 Capital gain exclusion for pre-1987 sales.

Case Notes

Proceeds of Multistate Lottery Ticket Purchased and Redeemed in Montana Taxed as "Income Earned in Montana" — Residency of Winner Not Determinative: The Sharps won $47 million in the multistate lottery game known as Lotto America. The Sharps, who were Montana residents when they won the lottery but later moved to Washington, challenged taxation of their earnings by the Montana Department of Revenue in a declaratory judgment action. The District Court held that all of the annual lottery payments made to the Sharps by the Montana Lottery on behalf of Lotto America were taxable as income earned in Montana. Before the Supreme Court, the Sharps argued that: (1) the version of 15-30-105 in effect in 1991 governs their situation; (2) their annual payments from the lottery are payments in the nature of an annuity that are exempt under the 1991 version of subsection (1) of this section; and (3) ARM 42.16.1113(1), exempting from taxation income from intangible personal property, applies to their situation. In beginning its analysis, the Supreme Court noted that pursuant to the statement of legislative intent in 15-30-102, no statute or administrative rule defines the proceeds of the lottery paid to the Sharps as income from intangible personal property or exempts the winnings from taxation. The Supreme Court also noted that the Department administrative rule relied upon by the Sharps cannot change a state statute and that the annual payments won by the Sharps are not an annuity or other income but are the prize itself. The Supreme Court then addressed the issue of which statute applied, holding that under the rationale of Couchot v. St. Lottery Comm'n, 659 NE 2d 1225 (Ohio 1996), certiorari denied, 519 US 810, 136 L Ed 2d 18, 117 S Ct 55 (1996), the statute in effect at the time of the annual distribution of the prize money, in this case, the 1992 version of 15-30-105, governs the Sharps' situation. Relying upon Couchot, Harvester Co. v. Dept. of Taxation, 322 US 435 (1944), and Stark v. Comptroller, 554 A2d 458 (Md. App. 1989), the Supreme Court held that under the version of 15-30-105, as amended by a 1992 special session of the Legislature, the Sharps' lottery winnings constitute "income earned in Montana" because they were "earned" in the state in which they were won and are therefore taxable in 1992 and subsequent years. Sharp v. Dept. of Revenue, 284 M 424, 945 P2d 38, 54 St. Rep. 949 (1997).

No Basis for Denying Alimony Payment Deduction to Nonresident Taxpayer: Dray, a Texas resident, paid his ex-wife $10,000 a month alimony. Dray paid taxes in Montana on royalty income and agricultural income. In tax years 1984 through 1988, Dray claimed an alimony payment deduction for Montana taxes based on the deduction of alimony used in arriving at adjusted gross income for federal tax purposes. The Department of Revenue disallowed the deduction on the basis that this section does not expressly provide for an alimony deduction for nonresidents and that deductions exist only by express grant of the Legislature. The Supreme Court held that although it agreed that a deduction existed only if granted by the Legislature,

Montana's adoption of the federal definition of adjusted gross income in 15-30-111 gives no basis for denying the deduction to nonresident taxpayers. Dept. of Revenue v. Dray, 266 M 89, 879 P2d 651, 51 St. Rep. 756 (1994).

State Right to Tax Nonresident Income: Appellant residents of the Montana portion of Yellowstone Park contended Montana's income tax was unconstitutional because appellants did not enjoy all the same benefits as state residents. The Supreme Court affirmed the state's right to tax income of nonresidents earned within this state, citing Shaffer v. Carter, 252 US 37, 64 L Ed 445, 40 S Ct 221 (1920). The court found that appellants enjoyed substantial residential benefits and that alleged denial of certain benefits was not sufficient reason to prevent the state from levying the income tax. Olson v. Dept. of Revenue, 223 M 464, 726 P2d 1162, 43 St. Rep. 1916 (1986).

Collateral References

Taxation *key* 1031.

85 C.J.S. Taxation §§1702, 1719.

71 Am. Jur. 2d State and Local Taxation §467.

Domicile of taxpayer within state for only part of taxable year as affecting computation of income tax. 93 ALR 1199, supplemented in 126 ALR 455.

15-30-132. Change from nonresident to resident or vice versa.

Compiler's Comments

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, after "he shall file a return" deleted "covering the fraction of the year during which he was a resident. The exemptions provided in 15-30-112 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state, abandoning his residence in the state, and establishing a residence elsewhere must file a return on the fractional basis" and in last sentence, after "outside the state", deleted "without abandoning his Montana residence"; and made minor changes in style. Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

Collateral References

Taxation *key* 1012.

85 C.J.S. Taxation §§1702, 1719.

Domicile of taxpayer within state for only part of the taxable year as affecting computation of income tax. 93 ALR 1199, supplemented in 126 ALR 455.

15-30-134. Determination of marital status.

Collateral References

85 C.J.S. Taxation §§1703, 1737.

71 Am. Jur. 2d State and Local Taxation §549.

15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts.

Compiler's Comments

1983 Amendments: Chapter 2, in (1)(d), changed "an infant" to "a minor".

Chapter 260 deleted former (1)(e), which read: "income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary."; in (2), deleted second sentence, which read: "The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States or any state, territory, or any political subdivision thereof or the District of Columbia.", in second sentence, substituted "(a) and (d)" for "(d) and (e)", and made minor changes in phraseology; at end of (3), deleted "except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under 15-30-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-30-131." and made a minor phraseology change; in (3), inserted former (4)(c), relating to calculation of taxpayer's net income on basis of period differing from that of estate or trust, as second sentence after making a minor phraseology change; and

deleted former (4)(a) and (b), which read: "(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income collected by a guardian of an infant, which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable year.

(b) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary."

Law Review Articles

Taxation of "Income in Respect of a Decedent", 19 Mont. L. Rev. 33 (1957).

Collateral References

Taxation *key* 1021.

85 C.J.S. Taxation §§1710 through 1713.

71 Am. Jur. 2d State and Local Taxation §§518, 519.

Power of court to authorize modification of trust instrument due to changes in tax law. 57 ALR 3d 1044.

Trustor as subject of income tax in respect of income of irrevocable charitable trust. 148 ALR 1236.

Taxation of income distributable or distributed to trust beneficiary as affected by assignment or disclaimer. 141 ALR 1112.

Construction and application of statutory provisions taxing legatees, heirs, or trust beneficiaries on income distributable or distributed to them. 141 ALR 1055.

Liability of settlor for income tax in respect of income for trust applied to relieve him of financial obligation or burden. 101 ALR 397, supplemented in 109 ALR 1048, 132 ALR 819, and 158 ALR 1315.

Income tax in respect of that part of extraordinary cash dividend on stock held by trustee that is allocated to corpus as regards to respective rights of life beneficiary and remainderman. 99 ALR 518.

15-30-136. Computation of income of estates or trusts — exemption.

Compiler's Comments

2003 Amendment: Chapter 114 in (1)(e) substituted "(now deleted)" for "as amended"; in (2)(a) at end after "Code" deleted "of 1954, as amended" and inserted "26 U.S.C. 163"; in (2)(b) at end after "Code" deleted "of 1954, as amended" and inserted "26 U.S.C. 167, 611, and 642"; in (2)(d) at end after "Code" deleted "of 1954, as amended" and inserted "26 U.S.C. 642(c)"; in (2)(e) at end after "Code" deleted "of 1954, as amended" and inserted "26 U.S.C. 212 and 642(g)"; in (2)(f) at end after "Code" deleted "of 1954, as amended" and inserted "26 U.S.C. 165"; and in (2)(g) near end after "Code" deleted "of 1954, as amended" and inserted "26 U.S.C. 642(d)". Amendment effective October 1, 2003.

2000 Amendment by Referendum: Chapter 9 at end of (2)(e) deleted "if the expenses were not claimed as a deduction in the determination of Montana inheritance tax"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

1993 Amendment: Chapter 103 deleted former (3)(c) that read: "(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year"; and made minor changes in style.

Applicability: Section 2(1), Ch. 103, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Rulemaking Authority: Section 2(2), Ch. 103, L. 1993, provided: "The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993."

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (4), at end, substituted reference to subsection (6) of 15-30-112 for "15-30-112(8)". Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1991 Amendments: Chapter 807 deleted former (3) that read: "(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect". Amendment effective December 31, 1991.

Chapter 823 deleted former (2)(h) that read: "(h) all benefits, not in excess of $3,600, received:

(i) as federal employees' retirement;

(ii) as retirement from public employment in a state other than Montana; or

(iii) as an annuity, pension, or endowment under private or corporate retirement plans or systems"; deleted (2)(i) that read: "(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706"; deleted (2)(j) that read: "(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105"; deleted (2)(k) that read: "(k) all benefits paid under the Montana highway patrol officers' retirement system that are specified as exempt from taxation by 19-6-705"; deleted (2)(m) that read: "(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children"; deleted (2)(n) that read: "(n) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005"; deleted (6) that read: "(6) A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) are less than $3,600, in which case the trust or estate may combine benefits to exclude up to a total of $3,600 from net income"; and made minor change in style. Amendment effective May 24, 1991.

Effective Dates — Applicability: Section 12, Ch. 807, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purpose of promulgating administrative rules to implement [sections 1 through 10] [15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161 (now repealed), 15-31-201 (renumbered 15-30-1101), 15-31-202 (now repealed), 15-31-204 (now repealed), and 90-8-202], [this act] is effective on passage and approval." Approved May 17, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

1991 Statement of Intent: The statement of intent attached to Ch. 823, L. 1991, provided: "A statement of intent is required for this bill because the public employees' retirement board and the teachers' retirement board must establish a percentage rate to provide a uniform adjustment

payment rate to all members of public retirement systems as provided in [section 4] [19-15-101, now repealed]."

Study of Taxation of Retirement Benefits: Section 19, Ch. 823, L. 1991, requested the Revenue Oversight Committee (now Revenue and Transportation Interim Committee) to study the taxation of retirement benefits and report its findings and recommendations to the 53rd Legislature.

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1989 Amendment: In (2)(k) changed "patrolmen's" to "patrol officers'".

1987 Amendment: In (2)(h), after "benefits", inserted "not in excess of $3,600"; in (2)(h)(i), after "retirement", deleted "not in excess of $3,600"; inserted (2)(h)(ii) relating to retirement from public employment in another state; inserted (2)(h)(iii) relating to certain benefits under private or corporate plans; deleted former (2)(o) that read: "(o) all benefits not in excess of $360 received as an annuity, pension, or endowment under private or corporate retirement plans or systems"; inserted (6) relating to combining benefits for $3,600 cap; and made minor changes in phraseology.

Applicability: Section 4, Ch. 657, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1986."

1985 Amendment: In (2)(n) substituted "all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005" for "all benefits paid by first- or second-class cities for the Montana police officers' retirement system provided for by the metropolitan police law".

15-30-137. Determination of tax of estates and trusts.

Compiler's Comments

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

15-30-141. Tax as personal debt.

Collateral References

Taxation *key* 93.

85 C.J.S. Taxation §1777, et seq.

71 Am. Jur. 2d State and Local Taxation §443.

15-30-142. Returns and payment of tax — penalty and interest — refunds — credits.

Compiler's Comments

2005 Amendment: Chapter 594 deleted former (5) that read: "(5) As soon as practicable after the return is filed, the department shall examine and verify the tax"; in (5) before first "amount" inserted "department determines that the", after "tax" substituted "due" for "as verified", and after second "amount" substituted language related to notice to taxpayer of additional tax proposed to be assessed for "paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendments — Composite Section: Chapter 10 in (4) near middle of first sentence substituted "on or before the date required by this chapter for filing a return" for "at the time of filing the return required by this chapter". Amendment effective October 1, 2003.

Chapter 544 in (1) in first sentence increased gross income for single individuals from $1,500 to $3,560 and for married individuals from $3,000 to $7,120 and in second sentence increased amount of adjustment from $800 to $1,900. Amendment effective January 1, 2005.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

1999 Amendments — Composite Section: Chapter 67 in (1) at beginning of first sentence inserted "For both resident and nonresident taxpayers" and deleted last sentence that read: "A nonresident shall file a return if the taxpayer's gross income for the tax year derived from sources within Montana exceeds the amount of the personal exemption that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under the provisions of 15-30-112(2) through (4)." Amendment effective March 15, 1999.

Chapter 427 in (6) substituted reference to 15-1-216 for "at the rate of 9% a year or fraction of a year on the additional tax". Amendment effective January 1, 2000.

Retroactive Applicability: Section 3, Ch. 67, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1995 Amendment: Chapter 435 in first sentence in (1) increased required minimum filing amounts from "$1,000" to "$1,500" and from "$2,000" to "$3,000" and in last sentence, after "return", substituted "if the taxpayer's gross income for the tax year derived from sources within Montana exceeds the amount of the personal exemption that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under the provisions of 15-30-112(2) through (4)" for "if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4)"; and made minor changes in style.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (1), near middle, substituted reference to subsection (6) of 15-30-112 for "15-30-112(7) and (8)" and at end deleted "as prorated according to 15-30-112(6)". Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1981 Amendments: Chapter 477 increased the time period within which to pay taxes due after notice from 30 to 60 days in (6).

Chapter 548 changed single individual gross income from "$940" to "$1,000" and married individuals gross income from "$1,880" to "$2,000" in the first sentence of (1).

Interim Committee Bills: Chapter 4, L. 1981 (HB 219), and Ch. 477, L. 1981 (HB 13), were introduced at the request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See Miscellaneous Reports on Taxes, Legislative Council, 1980.

Temporary Increase in Gross Income Amounts: Chapter 4, L. 1981, increased the gross income amounts from $940 to $1,470 for single returns and from $1,880 to $2,940 for joint returns and the amount to be added for each personal exemption from $800 to $1,250 for taxable year 1980.

1980 Initiative Amendment: Initiative No. 86 inserted "as adjusted under the provisions of subsection (7)" twice in (1); inserted "as adjusted under the provisions of 15-30-112(7) and (8)" in the second sentence of (1); and added (7) relating to inflation factor for minimum filing income level and (8) relating to income tax form instructions and tables.

Incorporation Into Existing Law: Section 6, Initiative No. 86 was enacted without a codification instruction. The apparent intent was that it become an integral part of Title 15, ch. 30, and it has been codified accordingly as subsection (8) of 15-30-142.

Administrative Rules

ARM 42.2.505 Interest on unpaid tax.

ARM 42.2.510 Review of statement of account notices.

Title 42, chapter 9 ARM Pass-through entities.

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

ARM 42.15.301 Who must file returns.

ARM 42.15.303 Returns for those unable to make own return.

ARM 42.15.321 Joint returns.

ARM 42.15.322 Separate returns for married taxpayers.

Case Notes

Taxpayer Properly Held in Contempt for Refusal to File Income Tax Returns — Privilege Against Self-Incrimination No Defense: Gillispie failed to file an income tax return for 4 years. The District Court ordered her to file the returns or to show cause why she should not be required to file them. At the hearing, the Department of Revenue introduced Gillispie's W-2 forms, which showed that she had made the minimum income necessary to require her to file returns. The District Court ordered her to file the returns or be found in contempt. When Gillispie failed to file the returns, the District Court held her in contempt, and Gillispie filed a petition for a writ of habeas corpus with the Supreme Court. The Supreme Court held that the District Court had jurisdiction to order Gillispie to file the returns and jurisdiction to hold Gillispie in contempt and that the District Court also had sufficient evidence to do so. The Supreme Court also held that Gillispie's privilege against self-incrimination does not justify the outright refusal to file a return and cannot be used as a method of evading payment of lawful taxes. The Supreme Court held that she must demonstrate the specific parts of the returns that would result in self-incrimination. Gillispie v. Sherlock, 279 M 21, 929 P2d 199, 53 St. Rep. 507 (1996).

Tax Withholding Statement Irrelevant: In a prosecution for failure to file proper tax returns, it was proper for the court to refuse to admit into evidence a tax withholding statement, although evidence of defendant's income was admitted. The payment of taxes by withholding was irrelevant to the issue of whether proper returns were filed and could have confused the jury. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Collateral References

Taxation *key* 1079, 1096, 1097.

85 C.J.S. Taxation §1699.

71 Am. Jur. 2d State and Local Taxation §§596, 606, 608 through 611; 72 Am. Jur. 2d State and Local Taxation §784.

Right of surviving spouse to tax refund resulting from joint income tax return. 67 ALR 3d 1038.

Tax returns as official records with respect to admissibility in evidence. 50 ALR 2d 1206.

15-30-143. Return of fiduciary.

Administrative Rules

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

ARM 42.15.301 Who must file returns.

Collateral References

Taxation *key* 1079.

85 C.J.S. Taxation §1699.

71 Am. Jur. 2d State and Local Taxation §596.

Trustor as subject to income tax in respect of income of irrevocable charitable trust. 148 ALR 1236.

What constitutes a trust for purposes of income tax assessments. 113 ALR 457.

15-30-144. Time for filing — extensions of time.

Compiler's Comments

1999 Amendment: Chapter 26 in (2)(a) after "return" substituted language requiring taxpayer to file request for extension of time for filing tax return and clarifying that extension is not extension of time for paying taxes for "an application is made on forms available from the department or in writing to the department. If the application is made in writing, it must include substantially the same information as is required on the department's forms"; in (2)(b) at beginning substituted "taxpayer" for "applicant"; in (3) at beginning of first sentence deleted "Before the expiration date of the automatic 4-month extension, an applicant may request in writing" and substituted language concerning automatic allowance of the extension and the proviso requiring the taxpayer's application for an additional extension of time in which to file a return for "The department may, in its discretion, grant the request upon a showing of good cause by the applicant" and inserted last sentence regarding payment of taxes; and made minor changes in style. Amendment effective February 18, 1999.

Effective Date — Retroactive Applicability: Section 2, Ch. 26, L. 1999, provided: "[This act] is effective on passage and approval [approved February 18, 1999] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1995 Amendment: Chapter 560 in (2), in introductory clause, substituted "4-month" for "6-month"; in (2)(a) inserted last sentence concerning content of application; in (2)(b) substituted "90%" for "95%"; and inserted (3) regarding additional 2-month extension. Amendment effective April 26, 1995.

Effective Date — Retroactive Applicability: Section 2, Ch. 560 L. 1995, provided: "[This act] is effective on passage and approval [approved April 26, 1995] and applies retroactively, within the meaning of 1-2-109, to tax returns due after December 31, 1994."

1991 Amendment: Inserted (2)(b) concerning payment of 95% of current year's or 100% of previous year's tax liability. Amendment effective May 17, 1991.

Retroactive Applicability: Section 4, Ch. 796, L. 1991, provided that the amendment to this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1981 Amendment: Increased the automatic extension of time from 2 months to 6 months at the beginning of (2); deleted provisions allowing an additional extension of time (beyond 2 months) and setting a 6-month maximum for extensions with exceptions for members of the armed forces and persons living or traveling outside the U.S.

Administrative Rules

ARM 42.15.312 Reproduction of return forms.

ARM 42.15.316 Extensions.

Case Notes

Venue for Failure to File Tax Returns: Tax returns are required to be filed with the Department of Revenue. The department is required to be located in Helena, Montana. Section 46-3-101 (renumbered 46-3-111) provides that in all criminal prosecutions, trial shall be in the county where the offense was committed. The offense charged here was failure to properly file tax returns, so that venue was properly with Lewis and Clark County where Helena is located. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Failure to File Tax Return — Venue: Venue of a criminal action charging intentional failure to file a properly completed Montana individual income tax return would lie in either Lewis & Clark County or the county in which defendants reside. But, since the complaint was filed in the former and no legal justification or prejudice was shown to support transfer, the Supreme Court reversed the District Court's change of venue from Lewis & Clark County. Dept. of Revenue v. Lane, 187 M 230, 609 P2d 300 (1980), following St. v. Bretz, 169 M 505, 548 P2d 949 (1976).

Collateral References

Taxation *key* 1079.

85 C.J.S. Taxation §1699.

71 Am. Jur. 2d State and Local Taxation §589.

Sufficiency of return to start running of Statute of Limitations. 3 ALR 2d 647.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-30-145. Revision of return by department — statute of limitations — examination of records and persons.

Compiler's Comments

1993 Amendment: Chapter 520 in (2), after "taxpayer", substituted "does not file" for "fails to make", after "department" substituted "may, at any time, audit the taxpayer or" for "is authorized to make an", and after "possession and" substituted "based upon the audit or estimate, assess the taxpayer" for "to audit and state an account according to such return or the estimate so made by it"; substituted (3) concerning date return is considered filed for "Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due under any return shall be determined by the department within 5 years after the return was made and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon, and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period, notwithstanding the provisions of 15-30-322"; at end of (4), after "due", deleted "and, where no return has been filed, the tax may be assessed at any time"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

Effective Date — Applicability: Section 5, Ch. 648, L. 1979, provided: "This act is effective on passage and approval but has no effect on prosecutions commenced prior to the effective date of this act." This act is codified as 15-30-101, 15-30-145, 15-30-321, and 15-30-324 and was approved May 7, 1979.

Administrative Rules

ARM 42.15.325 Failure to furnish requested information or file delinquent return.

Case Notes

Limitation on Reassessment: Prior to its amendment in 1955, this section did not constitute a Statute of Limitations but was a limitation on the authority of the State Board of Equalization (now Department of Revenue) to reassess returns. State ex rel. Conn v. Robinson, 133 M 549, 327 P2d 390 (1958); State ex rel. Anderson v. St. Bd. of Equalization, 133 M 8, 319 P2d 221 (1957).

Construction Prior to Amendment — Construed in Favor of Taxpayer: The provision of this section, before the 1955 amendment, commanding a particular act to be done for the protection of the taxpayer, viz., assessment within 3 years, must be construed in favor of the taxpayer. State ex rel. Anderson v. St. Bd. of Equalization, 133 M 8, 319 P2d 221 (1957).

Collateral References

Taxation *key* 1079.

85 C.J.S. Taxation §1756.

71 Am. Jur. 2d State and Local Taxation §597.

15-30-146. Tolling of statute of limitations.

Collateral References

85 C.J.S. Taxation §1761.

71 Am. Jur. 2d State and Local Taxation §595.

15-30-147. Application for revision — appeal.

Compiler's Comments

1993 Amendment: Chapter 520 in first sentence, after "5 years from the", substituted remainder of sentence concerning last day for filing return and second sentence authorizing taxpayer to revise revised return until liability for tax year is finally determined for "original due date of the return" and at end of third sentence, after "board", deleted "as provided therein, which shall have authority to grant the claim or any part thereof"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

Composite Section: This section was amended twice in 1973, once by Ch. 405 and once by Ch. 516. Because of the comprehensive nature of the amendment by Ch. 405, the earlier enactment, the changes made by Ch. 516 were no longer applicable. The compiler in 1973 used the language of Ch. 405.

Case Notes

Filing of Claim: Respondent paid additional tax under protest on June 12, 1953. Within the 2 years granted by this section, prior to 1955 amendment, he applied for a revision, filing claim on July 24, 1954, setting forth the contended invalidity of the assessment. The claim was filed on a form provided by the Board of Equalization (now Department of Revenue) for refund of tax illegally collected. This was a sufficient compliance with the statute. State ex rel. Conn v. Robinson, 133 M 549, 327 P2d 390 (1958).

Collateral References

Taxation *key* 1079.
85 C.J.S. Taxation §§1699, 1765, et seq.
71 Am. Jur. 2d State and Local Taxation §605.

15-30-148. Judicial review.

Compiler's Comments

1993 Amendment: Chapter 214 in (1) increased appeal time to 60 days from 30 days; and made minor changes in style.

1991 Amendment: In (1), in first sentence, reduced complaint filing deadline from 6 months to 30 days and at end substituted "notice of the determination" for "notice of the decision of the state tax appeal board".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Case Notes

Review of Reassessment: Under section 84-4923, R.C.M. 1947 (now repealed), when the Board of Equalization (now Department of Revenue) rejected claim of taxpayer, on August 18, 1954, for return of illegally collected tax, it constituted the determination of the Board upon the application for revision made by respondent and was reviewable by District Court under sec. 23, Ch. 181, L. 1933, when respondent applied for Writ of Certiorari on September 11, 1954, within the 30-day limitation provided in sec. 23. State ex rel. Conn v. Robinson, 133 M 549, 327 P2d 390 (1958).

Court Without Authority to Return Tax Paid Under Protest: Under section 84-4923, R.C.M. 1947 (now repealed), the court was without power to render a judgment for the return of the tax paid under protest. State ex rel. Davis v. St. Bd. of Equalization, 104 M 52, 64 P2d 1057 (1937).

Collateral References

Taxation *key* 1087.
85 C.J.S. Taxation §1765, et seq.
71 Am. Jur. 2d State and Local Taxation §605.

15-30-149. Credits and refunds — period of limitations.

Compiler's Comments

2005 Amendment: Chapter 594 in (4) in first sentence after "taxes" inserted "as provided in 15-1-216"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1995 Amendment: Chapter 572 in (4)(a) substituted "45 days" for "6 months". Amendment effective May 1, 1995.

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995 and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

1993 Amendment: Chapter 520 in (2)(a), before "15-30-146", deleted "15-30-145 and by" and after "15-30-146" substituted "and 15-30-147" for "during which the department may determine tax liability"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

1991 Amendment: In (3) substituted last sentence relating to notice to taxpayer and review under 15-1-211 for "if the claim is disallowed, the department shall so notify the taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter"; in (4), at beginning of first sentence, deleted "Except as hereinafter provided for" and at end, after "taxes", deleted "due" and at beginning of second sentence inserted "Interest is payable"; and made minor changes in style.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

1981 Amendment: In (2) substituted "(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-145 and by 15-30-146 during which the department may determine tax liability, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back" for language that set a limit for claiming a credit or refund of 5 years from date for filing the return or 1 year from overpayment; near the beginning of (4) deleted a provision that the subsection was effective with taxable years ending on or after Dec. 31, 1962; substituted "interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due" for "interest shall be allowed on overpayments at the rate of 6% per annum" near the beginning of (4).

Applicability: Section 4, Ch. 589, L. 1981, provided: "This act applies to claims for refunds or credits that were made within the time period for submission of claims that is permitted under this act even though the claim may have been submitted after the 5-year period provided in 15-30-149, prior to amendment, had expired."

Interim Study Bill: House Bill 17 (Ch. 589, L. 1981) was the result of an interim study conducted by the Revenue Oversight Committee (now Revenue and Transportation Interim Committee), reported in "Revenue Oversight Committee: Miscellaneous Studies", published by the Montana Legislative Council, November 1980.

Administrative Rules

ARM 42.4.303 Claiming elderly homeowner credit.

ARM 42.15.315 Original and amended returns.

ARM 42.15.328 Form of claim for refund.

Case Notes

Refund of Tax Illegally Collected From Reservation Indians: Although state law is not binding in refunding tax illegally collected from reservation Indians, the state's interest in an orderly tax collection procedure mandates an adherence to the state procedures as guidelines in fashioning a remedy. Dillon v. St., 451 F. Supp. 168 (D.C. Mont. 1978), reversed at 634 F2d 463 (9th Cir. 1980).

Collateral References

Taxation *key* 1097.

85 C.J.S. Taxation §1778.

71 Am. Jur. 2d State and Local Taxation §§608 through 611.

15-30-150. Voluntary checkoff for nongame wildlife programs.

Compiler's Comments

Retroactive Applicability: Section 4, Ch. 321, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to voluntary income tax checkoff programs to which the contingent termination in section 1, Chapter 12, Laws of 1995, applied and that were in effect prior to January 1, 1999."

1993 Amendment: Chapter 581 in (3), after "section", inserted "after the department has deducted the administrative charge provided for in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

1985 Amendment: In (1) near middle, after "chapter 30", deleted "and who is entitled to a refund"; and in (2) at end of first sentence, deleted "from the taxpayer's refunded amount" and substituted language in contribution provision for language that read: "Montana nongame wildlife funding. Check the appropriate blank if you wish to designate ___$2, ___$5, or ___$10 of your tax refund to fund nongame wildlife programs in Montana. If a joint return, check the appropriate blank if your spouse wishes to designate ___$2, ___$5, or ___$10 for the same purpose."

15-30-151. Agriculture in Montana schools program account — administration.

Compiler's Comments

Permanent Continuation of Income Tax Checkoff: As originally enacted, this section had a termination date of July 1, 1987. The termination date was repealed by sec. 1, Ch. 16, L. 1987, which was effective February 17, 1987.

15-30-152. Voluntary checkoff for agriculture in Montana schools program.

Compiler's Comments

Elimination of Contingent Termination Date: Section 1, Ch. 12, L. 1995, amended sec. 12, Ch. 581, L. 1993, by deleting the contingent termination date applicable to 15-30-152. The effect of the amendment was to make permanent the voluntary income tax checkoff for the agriculture in Montana schools program. Amendment effective January 27, 1995.

Retroactive Applicability: Section 2, Ch. 12, L. 1995, provided: "[This act] [making permanent the voluntary income tax checkoff for the agriculture in Montana schools program] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1993 Amendment: Chapter 581 at end of (3) inserted "as provided in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Contingent Termination: Section 12, Ch. 581, L. 1993, provided: "A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years."

Permanent Continuation of Income Tax Checkoff: As originally enacted, this section had a termination date of July 1, 1987. The termination date was repealed by sec. 1, Ch. 16, L. 1987, which was effective February 17, 1987.

15-30-153. Funding for administration of special revenue accounts.

Compiler's Comments

1997 Amendment: Chapter 422 in (1), near beginning after "revenue account", deleted "created after January 1, 1993"; deleted former (3) that read: "There are special revenue accounts in the state treasury for the administration of income tax checkoffs"; in (3), at end, substituted "the state general fund" for "a tax checkoff administration account"; and deleted (5) that read: "(5) The money in a tax checkoff administration account, subject to appropriation, must be expended to administer the income tax checkoff for which the account was created." Amendment effective July 1, 1997.

Effective Date — Retroactive Applicability: Sections 10 and 11, Ch. 581, L. 1993, provided that this section is effective on passage and approval and applies to tax years beginning after December 31, 1992. Approved April 28, 1993.

15-30-154. Income tax deduction for contribution to veterans' programs.

Compiler's Comments

Preamble: The preamble attached to Ch. 491, L. 2003, provided: "WHEREAS, the 57th Legislature requested a study of veterans' issues, and the State Administration and Veterans' Affairs Interim Committee conducted numerous hearings, received expert testimony, and examined research during a 14-month period; and

WHEREAS, the Interim Committee found that, using 2000 data, Montana's population of nearly 107,000 veterans and an estimated 170,000 family members of veterans not only ranks Montana second in the nation in the number of veterans per capita (11.9%) but also means that veterans and their family members constitute more than 25% of Montana's total population; and

WHEREAS, the Interim Committee found that more than 80,000 Montana veterans are combat-era veterans (more than 36,000 are Vietnam-era, more than 16,000 are Persian Gulf-era, more than 16,000 are World War II-era, and about 14,000 are Korean-era veterans) and that the largest group of veterans is now between 50 and 65 years of age; and

WHEREAS, the U.S. Department of Veterans Affairs estimates that more than 50% of combat theater veterans suffer from clinically serious and disabling posttraumatic stress disorder, that twice as many veterans as nonveterans experience homelessness, that many veterans have overlapping and complex needs encompassing medical and nursing home care, mental health and chemical dependency counseling, housing, transportation, education and training, job services, and family support services, and that the children and families of veterans who do not get the help that they need are themselves at risk; and

WHEREAS, these complex needs and a maze of federal, state, local, public, and private services demand a high level of interagency coordination and cooperation for effective service delivery to ensure that veterans and their families do not fall through the cracks and to avoid unnecessary cost-shifting from federal to state and local public assistance programs; and

WHEREAS, the Interim Committee found that current statutory language establishing the Board of Veterans' Affairs as the lead agency for veterans' affairs dates back to 1919 and that although the Board's duties and responsibilities have consistently evolved, statutory language has not kept pace; and

WHEREAS, the Board hires and supervises its own classified employees, who make up the Montana Veterans' Affairs Division, but the Board does not have rulemaking authority to implement programs; and

WHEREAS, the Board is administratively attached to the Department of Military Affairs, which has greatly assisted veterans and supported the Board but has no statutory authority over veterans' affairs; and

WHEREAS, a legislative performance audit requested by the Interim Committee revealed that although the Montana Veterans' Affairs Division is to be commended for doing a great job with limited resources and limited statutory guidance, it also revealed that new management tools and updated information management systems are needed to provide more consistency and to track and manage staff workload; and

WHEREAS, the U.S. Department of Veterans Affairs spent about $175 million in Montana during fiscal year 2000, which ranked Montana 37th nationwide in per capita expenditures by the U.S. Department of Veterans Affairs on veterans; and

WHEREAS, the Interim Committee found that a statutory restructuring of powers, duties, and responsibilities for state veterans' affairs programs is essential, not only to address inadvertent statutory shortfalls and elevate the profile of state veterans' affairs, but also to better integrate benefit claims with human services programs so that eligible veterans and family members receive the federal compensation, benefits, and care that they have earned in self-sacrificing service in the armed forces of the United States of America."

Effective Date: Section 17, Ch. 491, L. 2003, provided that this section is effective January 1, 2004.

15-30-155. Voluntary checkoff for child abuse and neglect prevention program.

Compiler's Comments

Retroactive Applicability: Section 4, Ch. 321, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to voluntary income tax checkoff programs to which the contingent termination in section 1, Chapter 12, Laws of 1995, applied and that were in effect prior to January 1, 1999."

1993 Amendment: Chapter 581 at end of (3) inserted "as provided in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated this section January 1, 1990.

15-30-156. Deduction for contributions to child abuse and neglect prevention program.

Compiler's Comments

1993 Repeal — Rejected: The repeal of this section made by Ch. 634, L. 1993 (House Bill No. 671), was ineffective because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated this section January 1, 1990.

15-30-157. Deposit of deductible contributions.

Compiler's Comments

1993 Repeal — Rejected: The repeal of this section made by Ch. 634, L. 1993 (House Bill No. 671), was ineffective because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated this section January 1, 1990.

15-30-163. Credit for contributions to university system or private college foundations.

Compiler's Comments

1995 Amendment: Chapter 152 at beginning of (1) deleted "For taxable years beginning after December 31, 1990, and before January 1, 1996"; and made minor changes in style. Amendment effective March 16, 1995.

Effective Date — Retroactive Applicability: Section 5, Ch. 542, L. 1991, provided: "[This act] is effective on passage and approval [approved April 22, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

15-30-164. Credit for alternative fuel motor vehicle conversion.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 617, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved May 6, 1993.

15-30-165. Qualified endowments credit — definitions — rules.

Compiler's Comments

2003 Amendment: Chapter 482 inserted (3)(d) providing that a contribution is not a planned gift unless it is a qualified charitable gift annuity as defined in 33-20-701. Amendment effective April 24, 2003.

Applicability: Section 11, Ch. 482, L. 2003, provided: "[This act] applies to charitable contributions made after [the effective date of this act]." Effective April 24, 2003.

2001 Amendments — Composite Section: Chapter 226 at beginning of definition of planned gift inserted "Subject to subsection (3)"; inserted (3) providing that contributions using certain techniques are not considered planned gifts; inserted (4) requiring rulemaking for the preparation of life expectancy tables; and made minor changes in style. Amendment to subsections (1) through (3) effective October 1, 2001. Amendment to subsection (4), for purposes of promulgating administrative rules, effective April 12, 2001.

Chapter 411 inserted (2)(b) concerning affordable housing revolving loan account as qualified endowment; and made minor changes in style. Amendment effective April 28, 2001, and terminates December 31, 2004.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Retroactive Applicability: Section 6, Ch. 411, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

15-30-166. Credit for contributions to qualified endowment — recapture of credit — deduction included as income.

Compiler's Comments

2005 Amendment: Chapter 4 inserted (4) regarding requirements if a charitable gift is recovered by a taxpayer during any tax year. Amendment effective February 23, 2005, and terminates December 31, 2007.

Retroactive Applicability: Section 6, Ch. 4, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Deletion of Termination Date and Repeal of July 1, 2003, Version: Section 1, Ch. 205, L. 2003, amended sec. 11, Ch. 24, Sp. L. August 2002, by deleting the April 30, 2004, termination date applicable to the version of this section that was to be effective July 1, 2003. Section 2, Ch. 205, L. 2003, repealed the version of this section that was to be effective July 1, 2003. Amendment effective April 2, 2003.

2002 Amendment: (Temporary version) Chapter 24 in (1) in first sentence reduced percentage of present value of aggregate gift from 40% to 30% and in second sentence reduced maximum credit from $10,000 to $6,600. Amendment effective August 28, 2002, and terminates June 30, 2003.

(Version applicable July 1, 2003) Chapter 24 in (1) in first sentence increased percentage of present value of aggregate gift from 40% to 50% and in second sentence increased maximum credit from $10,000 to $13,400. Amendment effective August 28, 2002, and terminates April 30, 2004.

Applicability: Section 10, Ch. 24, Sp. L. August 2002, provided: "(1) [Sections 1, 3, 5, and 7] [temporary versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162] apply to charitable gifts made on or after [the effective date of this act]." Effective August 28, 2002.

"(2) [Sections 2, 4, 6, and 8] [versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162 applicable on July 1, 2003] apply to charitable gifts made on or after July 1, 2003."

2001 Amendment: Chapter 226 near middle of first sentence of (1) after "equal to" substituted "40% of the present value" for "50% of the present value". Amendment effective October 1, 2001.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Preamble: The preamble attached to Ch. 537, L. 1997, provided: "WHEREAS, charitable endowments are permanent savings accounts, the income from which is perpetually committed to charitable purposes; and

WHEREAS, Montana-based charitable endowments can grow over time to become significant resources capable of funding many unanticipated and unmet needs of, and creating new opportunities for, Montana's citizens and their communities; and

WHEREAS, Montana's relatively weak tradition of endowed philanthropy can be demonstrated by comparing our state with the other 49 states, in that Montana ranks 44th in population and 41st in per capita income, but ranks 48th in foundation assets and 49th in foundation giving; and

WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over the contributor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contributor to a charity prior to the contributor's death; and

WHEREAS, although planned gifts would appear to offer genuine financial potential for creating and expanding charitable endowments in Montana, in reality, planned gifts are so infrequently contributed in Montana that endowments in our state are not growing as fast as they are in other states; and

WHEREAS, planned gifts might be used more in funding charitable endowments in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, income distributed from endowments can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, local charitable endowments currently exist in almost every Montana community, and the existence of these widespread endowments offers everyone in Montana an opportunity to contribute endowed funding for their local communities; and

WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana communities by developing creative solutions to help individual communities meet growing needs and by helping these communities find transitions to self-sufficiency; and

WHEREAS, earnings from charitable endowments in Montana are distributed by volunteer boards of diverse community leaders to meet emerging community needs in such areas as education, arts and culture, social services, economic development, and health and the environment; and

WHEREAS, government cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] [15-30-166, 15-30-167, 15-31-161, and 15-31-162] to qualified permanent endowments held by tax-exempt organizations or by banks or trust companies on behalf of tax-exempt organizations; and

WHEREAS, for the purpose of renewing the tax credit created by [this act] [15-30-166, 15-30-167, 15-31-161, and 15-31-162], it is the intent of the 55th Legislature that the state's cost of administering the tax credit may not exceed 5% of the total annual credits claimed."

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

ARM 42.4.2708 Determining present value for endowment credit.

15-30-167. Beneficiaries of estates — credit for contribution to qualified endowment.

Compiler's Comments

Deletion of Termination Date and Repeal of July 1, 2003, Version: Section 1, Ch. 205, L. 2003, amended sec. 11, Ch. 24, Sp. L. August 2002, by deleting the April 30, 2004, termination date applicable to the version of this section that was to be effective July 1, 2003. Section 2, Ch. 205, L. 2003, repealed the version of this section that was to be effective July 1, 2003. Amendment effective April 2, 2003.

2002 Amendment: (Temporary version) Chapter 24 in third sentence reduced maximum credit from $10,000 to $6,600. Amendment effective August 28, 2002, and terminates June 30, 2003.

(Version applicable July 1, 2003) Chapter 24 in third sentence increased maximum credit from $10,000 to $13,400. Amendment effective August 28, 2002, and terminates April 30, 2004.

Applicability: Section 10, Ch. 24, Sp. L. August 2002, provided: "(1) [Sections 1, 3, 5, and 7] [temporary versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162] apply to charitable gifts made on or after [the effective date of this act]." Effective August 28, 2002.

"(2) [Sections 2, 4, 6, and 8] [versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162 applicable on July 1, 2003] apply to charitable gifts made on or after July 1, 2003."

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

ARM 42.4.2708 Determining present value for endowment credit.

15-30-168. Qualified research tax credit.

Compiler's Comments

Effective Date: Section 4, Ch. 444, L. 1999, provided that this section is effective April 22, 1999.

Retroactive Applicability: Section 5, Ch. 444, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

15-30-169. Voluntary checkoff for assistance to persons suffering from end-stage renal disease.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Applicability: Section 4, Ch. 535, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

15-30-171. Residential property tax credit for elderly — definitions.

Compiler's Comments

1999 Amendment: Chapter 445 in definition of income near beginning inserted exception clause, in (a)(i) near beginning before "amount" deleted "gross", in (a)(vii) at beginning deleted "payments and", and inserted (b) providing that income is reduced by taxpayer's basis; and made minor changes in style. Amendment effective April 22, 1999.

Coordination Instruction: Section 2, Ch. 445, L. 1999, provided: "If Senate Bill No. 424 is passed and approved and if it amends section 15-30-171, then the section of Senate Bill No. 424 amending section 15-30-171 is void." Senate Bill No. 424, including an amendment to 15-30-171, was passed and approved as Ch. 547, L. 1999; therefore, the amendment to 15-30-171 in Ch. 547 was void.

Retroactive Applicability: Section 4, Ch. 445, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 543 in definition of claimant, before "person", deleted "individual natural"; in definition of homestead, in (a) near beginning after "subject to", substituted "property" for "ad valorem"; in definition of household income after "means" deleted "$0 or" and after "subtracting" substituted "$6,300 from gross household income" for "the greater of $4,000 or 50% of total retirement benefits from gross household income, whichever is greater"; substituted property tax billed for property tax paid as defined term, before "taxes" deleted "general ad valorem", substituted "including special assessments" for "exclusive of special assessments", before "penalties" inserted "and fees but excluding", and after "interest" deleted "and paid"; and made minor changes in style. Amendment effective May 5, 1997.

Retroactive Applicability: Section 6, Ch. 543, L. 1997, provided: "[Sections 1 and 4] [15-30-171 and 15-30-177] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1991 Amendment: In definition of income, in (h), inserted "except social security income paid directly to a nursing home". Amendment effective April 24, 1991.

Retroactive Applicability: Section 4, Ch. 612, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

1989 Amendments: Chapter 559 in definition of homestead inserted (b) relating to a dwelling rented from a county or municipal housing authority. Amendment effective January 1, 1990.

Chapter 693 in definition of household income inserted "the greater of" and "or 50% of total retirement benefits"; and made minor change in phraseology. Amendment effective May 22, 1989, and applicable to taxable years beginning after December 31, 1988.

1987 Amendment: In (7) deleted 6-month residence requirement for owner, renter, or lessee of a dwelling. This amendment is applicable retroactively to claim periods beginning after December 31, 1986.

1983 Amendments: Chapter 134, in (1), after "nontaxable income" deleted "except all payments received under federal social security"; inserted (1)(h) relating to Social Security payments; in (5), substituted "Gross household income" for "Household income" and deleted "except payments received under federal social security" after "all income"; inserted definition of household income; and made minor phraseology changes. This amendment is applicable to claim periods beginning after December 31, 1982.

Chapter 605, in (1), after "received" substituted "as a result of fulfillment of federal social security eligibility requirements or payments comparable thereto" for "under federal social security"; in (1)(a), after "disability benefits" inserted exception of payments received by fulfillment of social security eligibility requirements; and in (5), after "all income" deleted "except payments received under federal social security". These amendments are not reflected in the statute because they are no longer applicable. See Effective Date note below.

Effective Date — Applicability: Section 2, Ch. 605, L. 1983, provided: "This act is effective on passage and approval and is applicable only to claim periods beginning after December 31, 1980, and before January 1, 1983. It is to be applied retroactively within the meaning of 1-2-109 for such periods."

Administrative Rules

Title 42, chapter 4, subchapter 3, ARM Individual — residential property tax credit for elderly.

ARM 42.4.301 Definitions.

15-30-172. Residential property tax credit for elderly — eligibility.

Compiler's Comments

1999 Amendment: Chapter 547 in (1)(d) increased from less than $35,000 to less than $45,000 the maximum gross household income for receipt of credit. Amendment effective April 30, 1999.

Retroactive Applicability: Section 5, Ch. 547, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 543 inserted (1)(d) requiring persons claiming tax credit to have less than $35,000 gross household income; and made minor changes in style. Amendment effective May 5, 1997.

1987 Amendment: Inserted (1)(c) requiring occupation of home; inserted (2) relating to change of residence; and made minor change in style. This amendment is applicable retroactively to claim periods beginning after December 31, 1986.

15-30-174. Residential property tax credit for elderly — filing date.

Compiler's Comments

2003 Amendment: Chapter 66 in (2) deleted former second sentence that read: "The department shall keep a record of each extension and the reason for granting the extension"; and inserted (4) concerning 5-year period for revising return and making claim. Amendment effective March 14, 2003.

Administrative Rules

ARM 42.4.303 Claiming elderly homeowner credit.

15-30-175. Residential property tax credit for elderly — form of relief.

Administrative Rules

ARM 42.4.303 Claiming elderly homeowner credit.

15-30-176. Residential property tax credit for elderly — computation of relief.

Compiler's Comments

1999 Amendment: Chapter 547 inserted (5) specifying amount of credit for person with income of more than $35,000 but less than $45,000; and made minor changes in style. Amendment effective April 30, 1999.

Retroactive Applicability: Section 5, Ch. 547, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 543 near middle of (1) and (3)(a) and near beginning of (4), after "tax", substituted "billed" for "paid"; and made minor changes in style. Amendment effective May 5, 1997.

1995 Amendment: Chapter 574 in (5) increased credit amount from $400 to $1,000. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 14, Ch. 574, L. 1995, provided: "(1) [This act] is effective on passage and approval. [Approved May 1, 1995.]

(2) (a) Except as provided in subsection (2)(b), [this act] applies to tax years beginning after December 31, 1995.

(b) [Sections 1 through 7 and 11] [15-1-1001 through 15-1-1007, now terminated, and 15-30-176] apply retroactively, within the meaning of 1-2-209, to tax years beginning after December 31, 1994."

1983 Amendment: Inserted (3) relating to claimant who both owns and rents homestead; in (5), increased the maximum credit from $150 to $400.

Administrative Rules

ARM 42.4.302 Computation of residential property tax credit for elderly.

15-30-177. Residential property tax credit for elderly — limitations.

Compiler's Comments

1997 Amendment: Chapter 543 in (2), near middle after "taxes", substituted "billed" for "paid"; in (3), near end, substituted "Montana property taxes" for "ad valorem taxation in Montana"; and made minor changes in style. Amendment effective May 5, 1997.

Retroactive Applicability: Section 6, Ch. 543, L. 1997, provided: "[Sections 1 and 4] [15-30-171 and 15-30-177] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1989 Amendment: At beginning of (2) and (3) inserted exception clause. Amendment effective January 1, 1990.

1983 Amendment: Inserted (3) disallowing claims on rented lands or dwellings not subject to ad valorem tax.

15-30-178. Residential property tax credit for elderly — proof of claim.

Compiler's Comments

1997 Amendment: Chapter 543 near beginning of first sentence, after "tax", substituted "billed" for "paid"; and made minor changes in style. Amendment effective May 5, 1997.

15-30-180. Credit for preservation of historic property.

Compiler's Comments

2001 Amendment: Chapter 538 inserted (2) through (5) allowing a tax credit for the preservation of historically significant property, including buildings and structures, allowing for tax credits resulting from the imposition of conservation easements on historically significant property, and allowing credit carryovers; in (6) near beginning after "credit" inserted "allowed in subsection (1)"; and made minor changes in style. Amendment effective January 1, 2002, and terminates December 31, 2011.

Applicability: Section 4, Ch. 545, L. 1997, provided: "[Sections 1 and 2] [15-31-151 and 15-30-180] apply to tax years beginning after December 31, 1997."

Administrative Rules

ARM 42.4.2902 Computation of tax credit for preservation of historic properties.

ARM 42.4.2903 Computation of tax credit for preservation of historic property for married taxpayers.

ARM 42.4.2904 Ownership of historic property.

15-30-182. Empowerment zone new employees — tax credit.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

15-30-183. Capital gains credit.

Compiler's Comments

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Effective Date: Section 61(2), Ch. 544, L. 2003, provided: "(2) [Sections 40 through 46 and 48] [15-30-183, 15-30-101, 15-30-103, 15-30-112, 15-30-121, 15-30-122, and 15-30-142] are effective January 1, 2005."

Applicability: Section 62(2), Ch. 544, L. 2003, provided: "(2) [Sections 40 and 42 through 45] [15-30-183, 15-30-101, 15-30-103, 15-30-112, and 15-30-121] apply to tax years beginning after December 31, 2004."

Administrative Rules

ARM 42.4.501 Definitions.

ARM 42.4.502 Capital gain credit.

15-30-184. Equity capital tax credit.

Compiler's Comments

Severability: Section 21, Ch. 537, L. 2005, was a severability clause.

Effective Date: Section 22, Ch. 537, L. 2005, provided: "[This act] is effective July 1, 2005."

15-30-185. Tax credit for health insurance premiums paid — eligible small employers — pass-through entities.

Compiler's Comments

Effective Date: Section 21, Ch. 595, L. 2005, provided that this section is effective July 1, 2005.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

15-30-186. Credit for dependent care assistance and referral services.

Compiler's Comments

2001 Amendment: Chapter 540 inserted (2) allowing a tax credit to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist certain employees to obtain dependent care; and made minor changes in style. Amendment effective May 1, 2001.

Retroactive Applicability: Section 7, Ch. 540, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000."

Applicability: Section 6, Ch. 706, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-30-187. Credit for contributions to developmental disability services account.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 338, L. 2005, amended sec. 6, Ch. 590, L. 2003, by extending the termination date imposed by Ch. 590 to January 1, 2008. Effective October 1, 2005.

Effective Date: Section 4, Ch. 590, L. 2003, provided: "[This act] is effective on passage and approval." Approved May 9, 2003.

Retroactive Applicability: Section 5, Ch. 590, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002."

Termination: Section 6, Ch. 590, L. 2003, provided: "[This act] terminates January 1, 2006."

15-30-188. Credit for physician practicing in rural area — definitions.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 6, Ch. 771, L. 1991, provided: "[This act] is effective on passage and approval [approved May 15, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Administrative Rules

ARM 42.4.601 Definitions.

15-30-189. Tax credit for physician practicing in rural area.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 6, Ch. 771, L. 1991, provided: "[This act] is effective on passage and approval [approved May 15, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Administrative Rules

ARM 42.4.601 Definitions.

15-30-190. Credit for physician practicing in rural area — limitations — repayment.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 6, Ch. 771, L. 1991, provided: "[This act] is effective on passage and approval [approved May 15, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Administrative Rules

ARM 42.4.602 Rural physician's credit — qualifications.

ARM 42.4.603 Rural physician's credit — repayment.

15-30-191. Credit for physician practicing in rural area — rulemaking authority.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 771, L. 1991, provided: "A statement of intent is required for [this act] because the department of revenue is granted rulemaking authority in [section 4] [this section]. The department is to adopt rules to implement [this act]."

Effective Date — Retroactive Applicability: Section 6, Ch. 771, L. 1991, provided: "[This act] is effective on passage and approval [approved May 15, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Administrative Rules

Title 42, chapter 4, subchapter 6, ARM Individual — rural physician's credit.

Part 2
Withholding and Estimated Tax

Part Administrative Rules

Title 42, chapter 17, ARM Withholding and estimated tax payments.

Part Collateral References

85 C.J.S. Taxation §1779.

71 Am. Jur. 2d State and Local Taxation §602.

15-30-201. Definitions.

Compiler's Comments

2005 Amendment: Chapter 67 deleted definition of agricultural labor that read: ""Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife"; deleted definition of domestic or household service that read: ""Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care"; in definition of employee inserted (b) excluding a sole proprietor from the definition; in definition of employer at end of (a) inserted "or, if the person for whom the individual performs or performed the services does not have control of the payment of wages for the services, the person having control of the payment of wages", deleted former (b) that read: "(b) a person who pays $1,000 or more in wages within the current calendar year", deleted former (c) that read: "(c) a person who pays $1,000 or more in cash for domestic or household service in any quarter during the current calendar year", in (b) near beginning after "organization" inserted "that has or had in its employ one or more individuals performing services for it within this state", in (b)(ii) near middle after "company, or" deleted "a limited liability partnership that has filed with the secretary of state", in (b)(iii) near middle inserted reference to trustee in bankruptcy, in (b)(iv) at end deleted "who has or had in its employ one or more individuals performing services for it within this state", and in (c) at end substituted "or under Title 39, chapter 71, for workers' compensation purposes" for "is considered an employer for state income tax withholding purposes"; deleted definition of independent contractor that read: ""Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business"; deleted definition of wages that read: ""Wages", unless specifically exempted under subsection (7)(b), means all remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, and includes but is not limited to the following:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes .

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;

(iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;

(iv) payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;

(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or

(vi) payments that may not be taxed under federal law"; inserted definition of sole proprietor; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

Contingent Termination: Section 3, Ch. 634, L. 1983, provided: "This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation." Section 2, Ch. 67, L. 2005, deleted subsection (7)(b)(v), which was the amendment inserted by sec. 3, Ch. 634, L. 1983, that would have terminated on occurrence of contingency.

2003 Amendment: Chapter 114 in definition of wages in (b)(v) after "Internal Revenue Code" inserted "of 1954". Amendment effective October 1, 2003.

1997 Amendments: Chapter 42 substituted cites to and inserted parenthetical references to United States Code sections of the Internal Revenue Code (voided by Ch. 491 amendment); and made minor changes in style. Amendment effective March 12, 1997.

Chapter 491 inserted definition of domestic or household service; in definition of employee inserted (c) concerning individual who performs service for another individual or organization and inserted (d) concerning classes, grades, or types of employees; in definition of employer, in (a) at end, deleted "However, if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term means the person who has control of the payment of wages" and inserted (b) through (e) concerning persons considered employers; in definition of wages, in (a), inserted "unless specifically exempted under subsection (7)(b)", after "means all remuneration" deleted "other than fees paid to a public official", at end substituted "and includes but is not limited to the following" for "except that the term does not include remuneration paid", and inserted (i) through (iii) concerning commissions, bonuses, and remuneration, severance or continuation pay, and tips unless exempted, deleted former (a) through (k) listing types of pay excluded from definition of wages (see 1997 Session Law for former text), and inserted (b) excluding certain payments from definition; and made minor changes in style. Amendment effective January 1, 1998.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1995 Amendments — Composite Section: Chapter 254 in definition of wages deleted former (j) that read: "(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d)"; and made minor changes in style. Amendment effective March 27, 1995.

Chapter 479 in (6)(j), after "tips", inserted "or gratuities that are" and after "3402(k)" inserted "or service charges that are covered by section 3401"; and made minor changes in style. Amendment effective April 15, 1995.

Chapter 529 inserted definition of independent contractor; adjusted subsection references; and made minor changes in style. Amendment effective April 25, 1995.

Chapter 572 inserted definition of lookback period; adjusted subsection references; and made minor changes in style. Amendment effective May 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Effective Date — Applicability: Section 5, Ch. 479, L. 1995, provided that this act applies to contracts entered into on or after April 15, 1995.

Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

1989 Amendment: Inserted (4)(l) excluding remuneration paid by employer for dependent care assistance actually provided to or on behalf of employee and for which credit is allowed under 15-30-186 or 15-31-131, subject to limitations in section 129(b) of the Internal Revenue Code as it read January 1, 1989; and made minor changes in phraseology.

Applicability: Section 6, Ch. 706, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1983 Amendments: Chapter 128, in (4)(a), inserted "regular" before "armed forces" and inserted ", as defined in 10 U.S.C. 101(33)"; and inserted (4)(j) relating to wages for National Guard and reserve training.

Chapter 634 inserted (4)(k) that read: "as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging."

Part of Section Not Codified: Subsection (a) of section 84-4942, R.C.M. 1947, which provides a definition of "department" and is redundant with 15-30-101, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 246, L. 1955, as amended by sec. 185, Ch. 516, L. 1973.

Administrative Rules

ARM 42.17.101 Definitions.
ARM 42.17.103 Other payments.
ARM 42.17.133 Treatment of supplemental wages — state income tax withholding.
ARM 42.17.206 Wages.
ARM 42.17.207 Rental of capital assets — not wages.
ARM 42.17.208 Employee expenses — not wages.
ARM 42.17.209 Juror fees, insurance premiums, annuities, director fees — not wages.
ARM 42.17.210 Determination of independent contractors.
ARM 42.17.219 Filings and payments due after termination of wage payments.

15-30-202. Withholding of tax from wages.

Compiler's Comments

2005 Amendment: Chapter 67 in (1) at beginning after "employer" deleted "except an independent contractor" and near middle after "payment of wages" deleted "for employment as defined in 15-30-256"; inserted (3) providing that a disregarded entity and its owner are considered to be a single employer; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1997 Amendments: Chapter 42 at beginning of first sentence, after "employer", inserted "except an independent contractor"; and in second sentence substituted "10 U.S.C. 101" for "10 U.S.C. 101(33)" (voided by Ch. 491 amendment). Amendment effective March 12, 1997.

Chapter 491 in (1) inserted "for employment as defined in 15-30-256" and deleted second sentence that read: "Persons on active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), are not subject to the provisions of this section"; inserted (2) concerning employer who maintains two or more separate establishments; and made minor changes in style. Amendment effective January 1, 1998.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1995 Amendment: Chapter 254 near middle of first sentence, before "withhold", deleted "deduct and"; near middle of second sentence, after "10 U.S.C. 101(33)", deleted "and members of

the national guard and reserves participating in training as provided in 5 U.S.C. 5517(d)"; and made minor changes in style. Amendment effective March 27, 1995.

1983 Amendment: Near middle, inserted "regular" before "armed forces"; following "United States" inserted "as defined in 10 U.S.C. 101(33) and members of the national guard and reserves participating in training as provided in 5 U.S.C. 5517(d)".

Administrative Rules

ARM 42.17.105 Computation of withholding.

ARM 42.17.111 Who must withhold Montana state income tax and who subject to withholding — exemptions.

ARM 42.17.131 Withholding allowances.

ARM 42.17.133 Treatment of supplemental wages — state income tax withholding.

ARM 42.17.134 Reciprocal agreement — North Dakota.

ARM 42.17.135 False statements by employees — recomputation of withholding.

Case Notes

On-Reservation Taxation: Plaintiffs' request for a prohibitive injunction to preclude on-reservation employers from withholding state taxes was denied because of due process and sovereign immunity considerations. Dillon v. St., 451 F. Supp. 168 (D.C. Mont. 1978), reversed at 634 F2d 463 (9th Cir. 1980).

15-30-203. Employer liable for withholding taxes and statements.

Compiler's Comments

2005 Amendment: Chapter 67 throughout section changed "reports" to "statements"; in (1) near beginning of first sentence after "liable for the" deleted "reports and" and at end inserted "annual statements required by 15-30-206 and 15-30-207" and at beginning of second sentence inserted "The payments required by 15-30-204 and the amounts required to be deducted and withheld"; inserted (5)(a) regarding partner joint and several liability; at beginning of (5)(b) substituted "each member of a" for "a member-managed", near middle after "partnership" substituted "or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements" for "with liability for filing reports and remitting", and at end after "interest" substituted "due while a member" for "owed extending to each member who was a member at the time the report or taxes were due"; inserted (5)(c) regarding joint and several liability of members of a single-member limited liability company; in (5)(d) at beginning substituted "each manager of" for "For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by", near middle after first "company" substituted "is" for "the managers of the limited liability company are", and at end substituted "due while a manager" for "owed"; deleted former (7) that read: "(7) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest due"; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1997 Amendment: Chapter 491 in (1), in first sentence near middle, inserted "the reports and payments required by 15-30-204"; in (2), near beginning after "The officer", deleted "or employee" and substituted "responsibility" for "duty"; inserted (3) concerning liability of officer of corporation for filing reports; inserted (4) concerning liability of individual in case of corporate bankruptcy; inserted (5) concerning liability of member-managed limited liability company; inserted (6) concerning personal liability of managers of limited liability company; inserted (7) concerning personal liability of partners of limited liability partnership; and made minor changes in style. Amendment effective January 1, 1998.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1991 Amendment: Near middle of (2), after "who", deleted "willfully"; and made minor changes in style. Amendment effective February 19, 1991.

Retroactive Applicability: Section 3, Ch. 33, L. 1991, provided: "[Section 1] [15-30-203] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Administrative Rules

ARM 42.17.120 Employer's failure to withhold.

Case Notes

Statute and Administrative Rule Not Composing Unconstitutional Dual Tax: Under this section, each employer is liable for state withholding taxes. If the employer fails to deduct and withhold the required amounts and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer. The state is not allowed to collect the same withholding taxes twice. However, under ARM 42.17.120, the employer will not be relieved from liability for the required withholding taxes unless it can show that the income tax against which the required withholdings may be credited has been paid. Here, an employer claimed that the Department of Revenue assessed both the employer and its workers for the same withholding taxes, resulting in an unconstitutional dual tax. The District Court concluded that although the statute and the administrative rule placed the burden of proving that withholding taxes were paid on the employer, they did not create a dual tax. The court noted that if the employer was in fact assessed state withholding taxes, the employer had but to show that the worker at issue also paid the tax. The Supreme Court agreed. The statutory enactments do not create a dual tax, but rather impose a burden on an employer to show that withholding taxes were paid, and if they were paid, the employer is relieved from liability so that only one tax is ultimately assessed. Spain v. Dept. of Revenue, 2002 MT 146, 310 M 282, 49 P3d 615 (2002).

15-30-204. Schedules for remitting income withholding taxes — records.

Compiler's Comments

2005 Amendment: Chapter 67 in (1) at beginning deleted "For the purposes of this section" and near end after "taxes" substituted "withheld from employee wages" for "in accordance with the appropriate remittance schedule"; in (1)(c) near middle after "remit on" substituted "an "annual schedule"" for "a "quarterly schedule"" and at end substituted "February 28 of the year following payment of wages" for "the last day of the month following the close of each calendar quarter"; deleted former (1)(d) that read: "(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose total liability for state income tax withholding during the preceding lookback period was less than $1,200 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following payment of wages"; deleted former (2)(a) through (2)(c) that read: "(a) Every employer is required to file a report quarterly in the form required by the department.

(b) The report is due on or before the last day of the month following the close of the calendar quarter.

(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year"; in (1)(d) near beginning after "no" substituted "withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted" for "payroll during a quarter may elect to report "no wages paid this quarter" using alternative reporting methods provided in department rules"; deleted former (2)(e) that read: "(e) An employer, in addition to the scheduled reports and remittances, must file the annual report and wage statements as required by 15-30-207"; inserted (2) requiring a noncompliant employer to remit on the monthly schedule; deleted former (3)(a) and (3)(b) that read: "(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the remittance schedule for each employer.

(b) If an employer subject to the provisions of subsection (1)(d) does not comply with the requirements of this section, the employer may be subject to the quarterly reporting schedule provided in subsection (2)(a) and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from the employer's subsequent filing and payment history that the employer will file and remit in a timely fashion"; in (4) at beginning deleted "Except as provided in subsection (3)(g)" and near beginning after "subject to the" substituted "monthly" for "quarterly"; in (5) near beginning after "employer" deleted "who is subject to the quarterly schedule in subsection (1)(c)", at end after "basis" inserted "than is required by subsection (1)", and deleted former second sentence that read "An employer who is on an annual schedule may elect to remit monthly or quarterly payments"; deleted former (3)(f) and (3)(g) that read: "(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must begin withholding state income tax on or before the last day of the month following the quarter in which the wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose estimated annual state income tax withholding is not expected to exceed $1,199 for the calendar year may remit according to the annual schedule and report annually on or before February 28"; in (8) near beginning of first sentence after "keep" deleted "true and"; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1999 Amendment: Chapter 184 in (1)(d) near middle after "withholding" deleted "or if state income tax withholding is not required, whose total liability for old fund liability tax"; in (3)(g) near middle after "withholding" deleted "or if state income tax withholding is not required, whose estimated old fund liability tax"; and made minor changes in style. Amendment effective March 26, 1999.

1997 Amendment: Chapter 491 in (1) substituted current text concerning tax remittance schedule for former (1) concerning duty of employer subject to 15-30-202 and 15-30-203 whose liability for withholding was $12,000 or greater to file return and make payment (see 1997 Session Law for former text); in (2) substituted current text concerning duty of employer to file report quarterly for former (2) regarding duty of employer subject to 15-30-202 and 15-30-203 whose liability for withholding was less than $12,000 but greater than $1,199 to file return and make payment (see 1997 Session Law for former text); in (3)(a) substituted current text concerning payment according to remittance schedule for former (3)(a) and (3)(b) regarding duty of employer if total amount of tax withholding is less than $1,200 and regarding election to remit monthly payments (see 1997 Session Law for former text); in (3)(b), near beginning, substituted "subsection (1)(d) does not comply with the requirements of this section" for "subsection (3) does not file the annual return required by subsection (3)(a)", substituted "may be" for "is", substituted "quarterly reporting schedule provided in" for "payment and filing provisions of", near middle inserted "and to the quarterly remittance schedule provided in subsection (1)(c)", near end, after "filing", inserted "and payment", and inserted "and remit"; in (3)(d), at beginning, inserted exception clause and near middle substituted "quarterly remittance schedule in subsection (1)(c)" for "provisions of subsection (2)"; inserted (3)(e) through (3)(h) concerning employer tax remittance schedules and methods; in (4), at end, substituted "15-1-703" for "15-30-312 with respect to jeopardy assessments of income tax"; inserted (5) requiring employers to keep payroll records; and made minor changes in style. Amendment effective January 1, 1999.

Pursuant to sec. 39(1), Ch. 491, L. 1997, a coordination section, the amendments made to this section by Ch. 123, L. 1997, were rendered void.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1995 Amendment: Chapter 572 at beginning of first sentence of (1) deleted "Except as provided in subsection (3), on or before the last day of April, July, October, and January", after "15-30-203" inserted "whose total liability for withholding during the preceding lookback period was $12,000 or greater", before "shall pay" deleted "except as provided in subsection (2)", and at end, after "preceding", substituted "payroll period" for "quarter", inserted second sentence requiring payment to be submitted on or before date on which federal income tax weekly withholding payments are due, inserted third sentence requiring employer to file return on or before last day of April, July, October, and January, in fourth sentence, after "employers", substituted "subject to this subsection" for "paying weekly", and inserted fifth sentence requiring employer to file annual statement required by 15-30-207; in first sentence in (2), after "withholdings", substituted "during the preceding lookback period was less than $12,000 but greater than $1,199 shall remit monthly payment" for "equaled or exceeded $300,000 for the preceding calendar year shall remit a weekly payment" and at end substituted "month" for "week", in second sentence substituted "monthly payment must be submitted on or before the 15th day of the month following the payment of the wages" for "weekly payment must be submitted on or before the date on which federal income tax weekly withholding payments are due", inserted third sentence requiring employer to file annual return and annual statement on or before February 28 of year following payment of wages, and inserted fourth sentence requiring annual returns for employers to be used to summarize and adjust payments and overpayment requests; in first sentence in (3)(a) substituted "is less than $1,200 for the preceding lookback period" for "is less than $10 in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in subsection (1), but in lieu thereof such", after "department" inserted "together with the annual statement required by 15-30-207", and after "shall" inserted "at the same time";

inserted (3)(b) authorizing employer to elect to remit monthly payments during entire year; inserted (3)(c) subjecting employer who does not file required annual return to payment and filing provisions of subsection (2); inserted (4)(a) requiring Department to notify employers of remittance schedules for following calendar year on or before November 1 of each year; inserted (4)(b) subjecting new employer or employer with no filing history to provisions of subsection (2) until Department determines employer's proper remittance schedule; and made minor changes in style. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

1989 Amendment: In (3), near middle, substituted "February 28" for "February 15".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1986 Amendment: In (1) at beginning inserted "Except as provided in subsection (3)", near beginning after "January", deleted "of each calendar year", in middle of first sentence inserted "except as provided in subsection (2)", at end of first sentence substituted "quarter" for "quarterly period of 3 months", and inserted second sentence that reads: "Quarterly returns for employers paying weekly shall be used to summarize and adjust payments and request refunds of overpayments"; inserted (2) requiring weekly payments by employers with annual withholdings of $300,000 or more; in (3) near middle substituted "in subsection (1)" for "in the preceding subsection"; and made minor changes in phraseology.

Effective Date — Applicability: The 1986 amendment was effective October 1, 1986, and applies to the reporting and payment period beginning April 1, 1987, and thereafter.

Administrative Rules

ARM 42.2.503 Jeopardy assessment and emergency execution.

ARM 42.15.317 Filing date.

ARM 42.17.113 Payments.

ARM 42.17.203 Records to be kept by employer.

ARM 42.17.204 Remittance of tax by employers.

ARM 42.17.219 Filings and payments due after termination of wage payments.

ARM 42.17.222 Demand of payment or reports if employer transfers or discontinues business.

15-30-205. Amount withheld considered as tax collected.

Administrative Rules

ARM 42.17.219 Filings and payments due after termination of wage payments.

Case Notes

Indians — Withholding Tax — Refund: Montana income tax erroneously withheld from wages of an Indian employed by the federal government on a reservation may only be recovered by filing a claim for refund with the state taxing authority, since the employer is not liable under Montana law. Clincher v. U.S., 499 F2d 1250 (9th Cir. 1974).

15-30-206. Annual withholding statement.

Compiler's Comments

1989 Amendment: Near beginning substituted "January 31" for "February 15".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

Administrative Rules

ARM 42.17.114 Annual reconciliation and wage statements.

ARM 42.17.219 Filings and payments due after termination of wage payments.

Collateral References

85 C.J.S. Taxation §1699.

15-30-207. Annual statement by employer.

Compiler's Comments

1999 Amendment: Chapter 184 in (1) at end after "15-30-209" deleted "and 39-71-2503". Amendment effective March 26, 1999.

1997 Amendment: Chapter 491 deleted (3) that read: "(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1)

subjects the employer to a penalty of $5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be $50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts"; and made minor changes in style. Amendment effective January 1, 1999.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1993 Amendment: Chapter 637 at end of (1) inserted "and 39-71-2503". Amendment effective May 13, 1993.

Severability: Section 10, Ch. 637, L. 1993, was a severability clause.

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

1989 Amendment: In (1), near beginning, and in (3), near middle, substituted "February 28" for "February 15".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1983 Amendment: In (1), substituted "wage and tax statement for each employee" for "statement"; inserted (3) imposing penalties for failure to furnish a statement; and made minor changes in phraseology.

Administrative Rules

ARM 42.15.317 Filing date.

ARM 42.17.114 Annual reconciliation and wage statements.

ARM 42.17.219 Filings and payments due after termination of wage payments.

15-30-208. Withheld taxes held in trust for state.

Compiler's Comments

1997 Amendment: Chapter 491 deleted (2) through (4) concerning warrant for distraint, tax lien, and third parties subject to lien (see 1997 Session Law for former text); and made minor changes in style. Amendment effective January 1, 1999.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1987 Amendment: Inserted (3) relating to third-party interest recorded before warrant for distraint; and inserted (4) relating to false affidavit.

Applicability: Section 3, Ch. 489, L. 1987, provided: "This act is effective on passage and approval and applies to taxes due on and after the effective date of this act." Effective April 15, 1987.

1985 Amendment: Inserted last sentence of (2) relating to priority date of tax lien.

Effective and Applicability Dates of 1985 Amendment: Section 3, Ch. 34, L. 1985, read: "This act is effective on passage and approval and applies to taxes due after January 1, 1985." The chapter was approved February 22, 1985.

1981 Amendment: Divided the first sentence of the section into two sentences and renumbered them subsections (1) and (2); in first sentence of (2) substituted "tax is not paid when due" for "tax is not paid within 60 days after the same becomes due"; at end of first sentence of (2) substituted "the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for "the department shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in 15-30-311 with respect to warrants relating to unpaid income taxes".

Administrative Rules

ARM 42.17.136 Affidavit — form and content.

ARM 42.17.137 Affidavit — time period for execution.

ARM 42.17.138 Record of affidavit — notice.

Collateral References

85 C.J.S. Taxation §1699.

15-30-209. Violations by employer — penalties, interest, and remedies.

Compiler's Comments

2005 Amendment: Chapter 67 deleted former (2) through (5) that read: "(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date,

the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.

(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

(5) (a) A summons penalty of $50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a summons pursuant to 15-1-301.

(b) If an employer fails to honor the summons provided in subsection (5)(a), an additional $100 penalty must be added to the liability"; in (2) at beginning after "addition to" substituted "the penalties imposed by 15-1-216" for "any other penalty provided by law"; deleted former (7) through (10) that read: "(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes"; and made minor changes in style. Amendment effective March 24, 2005.

The amendment to this section made by sec. 7, Ch. 594, L. 2005, was rendered void by sec. 41, Ch. 594, L. 2005, a coordination section.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

2003 Amendment: Chapter 95 in (5)(a) in two places substituted "summons" for "subpoena" and at end substituted "15-1-301" for "15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703"; and in (5)(b) near middle substituted "summons" for "subpoena". Amendment effective March 24, 2003.

2001 Amendment: Chapter 108 inserted (1) requiring penalty and interest to be added to delinquent withholding taxes; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 427 in (2) inserted "under 15-1-216"; deleted former (2)(b) that read: "(b) If the report is not received prior to the issuance of a notice of delinquent report, a $50 penalty must be assessed at the same time the notice is issued"; deleted former (3)(a) that read: "(a) Taxes unpaid on the date on which they are due and payable are subject to a penalty of 2% per month, or any portion of a month, on the late paid tax with a maximum penalty of 24%"; in (3) substituted "waived pursuant to 15-1-206" for "suspended" and near end substituted "waiver" for "suspension"; deleted former (4) that read: "(4) An employer must be assessed interest at the rate of 18% a year, computed at 1 1/2% a month or fraction of a month, on any remaining unpaid tax required to be paid" in (9) in second sentence substituted "The department may bring an action as provided in 15-30-321(1)" for "Notwithstanding the provisions of 15-30-321(3), the department may bring an action as provided in that subsection"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 491 in (1) substituted current text concerning filing a report or remitting a tax after the due date for former provision requiring imposition of same penalties as

imposed by 15-30-321 (see 1997 Session Law for former text); inserted (2) through (10) concerning late report penalty, late payment penalty, interest, subpoena penalty, waiver, warrant for distraint, tax lien, and civil action to recover penalty and delinquent taxes; in (11), at end, inserted "unless otherwise specifically addressed in this part"; and made minor changes in style. Amendment effective January 1, 1999.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

Part of Section Not Codified: A part of section 84-4955, R.C.M. 1947, which grants rulemaking authority to the Department and is redundant with 15-30-305, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 246, L. 1955, as amended by sec. 191, Ch. 516, L. 1973.

Administrative Rules

ARM 42.17.113 Payments.
ARM 42.17.114 Annual reconciliation and wage statements.
ARM 42.17.120 Employer's failure to withhold.
ARM 42.17.131 Withholding allowances.
ARM 42.17.133 Treatment of supplemental wages — state income tax withholding.
ARM 42.17.134 Reciprocal agreement — North Dakota.
ARM 42.17.135 False statements by employees — recomputation of withholding.
ARM 42.17.218 Employer registration.
ARM 42.17.219 Filings and payments due after termination of wage payments.

15-30-210. Remitting withholding taxes electronically — employer option — timely remittance.

Compiler's Comments

2005 Amendment: Chapter 67 in (1) at beginning inserted "Subject to subsection (2)", after "employer" deleted "within 30 days of notification of the employer's remittance schedule as required by 15-30-204", after "may" deleted "elect to", and deleted former second and third sentences that read: "An election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. An employer may cancel the election provided in this section by providing written notice of the cancellation to the department"; deleted former beginning of (2) that read: "An employer who elects pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department"; inserted (2) requiring an employer to obtain department approval before remitting withholding taxes electronically; inserted (3) providing that withholding taxes that are remitted electronically are considered timely if remitted within 5 days of the due date; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1999 Amendment: Chapter 184 in (1) near middle after "withholding" deleted "and old fund liability tax". Amendment effective March 26, 1999.

Remittance of 1995 Fourth Quarter Tax: Section 9, Ch. 572, L. 1995, provided: "Notwithstanding the provisions of [sections 1 and 6] [15-30-210 and 39-71-2501], the provisions of 15-30-204 and 15-30-207, as they read on January 1, 1995, govern and control the payment of tax for wages paid during 1995 and the filing of all required employer returns."

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

Administrative Rules

ARM 42.5.213 Electronic funds — backup situation.
ARM 42.17.113 Payments.

15-30-215. Voluntary state withholding from federal annuity — agreement with federal government.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 243, L. 1993, provided: "A statement of intent is required for this bill because [section 1] [15-30-215] grants rulemaking

authority to the department of revenue to implement voluntary withholding for state income tax from federal annuity payments under federal law. The rules should conform to federal requirements and provide a way for residents to apply for withholding."

Effective Date: Section 3, Ch. 243, L. 1993, provided: "[This act] is effective July 1, 1993."

15-30-241. Estimated tax — payment — exceptions — interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (5)(a) in first sentence after "interest" deleted "equal to 12% a year" and after "underpayment" inserted "as provided in 15-1-216". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2001 Amendment: Chapter 143 in (6) after "gross income, as defined in" substituted "15-30-101" for "15-30-101(7)". Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1999 Amendment: Chapter 427 in (5)(a) in first sentence substituted "interest equal to 12% a year" for "a penalty equal to 10% a year"; in (5)(a) at beginning of second sentence substituted "The interest" for "The penalty"; in (5)(b) and (5)(c) substituted "amount of interest due" for "penalty"; in (5)(d) substituted "interest" for "penalty"; in (5)(e) at beginning substituted "Interest may not be charged" for "A penalty may not be imposed"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1992 Special Session Amendment: Chapter 17 substituted present text regarding payment of estimated tax, exceptions, and penalty for former language that read: "(1) Every individual except farmers, ranchers, or stockmen shall, at the time prescribed in subsection (3) of this section, make a declaration of his estimated tax for the taxable year if his net income from sources other than wages, salaries, bonuses, or other emoluments can reasonably be expected to equal or exceed his net income from wages, salaries, bonuses or other emoluments, which are subject to withholding.

(2) In the declaration required under subsection (1) of this section, the individual shall state:

(a) the amount which he estimates as the amount of tax under 15-30-103 for the taxable year;

(b) the amount which he estimates will be withheld from wages paid by his employer if said individual is an employee;

(c) the excess of the amount estimated under subsection (2)(a) over the amount estimated under subsection (2)(b), which excess for purposes of this section shall be considered the estimated tax for the taxable year;

(d) such other information as may be prescribed in rules promulgated by the department.

(3) The declaration required under subsection (1) of this section shall be filed with the department on or before April 15 of the taxable year, except that if the requirements of subsection (1) of this section are first met:

(a) after April 1 and before October 1 of the taxable year, the declaration shall be filed on or before October 15 of the taxable year;

(b) after October 1 of the taxable year, the declaration shall be filed on or before February 15 of the succeeding taxable year.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules prescribed by the department.

(5) If, on or before February 15 of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on his return as payable, then under rules prescribed by the department:

(a) if the declaration is not required to be filed during the taxable year but is required to be filed on or before such February 15, such return shall for the purposes of this section be considered as such declaration; and

(b) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made or in the last amendments thereof, such return shall for the purposes of this section be considered as the amendment of the declaration permitted by subsection (4) of this section to be filed on or before such February 15.

(6) The department shall promulgate rules governing reasonable extensions of time for filing declarations and paying the estimated tax except in the case of taxpayers who are abroad, and no such extension shall be for more than 6 months.

(7) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(8) Any individual who fails to file a declaration of estimated tax as required by this section is not subject to the penalties set forth in 15-30-321."

Effective Dates — Applicability: Section 4, Ch. 17, Sp. L. January 1992, provided: "(1) Except for the purposes of subsection (2), [this act] is effective July 1, 1992, and applies to tax years beginning after December 31, 1992.

(2) For the purposes of promulgating administrative rules to implement [section 1] [amending 15-30-241], [this act] is effective on passage and approval." Approved February 4, 1992.

Part of Section Not Codified: A part of section 84-4939, R.C.M. 1947, which was temporary in nature, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 12, Ch. 260, L. 1955, as amended by sec. 183, Ch. 516, L. 1973 and sec. 1, Ch. 374, L. 1977.

Section Not Codified: Section 84-4941, R.C.M. 1947, which is a severability section, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 260, L. 1955.

Administrative Rules

ARM 42.15.315 Original and amended returns.

Title 42, chapter 17, subchapter 3, ARM Estimated tax payments.

Collateral References

Taxation *key* 1079.

85 C.J.S. Taxation §1699.

71 Am. Jur. 2d State and Local Taxation §596.

15-30-246. Policy and purpose.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 488, L. 1993, provided: "[This act] is effective on passage and approval [approved April 22, 1993] and applies retroactively, within the meaning of 1-2-109, to all lottery proceeds subject to the withholding tax regardless of when the prize was won."

15-30-247. Withholding of lottery winnings.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 488, L. 1993, provided: "[This act] is effective on passage and approval [approved April 22, 1993] and applies retroactively, within the

meaning of 1-2-109, to all lottery proceeds subject to the withholding tax regardless of when the prize was won."

Case Notes

Proceeds of Multistate Lottery Ticket Purchased and Redeemed in Montana Taxed as "Income Earned in Montana" — Residency of Winner Not Determinative: The Sharps won $47 million in the multistate lottery game known as Lotto America. The Sharps, who were Montana residents when they won the lottery but later moved to Washington, challenged taxation of their earnings by the Montana Department of Revenue in a declaratory judgment action. The District Court held that all of the annual lottery payments made to the Sharps by the Montana Lottery on behalf of Lotto America were taxable as income earned in Montana. Before the Supreme Court, the Sharps argued that: (1) the version of 15-30-105 in effect in 1991 governs their situation; (2) their annual payments from the lottery are payments in the nature of an annuity that are exempt under the 1991 version of 15-30-131(1); and (3) ARM 42.16.1113(1), exempting from taxation income from intangible personal property, applies to their situation. In beginning its analysis, the Supreme Court noted that pursuant to the statement of legislative intent in this section, no statute or administrative rule defines the proceeds of the lottery paid to the Sharps as income from intangible personal property or exempts the winnings from taxation. The Supreme Court also noted that the Department administrative rule relied upon by the Sharps cannot change a state statute and that the annual payments won by the Sharps are not an annuity or other income but are the prize itself. The Supreme Court then addressed the issue of which statute applied, holding that under the rationale of Couchot v. St. Lottery Comm'n, 659 NE 2d 1225 (Ohio 1996), certiorari denied, 519 US 810, 136 L Ed 2d 18, 117 S Ct 55 (1996), the statute in effect at the time of the annual distribution of the prize money, in this case, the 1992 version of 15-30-105, governs the Sharps' situation. Relying upon Couchot, Harvester Co. v. Dept. of Taxation, 322 US 435 (1944), and Stark v. Comptroller, 554 A2d 458 (Md. App. 1989), the Supreme Court held that under the version of 15-30-105, as amended by a 1992 special session of the Legislature, the Sharps' lottery winnings constitute "income earned in Montana" because they were "earned" in the state in which they were won and are therefore taxable in 1992 and subsequent years. Sharp v. Dept. of Revenue, 284 M 424, 945 P2d 38, 54 St. Rep. 949 (1997).

15-30-248. Determination of employer status.

Compiler's Comments

2005 Amendment: Chapter 67 near middle deleted reference to part 2 of chapter 30 and deleted former second sentence that read: "A final decision of the workers' compensation court may be appealed as provided in 39-71-2904". Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1999 Amendments — Composite Section: Chapter 184 at end after "withholding" deleted "and old fund liability tax to be paid". Amendment effective March 26, 1999.

Chapter 442 in first sentence near beginning substituted "workers' compensation court" for "board of personnel appeals" and near middle after "part 2" deleted "which may be subject to judicial review, as provided in 39-51-2404, at the discretion of the taxpayer"; and inserted second sentence concerning appeal of workers' compensation court decision. Amendment effective April 23, 1999.

Preamble: The preamble attached to Ch. 442, L. 1999, provided: "WHEREAS, Montana's current employment statutes constitute a complex and often confusing body of law requiring specialized skills and knowledge to interpret; and

WHEREAS, most employers in the private sector employ 10 or fewer employees and function without the assistance of personnel officers or in-house legal staff; and

WHEREAS, employment-related disputes are currently heard in many different forums, including the Board of Personnel Appeals for wage and hour issues, the Board of Labor Appeals for unemployment insurance issues, the Workers' Compensation Court for workers' compensation issues, the Commission for Human Rights for discrimination issues, and District Courts for the resolution of wrongful discharge conflicts; and

WHEREAS, the 1997 Legislature enacted House Joint Resolution No. 10, which directed the Department of Labor and Industry to convene a group of interested parties to explore, investigate, and report to the 1999 Legislature optional approaches to an integrated dispute resolution process for employment-related issues; and

WHEREAS, members of the Legislature and interest groups, including employers and employees from the private and public sectors, formed the House Joint Resolution No. 10 work

group, which convened in September 1997 to begin studying the issues related to the employment dispute resolution process; and

WHEREAS, after approximately 10 meetings during the 1997 interim, the work group issued its report in November 1998, recommending that legislation be prepared for consideration by the 1999 Legislature to revise the dispute resolution process for employment-related issues."

Severability: Section 28, Ch. 442, L. 1999, was a severability clause.

Effective Date: Section 18(2), Ch. 529, L. 1995, provided that this section is effective July 1, 1996.

Administrative Rules

ARM 42.17.210 Determination of independent contractor.

ARM 42.17.223 Determining employee status.

15-30-255. Credits and refunds — period of limitations.

Compiler's Comments

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

Effective Date: Section 40(2), Ch. 491, L. 1997, provided: "[Sections 3 through 7 [section 4 is 15-30-255], 9 through 12, 17 through 19, 21 through 23, 25 through 32, and 34] are effective January 1, 1998."

Part 3
Administration and Collection

Part Law Review Articles

Montana's Tax Appeals Process: A Guide Through the Maze, Woodgerd, 51 Mont. L. Rev. 190 (1990).

Part Collateral References

Taxation *key* 1071 through 1104.

85 C.J.S. Taxation §§973, et seq., 1779, 1780.

71 Am. Jur. 2d State and Local Taxation §§596 through 607; 72 Am. Jur. 2d State and Local Taxation §§737 through 761, 763 through 811.

15-30-301. Information agents' duties.

Compiler's Comments

2003 Amendment: Chapter 114 in (1)(a) in two places after "Code" substituted a U.S.C. reference for "of 1965 or as that section may be amended"; in (1)(d) in temporary version substituted "United States department of the treasury" for "internal revenue service"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 461 inserted (1)(d) requiring reporting of proceeds from real estate transactions; in (2) in second sentence after first "form" substituted "should be identical to the comparable federal form or the department may allow submission of a copy of the federal form or submission by magnetic media or in electronic format" for "shall be as nearly identical to the comparable federal form as possible"; inserted (3) providing a penalty for an information agent who fails to file a return; and made minor changes in style. Amendment effective July 1, 2001, and terminates December 31, 2004.

Report to Interim Committee: Section 2, Ch. 461, L. 2001, provided: "The department of revenue shall monitor the reports filed pursuant to 15-30-301(1)(d) and report to the revenue and taxation interim committee [now the revenue and transportation interim committee], on a periodic basis, the results of requiring the reporting and any other factors the department may notice as a result of the required reporting.

1991 Amendment: Inserted (1)(b) requiring an information agent to report interest income in excess of $10 from obligations of another state or political subdivision of another state; in (1)(c) inserted reference to subsection (1)(b); and made minor changes in style. Amendment effective March 19, 1991.

Retroactive Applicability: Section 2, Ch. 89, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

1989 Amendment: In (1)(a) inserted "royalties"; and in (1)(b) deleted "royalties".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

Section Not Codified: Section 84-4941, R.C.M. 1947, which is a severability section, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 260, L. 1955.

Administrative Rules

ARM 42.17.122 Returns of information agents.

Collateral References

Taxation *key* 1071.
85 C.J.S. Taxation §§973, 1699, 1719, 1756 through 1759.
71 Am. Jur. 2d §§596, 602.

15-30-302. Oaths administered by director of revenue and designated employees.

Collateral References

Taxation *key* 1079.
85 C.J.S. Taxation §1757.
71 Am. Jur. 2d State and Local Taxation §599.

15-30-303. Confidentiality of tax records.

Compiler's Comments

2005 Amendment: Chapter 595 inserted (8)(h) related to small business health insurance tax credit. Amendment effective July 1, 2005.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

1999 Amendment: Chapter 461 in first sentence in (8)(g) after "transportation" deleted "the ratio of gross", after "farm income" substituted "information" for "to total gross income", and in two places after "15-70-223" inserted reference to 15-70-362. Amendment effective July 1, 1999, and terminates June 30, 2001.

1995 Amendments: Chapter 529 in (6), in introductory clause, inserted reference to taxpayer return information; in (6)(a) substituted "be used for the purpose of investigation and prevention of noncompliance, tax evasion" for "prevent and detect" and at end substituted "insurance laws" for "compensation program"; and in (6)(b) substituted "be used for the purpose of investigation and prevention of noncompliance" for "prevent and detect". Amendment effective April 25, 1995.

Chapter 546 in (8)(b) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments — Composite Section: Chapter 20 in (1), near beginning in exception clause, inserted reference to subsections (7) and (8) and after "unlawful" deleted "for the department or any deputy, assistant, agent, clerk, or other officer or employee"; in (1)(a), in two places, inserted "individual"; inserted (8)(f) regarding the furnishing of individual tax information to the Legislative Fiscal Analyst and the Office of Budget and Program Planning; and made minor changes in style.

Chapter 245 inserted (8)(g) allowing the Department of Transportation access to certain tax information to determine whether gasoline use qualifies as agricultural use for refund purposes; and made minor changes in style. Amendment effective April 1, 1993.

Chapter 410 inserted (6) stating that the section may not be construed to prohibit release of certain information by the Department to the Department of Labor and Industry and to the state workers' compensation fund to detect fraud and abuse in the unemployment compensation and workers' compensation programs; inserted (8)(c) requiring the Department to give the Department of Labor and Industry certain information for purposes of preventing fraud and abuse in unemployment and workers' compensation programs; and made minor changes in style.

Chapter 520 in (3)(c), after "15-30-311", deleted "and 15-30-322". Amendment effective April 24, 1993.

Style changes were slightly different in the chapters. In each case, the codifier chose the most appropriate.

Effective Dates — Applicability: Section 3, Ch. 245, L. 1993, provided: "[This act] is effective on passage and approval and applies to claims for refunds filed on or after [the effective date of this act]." Effective April 1, 1993.

Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

1989 Amendments: Chapter 358 inserted (7)(d) requiring Department to furnish to Board of Regents information required under 20-26-1111; and made minor change in phraseology.

Chapter 416 inserted (7)(c) relating to residency requirement information for Department of Fish, Wildlife, and Parks. Amendment effective April 3, 1989.

1985 Amendment: Inserted (7)(b) compelling release of information to prevent public assistance fraud.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

Statement of Intent: The statement of intent attached to Ch. 131, L. 1985, provided: "A statement of intent is necessary for this act in order to clarify the type of notice the legislature intends to be given to applicants for public assistance by the department of social and rehabilitation services [now department of public health and human services]. It is the intent of the legislature that the notice may be contained in the initial release of confidential information which an applicant signs when applying for public assistance. The notice shall be reasonably simple and specific as to the type of information obtainable.

It is the further intent of the legislature that rules adopted by the department of revenue to implement this act may not be burdensome to the department of social and rehabilitation services [now department of public health and human services] in obtaining the information so long as the notice has been given. The department of revenue shall cooperate with the department of social and rehabilitation services [now department of public health and human services] in achieving the purpose of this act, which is to allow easy access to information obtainable from other sources in order to reduce fraud in obtaining public assistance."

Administrative Rules

Title 42, chapter 4, subchapter 5, ARM Individual — capital gain credit.

ARM 42.17.210 Determination of independent contractor.

Collateral References

Taxation *key* 1079.

71 Am. Jur. 2d State and Local Taxation §590.

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information. 1 ALR 4th 959.

Constitutionality, construction, and application of statutory provisions regarding publicity or confidential and privileged character of return. 151 ALR 1049.

15-30-304. Furnishing copy of federal return — copy of share of income, credit, and deductions schedule — copies of federal corrections — filing amended return required.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 68 in second sentence substituted "the taxpayer shall file an amended Montana return with the department" for "the taxpayer shall report the change or correction to the department"; in third sentence substituted "an amended Montana return" for "an amended return"; and made minor changes in style. Amendment effective March 15, 1999.

Chapter 184 deleted former second sentence that read: "Partners of a partnership, shareholders of a subchapter S. corporation, and members or managers of a limited liability company who are subject to the workers' compensation old fund liability tax shall attach to their Montana individual income tax return a copy of the share of income, credit, and deductions schedule that the partner, shareholder, or member or manager received from the entity that reports income to the federal government for the corresponding year." Amendment effective March 26, 1999.

Retroactive Applicability: Section 6, Ch. 68, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1995 Amendment: Chapter 172 inserted second sentence requiring persons with an interest in a partnership, subchapter S. corporation, or limited liability company who are subject to the workers' compensation old fund liability tax to attach to their Montana income tax return a copy of the schedule received from the business that reports income to the federal government; and made minor changes in style. Amendment effective March 20, 1995.

Severability: Section 4, Ch. 172, L. 1995, was a severability clause.

Retroactive Applicability: Section 5, Ch. 172, L. 1995, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Section Not Codified: Section 84-4941, R.C.M. 1947, which is a severability section, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 260, L. 1955.

Administrative Rules

ARM 42.2.501 Application of partial payments.

ARM 42.4.4101 Individual, corporation, and property — alternative energy production — definitions.

ARM 42.15.314 Changes in federal returns or taxes.

Collateral References

85 C.J.S. Taxation §1699.

71 Am. Jur. 2d State and Local Taxation §589.

15-30-305. Department rules.

Compiler's Comments

Part of Section Not Codified: A part of section 84-4955, R.C.M. 1947, which grants rulemaking authority and is redundant with 15-30-305, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 246, L. 1955, as amended by sec. 191, Ch. 516, L. 1973.

Administrative Rules

ARM 42.2.401 Small business liability funds.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Title 42, chapter 4, ARM Tax credits.

Title 42, chapter 4, subchapter 2, ARM Individual — energy conservation installation credit.

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

Title 42, chapter 15, ARM General provisions and preparation of income tax return.

Title 42, chapter 17, ARM Withholding and estimated tax.

Title 42, chapter 17, subchapter 2, ARM Withholding and unemployment insurance.

Title 42, chapter 17, subchapter 3, ARM Estimated tax payments.

Case Notes

Common Carrier Employee Tax Information to Be Supplied to Department of Revenue: While 49 U.S.C. 11504 fixes the mandatory duties of employers engaged in interstate commerce to withhold taxes and to file reports respecting earnings in any particular state, that section does not prohibit the furnishing of earnings information at the request of the state or under a properly issued administrative subpoena. Therefore, the Department of Revenue may by administrative subpoena obtain information relating to Montana earnings from an interstate rail carrier respecting its employees, even though the carrier is not obliged to withhold Montana state income tax. Burlington N., Inc. v. Dept. of Revenue, 239 M 458, 781 P2d 1121, 46 St. Rep. 1830 (1989).

Attorney General's Opinions

Income Tax Surtax — Effective Date — Applicability: The income tax surtax enacted by Ch. 666, L. 1987, which was effective May 22, 1987, and terminated December 31, 1989, applies to tax liabilities for calendar years 1987 and 1988 but does not apply to tax liabilities for calendar year 1989. 42 A.G. Op. 130 (1988).

Collateral References

Taxation *key* 1071.

85 C.J.S. Taxation §§1756, 1757.

15-30-306. Agreements with contiguous states.

Administrative Rules

ARM 42.17.134 Reciprocal agreement — North Dakota.

Collateral References

85 C.J.S. Taxation §§1718, 1719.

71 Am. Jur. 2d State and Local Taxation §596.

15-30-307. Closing agreements.

Collateral References

85 C.J.S. Taxation §§1779 through 1781.

71 Am. Jur. 2d State and Local Taxation §596; 72 Am. Jur. 2d State and Local Taxation §§756, 757.

15-30-310. Authority to collect tax — offset — hearing.

Compiler's Comments

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

Administrative Rules

ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.

15-30-311. Warrant for distraint.

Compiler's Comments

1981 Amendments: Both Ch. 439 and Ch. 570 deleted the exception in (1) that taxes imposed by 15-30-221 through 15-30-228 are not subject to this section.

Chapter 439 also substituted "any portion of such tax is not paid when due" for "any portion of such tax is not paid within 60 days after the same becomes due"; substituted "the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for a procedure where the department was required to issue a warrant directed to the sheriff to levy upon and sell the property of the taxpayer; deleted subsections (2), (3), and (4), the text of which may be found in sec. 1, Ch. 167, L. 1979.

Attorney General's Opinions

Collection of Delinquent Income Taxes of Nonresidents Employed by Foreign Corporation Doing Business in Montana: The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may be considered to be property within the state for the purpose of levying a warrant for distraint for unpaid state income taxes. Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. 41 A.G. Op. 9 (1985).

Collateral References

Taxation *key* 1100.

84 C.J.S. Taxation §§687 through 693; 85 C.J.S. Taxation §§1037, et seq., 1779, 1780.

71 Am. Jur. 2d State and Local Taxation §§596, 599; 72 Am. Jur. 2d State and Local Taxation §§771 through 773.

15-30-312. Jeopardy assessments.

Compiler's Comments

1981 Amendment: Added "including the issuance of a warrant for distraint as provided in Title 15, chapter 1, part 7" to the end of (2).

Administrative Rules

ARM 42.2.503 Jeopardy assessment and emergency execution.

Collateral References

Taxation *key* 1100.

84 C.J.S. Taxation §694; 85 C.J.S. Taxation §§1041 through 1048, 1558.

71 Am. Jur. 2d State and Local Taxation §599; 72 Am. Jur. 2d State and Local Taxation §779.

15-30-313. Deferment of taxes for person in military service — filing of return.

Compiler's Comments

2005 Amendment: Chapter 30 in (1) near beginning substituted "section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended, of the tax imposed by 15-30-103" for "the Soldiers' and Sailors' Civil Relief Act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state on the income of such person" and near end after "deferred for" substituted "not more than 180 days" for "a period extending not more than 6 months"; inserted (3) specifying when individual income tax return for certain individuals serving in combat zone or participating in contingency operation is due; and made minor changes in style. Amendment effective March 18, 2005.

Retroactive Applicability: Section 3, Ch. 30, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2003."

Attorney General's Opinions

Servicepersons — Registration to Vote — Tax Liability: The fact that a member of the military service has registered to vote in Montana is evidence, though not conclusive proof, that he is a Montana resident and is thus not exempt, under the federal Soldiers' and Sailors' Civil Relief Act of 1940, from property and income taxation by Montana. Montana's election law requires one to be a resident of Montana before voting in the state's elections, so a serviceperson who has registered to vote in Montana (thereby claiming to be a resident) may not claim tax exemption under the federal Act without offering convincing evidence that he is in fact not a Montana resident after all. However, to claim he is not in fact a resident after having registered to vote in Montana would subject him to prosecution for the misdemeanor of fraudulent registration. 41 A.G. Op. 2 (1985).

Collateral References

Taxation *key* 1100.

71 Am. Jur. 2d State and Local Taxation §334.

15-30-314. Stay of enforcement against military personnel.

Collateral References

Taxation *key* 1096.

85 C.J.S. Taxation §§1779, 1780.

71 Am. Jur. 2d State and Local Taxation §334.

15-30-316. Failure to file return or report — order to show cause — action by department.

Case Notes

Taxpayer Properly Held in Contempt for Refusal to File Income Tax Returns — Privilege Against Self-Incrimination No Defense: Gillispie failed to file an income tax return for 4 years. The District Court ordered her to file the returns or to show cause why she should not be required to file them. At the hearing, the Department of Revenue introduced Gillispie's W-2 forms, which showed that she had made the minimum income necessary to require her to file returns. The District Court ordered her to file the returns or be found in contempt. When Gillispie failed to file the returns, the District Court held her in contempt, and Gillispie filed a petition for a writ of habeas corpus with the Supreme Court. The Supreme Court held that the District Court had jurisdiction to order Gillispie to file the returns and jurisdiction to hold Gillispie in contempt and that the District Court also had sufficient evidence to do so. The Supreme Court also held that Gillispie's privilege against self-incrimination does not justify the outright refusal to file a return and cannot be used as a method of evading payment of lawful taxes. The Supreme Court held that she must demonstrate the specific parts of the returns that would result in self-incrimination. Gillispie v. Sherlock, 279 M 21, 929 P2d 199, 53 St. Rep. 507 (1996).

15-30-321. Penalties for violation of chapter.

Compiler's Comments

2005 Amendment: Chapter 594 deleted former (1) that read: "(1) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who purposely fails to file a return or files, renders, or signs a false or fraudulent return or statement or supplies false or fraudulent information is liable to a penalty of not less than $1,000 and not more than $5,000, to be recovered in the name of the state by action in a court of competent jurisdiction"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 deleted former (1) and (2) that read: "(1) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5% of any balance of tax unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than $5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part. If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be added to the tax a penalty of 10% of said tax, but not less than $5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails, purposely or knowingly violating any requirement imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% thereof, but such additional amount shall in no case be less than $25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid"; in (1) substituted "who purposely fails to file a return or files, renders, or signs a false or fraudulent return" for "who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder, purposely or knowingly, fails to pay the tax or to make, render, or sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent, purposely or knowingly makes, renders, or signs any false or fraudulent return" and substituted "not less than $1,000 and not more than $5,000 to be recovered in the name of the state" for "not more than $1,000 to be recovered by the attorney general in the name of the state"; in (2) at beginning inserted "An individual, corporation, or partnership or an officer or employee of a corporation or member or employer of a partnership who, with intent to evade any tax or requirement of this chapter or any lawful requirement of the department under this chapter, purposely fails to pay the tax or to file or sign any return or to supply information within the time required by this chapter or who with an intent to evade, purposely files or signs a false or fraudulent return or statement or supplies false or fraudulent information is"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1987 Amendment: In third sentence, in parenthetical, substituted "filing the return" for "the filing of a return".

Effective Date — Applicability: Section 5, Ch. 648, L. 1979, provided: "This act is effective on passage and approval but has no effect on prosecutions commenced prior to the effective date of this act." This act is codified as 15-30-101, 15-30-145, 15-30-321, and 15-30-324 and was approved May 7, 1979.

Administrative Rules

ARM 42.2.504 Penalties.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

ARM 42.15.315 Original and amended returns.

ARM 42.17.221 Due date and application of taxes.

Case Notes

Failure to File Tax Returns — Statute of Limitations: Prosecution for failure to file state tax returns is a criminal prosecution differing from the civil action under 15-30-322 (now repealed) for collection of unpaid taxes. The failure to file tax returns is a misdemeanor, and as such is subject to the 1-year Statute of Limitations of 45-1-205. The state is barred from prosecuting for

failure to file proper returns for the period prior to 1 year before commencing prosecution. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Giving of Sandstrom Instruction as Error: The giving of the Sandstrom instruction which states that a person intends the ordinary consequences of his voluntary acts, was prejudicial and harmful in this case, concerning failure to file proper state tax returns. The instruction when read with the body of instructions could be interpreted as allowing the jury no discretion and directing them to find the element of intent. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Judge to Instruct Jury on Law — Testimony of Constitutional Expert Excluded: The interpretation and application of the U.S. Constitution was a question of law and not a fact in issue in a prosecution for failure to file proper state tax returns. It was a determination to be made by the trial judge within his statutory powers. Instructing the jury on the law necessary for the jury's rendering of a verdict in a criminal case is a duty within the exclusive province of the trial judge. It was proper to exclude the testimony of an expert on the U.S. Constitution. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Pleading Fifth Amendment as a Defense: State tax returns which are signed, but submitted with a blanket assertion of the persons' fifth amendment privilege, are not properly filed returns as provided by law. Neither is the blanket assertion of privilege under the fifth amendment a proper defense. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Proper Limitation on Voir Dire — Religious Beliefs: In a prosecution for failure to file proper tax returns, it was within the trial court judge's discretion to restrict defendant from inquiring into the religious beliefs of the prospective jurors. Given the wide discretion allowed a trial judge, the lack of relevancy of religion to the issues at bar, and the permitted inquiry into the jurors' general belief in God, the limitation was proper. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Tax Withholding Statement Irrelevant: In a prosecution for failure to file proper tax returns, it was proper for the court to refuse to admit into evidence tax withholding statement, although evidence of defendant's income was admitted. The payment of taxes by withholding was irrelevant to the issue of whether proper returns were filed and could have confused the jury. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Venue for Failure to File Tax Returns: Tax returns are required to be filed with the Department of Revenue. The Department is required to be located in Helena, Montana. Section 46-3-101 (renumbered 46-3-111) provides that in all criminal prosecutions, trial shall be in the county where the offense was committed. The offense charged here was failure to properly file tax returns, so that venue was properly with Lewis and Clark County where Helena is located. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Failure to File Tax Return — Venue: Venue of a criminal action charging intentional failure to file a properly completed Montana individual income tax return would lie in either Lewis and Clark County or the county in which defendants reside. But, since the complaint was filed in the former and no legal justification or prejudice was shown to support transfer, the Supreme Court reversed the District Court's change of venue from Lewis and Clark County. Dept. of Revenue v. Lane, 187 M 230, 609 P2d 300 (1980), following St. v. Bretz, 169 M 505, 548 P2d 949 (1976).

Inadvertent Failure to Pay When Filing Return: The provision of this section, prior to the 1955 amendment, that any person failing to pay tax on due date was allowed 60 days in which to pay tax with only a 5% penalty did not prevent assessment of the 100% penalty after the termination of such period, notwithstanding the fact that the taxpayer failed to include payment due to mistake, inadvertence, and excusable neglect. Stewart v. St., 135 M 323, 340 P2d 151 (1959).

Constitutionality Prior to Amendment: The double penalty imposed under subsection (2) of this section, before the 1955 amendment, did not violate Art. III, sec. 20 and 27, 1889 Mont. Const. (now Art. II, sec. 22 and 17, 1972 Mont. Const.) as an excessive fine or the taking of property without due process of law. State ex rel. Hardy v. St. Bd. of Equalization, 133 M 43, 319 P2d 1061 (1958).

Collateral References

Taxation *key* 1103.

85 C.J.S. Taxation §1777, et seq.

71 Am. Jur. 2d State and Local Taxation §606; 72 Am. Jur. 2d State and Local Taxation §§759 through 761, 763 through 770.

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause". 29 ALR 4th 413.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

When running of limitations against criminal prosecutions for violation of income tax act begins. 76 ALR 1549.

15-30-323. Notice of additional assessment — penalty and interest for deficiency.

Compiler's Comments

2005 Amendment: Chapter 594 deleted former (1) and (2) that read: "(1) If the payment required by 15-30-142(6) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216. Except as otherwise provided in this subsection, the interest in all cases must be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due, as provided in 15-1-216, from the time when the return was originally required to be filed to the time of payment"; and inserted (1) and (2) related to notice of additional tax and penalties and interest. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (1) substituted "the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216" for "there shall be added to the amount of the deficiency 5% thereof; provided, however, that no deficiency penalty shall be less than $2. Interest will be computed at the rate of 9% per annum or fraction thereof on the additional assessment"; in (2) substituted "on the tax due as provided in 15-1-216" for "thereon at the rate of 9% per annum"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1981 Amendment: Increased the time period for payment from 30 to 60 days in (1).

Administrative Rules

ARM 42.2.504 Penalties.

Collateral References

Taxation *key* 1103.

85 C.J.S. Taxation §1782.

71 Am. Jur. 2d State and Local Taxation §606; 72 Am. Jur. 2d State and Local Taxation §§759 through 761, 763 through 770.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceedings. 13 ALR Fed. 877.

15-30-324. Time limitations for prosecution.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 648, L. 1979, provided: "This act is effective on passage and approval but has no effect on prosecutions commenced prior to the effective date of this act." This act is codified as 15-30-101, 15-30-145, 15-30-321, and 15-30-324 and was approved May 7, 1979.

Collateral References

Taxation *key* 1081.

85 C.J.S. Taxation §1780.

71 Am. Jur. 2d State and Local Taxation §597; 72 Am. Jur. 2d State and Local Taxation §§784, 785.

15-30-331. Certified copies of tax returns to taxpayer — fee.

Administrative Rules

ARM 42.15.316 Extensions.

Part 6
Particular Income Tax Applications

15-30-601. Short title.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-30-602. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-30-603. Montana farm and ranch risk management account — deposits — exclusion from income.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-30-604. Montana farm and ranch risk management account — creation — administration.

Compiler's Comments

2003 Amendment: Chapter 566 in (1) near middle of second sentence after "institution" inserted "other than an investment adviser"; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-30-605. Montana farm and ranch risk management account — distributions.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Part 11
Pass-Through Entities

Part Administrative Rules

Title 42, chapter 9, ARM Pass-through entities.

Part Collateral References

84 C.J.S. Taxation §§170, 171.

33A Am. Jur. 2d Federal Taxation §4620, et seq.

15-30-1101. Definition of "small business corporation".

Compiler's Comments

2001 Amendment: Chapter 143 in (1) substituted definition of "small business corporation for "means a corporation that has made a valid election under subchapter S. of Chapter 1 of the Internal Revenue code. A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective." Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1991 Amendment: In (1), at beginning of first sentence, substituted exception clause for "For purposes of this part", after "corporation" deleted "doing business in Montana and", and after "Code" deleted "of 1954 and thereafter" and in second sentence substituted "A small business corporation shall attach" for "has filed", after "approved" inserted "federal", and after "with the" substituted "Montana return filed for the first taxable year the federal election is effective" for "department on or before the 15th day of the third month of the taxable year for which the election is to become effective or"; deleted (1)(b) that read: "(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter"; substituted (2) authorizing corporation that would otherwise be small business corporation to continue to be subject to taxes imposed by Title 15, chapter 31, under certain conditions and outlining conditions that must be met for former (2) that read: "(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under Subchapter S in effect for the taxable year and:

(a) has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective; or

(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter"; and made minor changes in style. Amendment effective December 31, 1991.

Conditional Grandfather Clause for Certain Montana Shareholders of Foreign Corporations That Have Elected Subchapter S. Corporation Status for Federal Tax Purposes: Section 11, Ch. 807, L. 1991, provided: "A Montana taxpayer who is a shareholder in a corporation that is not doing business in Montana and that has elected subchapter S. corporation status for federal tax purposes may apply 15-30-111(3) as it read in 1989 for all tax years beginning on or before December 31, 1996, if the following conditions are met:

(1) The taxpayer can establish by substantial, credible evidence that the department of revenue gave the taxpayer advice concerning the application of 15-30-111(3) to the taxpayer's facts and circumstances.

(2) The taxpayer can establish by substantial, credible evidence that he relied on that advice to his detriment."

Effective Dates — Applicability: Section 12, Ch. 807, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purpose of promulgating administrative rules to implement [sections 1 through 10] [15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161 (now repealed), 15-31-201 (renumbered 15-30-1101), 15-31-202 (now repealed), 15-31-204 (now repealed), and 90-8-202], [this act] is effective on passage and approval." Approved May 17, 1991.

1989 Amendment: Inserted (1)(b) and (2)(b) to include, in alternative, a corporation that files copy of federal Subchapter S corporate tax return with tax return filed under this chapter; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 4, Ch. 534, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to all taxable years ending after July 1, 1989."

1983 Amendment: In (1) substituted "has made a valid election under Subchapter S of Chapter 1 of the Internal Revenue Code of 1954 and thereafter has filed a copy thereof with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective" for "does not have:

(a) more than 10 shareholders;

(b) as a shareholder a person (other than an estate and other than a trust described in 15-31-207) who is not an individual;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock"; and in (2) substituted "under Subchapter S" for "under this part" and inserted at end the requirement of filing a copy of the election.

Collateral References

33A Am. Jur. 2d Federal Taxation §4620.

15-30-1102. Income or license tax involving pass-through entities — information returns required.

Compiler's Comments

2003 Amendment: Chapter 225 in first sentence in (2) and in (4)(c)(i), (4)(d)(i), and (4)(d)(ii) before reference to member deleted reference to manager; in (2) in first sentence after "subsection (1)(c)" inserted "the first-tier pass-through entity" and after "individual" inserted "trust, or estate" and inserted second sentence subjecting owner of an entity that is a pass-through entity with Montana source income to taxes; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 143 in (1) at beginning substituted exception clause and (1)(a) providing partnership not subject to taxes imposed by Title 15, chapter 30 or 31, for former text that read: "Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return"; inserted (1)(b) and (1)(c) regarding entities not subject to tax imposed in Title 15, chapter 30 or 31; inserted (2) regarding entities subject to taxes provided in Title 15, chapter 30 or 31; inserted (3) regarding taxation of financial institution; inserted (4) requiring certain entities to file information return; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

Law Review Articles

Income Tax Aspects of Partnership Operation, Crawford, 18 Mont. L. Rev. 159 (1957).

Drafting Partnership Agreements, Willis, 16 Mont. L. Rev. 44 (1955).

Collateral References

Taxation *key* 1017.

85 C.J.S. Taxation §§1715 through 1719.

71 Am. Jur. 2d State and Local Taxation §517.

Holding period for purposes of computation of gain or loss on sale of partner's interest. 7 ALR 2d 672.

Nature of interest of special partner for purposes of income tax. 45 ALR 1381.

15-30-1111. Taxation of partners, shareholders, managers, and members.

Compiler's Comments

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

ARM 42.15.301 Who must file returns.

15-30-1112. Composite returns and tax.

Compiler's Comments

2005 Amendment: Chapter 594 in (4)(d) after "payments" inserted reference to underpayment interest, substituted "15-30-241(5)(a)" for "15-30-241", and after "computed" substituted "on the composite tax liability" for "separately for each participant". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendment: Chapter 225 in (1) and (1)(a) after "shareholder" substituted "member, or other owner" for "manager, or member"; near beginning of (1)(a) after "individual" inserted "a foreign C. corporation, or a pass-through entity"; at end of (5) after "15-30-144" inserted "a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403"; inserted (6)(b) including references to 15-31-101 and 15-31-121; inserted (6)(c) including reference to 15-31-403; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Administrative Rules

Title 42, chapter 9, subchapter 1, ARM Pass-through entities — general.
Title 42, chapter 9, subchapter 2, ARM Composite returns.
Title 42, chapter 9, subchapter 3, ARM Partnerships.
Title 42, chapter 9, subchapter 4, ARM S. corporations.
Title 42, chapter 9, subchapter 5, ARM Disregarded entities.
ARM 42.15.301 Who must file returns.

Collateral References

State income tax treatment of partnerships and partners. 2 ALR 6th 1.

15-30-1113. Consent or withholding.

Compiler's Comments

2003 Amendment: Chapter 225 in middle of (1) and in (5) after "shareholder" deleted "manager"; in (1) after "individual" inserted language regarding foreign C. corporation or pass-through entity with owner who is a nonresident individual; inserted (1)(a) concerning reporting requirements for partner, shareholder, member, or other owner who is a nonresident; at end of (1)(a)(i) after "return" deleted "with respect to the individual nonresident"; inserted (1)(b) concerning reporting requirements for partner, shareholder, member, or other owner that is a foreign C. corporation; inserted (1)(c) concerning reporting requirements for partner, shareholder, member, or other owner that is a pass-through entity or second-tier pass-through entity; inserted second sentence in (2) requiring pass-through entity to furnish a nonresident individual with record of tax paid on individual's behalf; inserted (3) requiring amount paid by pass-through entity on foreign C. corporation to be considered payment for corporation license tax and requiring pass-through entity to provide a foreign C. corporation with record of amount paid; inserted (4) requiring amount paid by pass-through entity as second-tier pass-through entity to be considered payment on account of individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and claimed as distributable share of refundable credit of pass-through entity partner, shareholder, member, or other owner and requiring pass-through entity to provide a second-tier pass-through entity with record of amount paid; in (5) substituted "subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(iii)" for "subsection (1)(c)"; inserted (6) requiring pass-through entity after notice of failure to file return or pay taxes to remit amount not included in pass-through entity's composite return for nonresident individual and foreign C. corporation; inserted (7) providing that section not intended to modify constitutional or statutory right of taxpayer to petition for fair representation of extent of taxpayer's business activity in Montana; and made minor changes in style. Amendment effective October 1, 2003.

Effective Dates: Section 18(1), Ch. 143, L. 2001, provided that [section 5], the temporary version of this section, is effective October 1, 2001.

Section 18(3), Ch. 143, L. 2001, provided that the permanent version of this section is effective January 1, 2003.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Termination: Section 20, Ch. 143, L. 2001, provided: "[Section 5] [15-30-1113, the temporary version] terminates December 31, 2002."

15-30-1114. Review of pass-through entity taxation by department.

Compiler's Comments

2005 Amendment: Chapter 318 deleted former (2) that read: "(2) The department shall report to the revenue and transportation interim committee at least once each year on the findings and recommendations of the review conducted under subsection (1)"; and made minor changes in style. Amendment effective April 21, 2005.

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-30-1121. Small business option unavailable on dissolution — exception.

Case Notes

Application: This section does not apply to the corporation license tax and therefore does not bar refund of a portion of the corporate license tax paid upon a gain realized by a corporation in the sale of its assets in liquidation. Barth v. St. Bd. of Equalization, 148 M 259, 419 P2d 484 (1966).

CHAPTER 31
CORPORATION LICENSE OR INCOME TAX

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Administrative Rules

Title 42, chapter 23, ARM Corporation license tax — general provisions.

Chapter Law Review Articles

Estate Planning for Farmers and Ranchers, Dietrich, 40 Mont. L. Rev. 189 (1979).

An Evolving Definition of Business Income, 39 Mont. L. Rev. 313 (1979).

The Status of the Adoption of the Model Business Corporation Act in Montana: A Commentary, Schaefer, 36 Mont. L. Rev. 29 (1975).

The Private Foundation is Alive and Moderately Well, Johnson, 35 Mont. L. Rev. 53 (1974).

Incorporated Professional Group Treated as Corporation for Federal Tax Purposes, 29 Mont. L. Rev. 229 (1968).

Montana Legislative Summary: 1961, 22 Mont. L. Rev. 103 (1961).

Montana Legislative Summary: 1959, 20 Mont. L. Rev. 133 (1959).

Multiple Taxation: The Supreme Court Lets Down the Bars, 1 Mont. L. Rev. 89 (1940).

Chapter Collateral References

Taxation *key* 117, 161 through 168.

84 C.J.S. Taxation §§177 through 180, 189; 85 C.J.S. Taxation §1693.

71 Am. Jur. 2d State and Local Taxation §§443 through 611.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Taxation of Montana's Financial Institutions, 1977-1978 Interim Report, Montana Legislative Council.

Montana Corporation License Tax, 1967-1968 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-1966 Interim Report, Montana Legislative Council.

Part 1
Corporation License Tax
Rate and Return

Part Compiler's Comments

Section Not Codified: Section 84-1519, R.C.M. 1947, which is a repealing and saving clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 15, Ch. 166, L. 1933.

Part Collateral References

84 C.J.S. Taxation §§177 through 180, 189.

71 Am. Jur. 2d State and Local Taxation §§254 through 272, 285 through 306, 446, 447.

Validity under federal Constitution of state tax measured by income of foreign corporation. 67 ALR 2d 1322.

Validity under import-export clause of federal Constitution of state tax on corporations. 20 ALR 2d 152.

Constitutionality of discrimination between domestic corporations as regards to taxation based on fact of whether their business is wholly within state, wholly out-of-state, or partially within and partially without state. 122 ALR 983.

15-31-101. Organizations subject to tax.

Compiler's Comments

2005 Amendment: Chapter 163 in (4) deleted former second sentence that read: "A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012." Amendment effective October 1, 2005.

2001 Amendment: Chapter 143 in (1) at end after "or the United States" inserted reference to any limited liability company or other entity that is not a disregarded entity that is treated as an association for tax purposes; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1997 Amendment: Chapter 382 in (3), at end of first sentence after "rate", substituted "set forth in this chapter" for "hereinafter set forth"; in (4) inserted second sentence providing that a chartered foreign capital depository is not subject to the corporation license tax; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

1989 Special Session Amendment: In (3), at beginning of third sentence, inserted exception clause. Amendment effective July 17, 1989.

Severability: Section 13, Ch. 9, Sp. L. June 1989, was a severability clause.

Applicability: Section 15, Ch. 9, Sp. L. June 1989, provided that this section applies to taxable years beginning after December 31, 1989.

1987 Amendments: Chapter 622 near beginning of (3) changed "33-2-705(6)" to "33-2-705(4)".

Chapter 659 at beginning of (3) substituted "Except as provided in 15-31-103 or 33-2-705(6) or as may be otherwise specifically provided, every corporation" for "Every corporation, except as hereinafter provided and except as provided in 33-2-705(6)".

Part of Section Not Codified: A part of section 84-1501.6, R.C.M. 1947, which provided an effective date, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 23, L. 1971.

A part of section 84-1501.7, R.C.M. 1947, which provided an effective date, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 23, L. 1971.

Administrative Rules

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

ARM 42.23.101 Extent of tax liability.

ARM 42.23.102 Doing or engaging in business defined.

ARM 42.23.103 Exemptions.

ARM 42.23.312 Filing requirements for inactive corporation.

ARM 42.23.702 Taxation of limited liability company.

ARM 42.26.101 Alternative tax.

Case Notes

Imposition of Corporate License Tax on Tribally Chartered Corporation Conducting Business Entirely on Indian Reservation Considered Infringement of Tribal Sovereignty and Self-Government Authority: The Department of Revenue sought to impose the state corporate license tax on Flat Center Farms, Inc. (Flat Center). The District Court found that the tax may not be imposed on an Indian-owned corporation that does business entirely within the boundaries of an Indian reservation. The state appealed, but the Supreme Court affirmed. Flat Center was incorporated pursuant to the laws of Montana and chartered by the Fort Peck Tribe as a tribal corporation, with its sole business activity consisting of farming located entirely within the exterior boundaries of the Fort Peck Reservation. The corporation was wholly Indian owned, the beneficiaries of the corporate income were ultimately Indians, and the assets generating the income were Indian trust lands. The longstanding rule set out in Mescalero Apache Tribe v. Jones, 411 US 145 (1973), is that a state is without power to tax reservation lands and Indian income generated from on-reservation activities without the express authorization of Congress. Further, under Williams v. Lee, 358 US 217 (1959), the exercise of state jurisdiction over activities occurring entirely on Indian lands is an infringement on inherent tribal authority and is contrary to principles of self-government and tribal sovereignty. Nevertheless, the state contended that, as a nontribal member with a corporate identity distinct from its stockholders, Flat Center did not enjoy the shield from state taxation afforded to tribes and tribal members. However, under LaRoque v. St., 178 M 315, 583 P2d 1059 (1978), tribal membership is not essential to a determination of whether income earned on a reservation is taxable. Flat Center did not "carry on business in the state" because all of its activities were conducted in Indian country, so its income was not earned in Montana. The state's taxation authority is statutorily limited based on the situs of the activity from which income is earned. Thus, the District Court correctly concluded that the corporation license tax may not be imposed on a tribally chartered corporation that does business entirely within a reservation. Flat Center Farms, Inc. v. Dept. of Revenue, 2002 MT 140, 310 M 206, 49 P3d 578 (2002).

Nonstop Flyover Miles — No Authority for Inclusion in Numerator of Apportionment Formula: The language of 15-31-312 and ARM 42.26.264 expresses no intent to consider activity other than that in Montana; therefore, the Department of Revenue had no statutory authority to include in the numerator of the apportionment formula those miles flown by an airline as nonstop flights that did not take off or land in Montana or have contact with the state. NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676, 43 St. Rep. 959 (1986).

Interest Income From Federal Obligations — Tax on Privilege and Income: Plaintiffs appealed from a summary judgment granted to defendant. Defendant had included the interest income from investments in several federal obligations in net income for purposes of computing plaintiffs' license tax. The District Court relied on 31 U.S.C. §742, which contains an exception allowing states to levy a franchise tax on the income from federal obligations. The defendant contended that the Montana corporation license tax is a franchise tax on the privilege of doing business in Montana, with the tax based upon or measured by the net income of the taxpayer. The Supreme Court held that the tax is on the privilege and the net income. Defendant was attempting to tax indirectly income that it could not tax directly. The interest income from exempt federal obligations was not includable in net income for the purpose of calculating the Montana corporation license tax. First Fed. S&L Ass'n v. Dept. of Revenue, 200 M 358, 654 P2d 496, 39 St. Rep. 1802 (1982).

Value of Federal Obligations Deductible Under Bank Shares Tax: Under former law, neither the applicable Montana statutes nor administrative regulations expressly authorized a deduction for the value of federal obligations in computing the bank shares tax. However, the Montana statute must be construed as permitting such deduction and administrative regulations to the contrary must fall. Any other construction would violate the federal exemption statute and be unconstitutional under the Supremacy Clause of the United States Constitution. Mont. Bankers Ass'n v. Dept. of Revenue, 177 M 112, 580 P2d 909 (1978). However, see Mont. Bank of Roundup v. County Bd. of Commr's, 248 M 199, 810 P2d 1192, 48 St. Rep. 392 (1991), wherein it was held that under the doctrine of nonretroactivity, the exemption for federal obligations does not apply prior to 1978.

Tax Unenforceable Against Banks During 1972: Under former federal law, the state was precluded from collecting the corporation license tax on national banks during 1972, and since the intent of the Legislature in enacting a predecessor to this statute was to treat state and national banks equally, the state was also precluded from collecting the license tax from state banks during that year. Sec. Bank & Trust Co. v. Connors, 170 M 59, 550 P2d 1313 (1976).

Sale of Assets in Liquidation: Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. St. Bd. of Equalization, 148 M 259, 419 P2d 484 (1966).

Livestock Production Credit Association: When "Class A" stock that had been federally owned was retired and control of production credit association passed completely into the hands of individual stockholders, then the association ceased to be an instrumentality of the United States as provided under 12 U.S.C., section 1138c, and became subject to the state corporation license tax. Mont. Livestock Prod. Credit Ass'n v. St., 143 M 578, 393 P2d 50 (1964).

No Conflict With Property Tax: Under former law, there was no conflict between this section and 15-24-801, since they dealt with separate and distinct taxes. Home Bldg. & Loan Ass'n v. Fulton, 141 M 113, 375 P2d 312 (1962).

Interest on United States Obligations: Under the wording of this section prior to the 1974 amendment, interest on the obligations of the United States was included in computing the corporate license tax since the United States is a "resident" within the meaning of the former provision fixing the tax at a percentage of the net income received "from all sources within the state". Mont. Bank v. Casey, 135 M 104, 337 P2d 935 (1959).

Interest-Bearing Obligations of Nonresidents: Under the wording of this section prior to the 1974 amendment, which imposed the tax upon the net income received by domestic insurance company "from all sources, including interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise" of the state, interest accruing on obligations of nonresidents was excluded. Mont. Life Ins. Co v. Shannon, 106 M 500, 78 P2d 946 (1938).

Income From Lease on Indian Land: A corporation extracting oil from lands within the Blackfeet Indian Reservation under lease given by the tribe was subject to the payment of corporation license tax. British-American Oil Prod. Co. v. St. Bd. of Equalization, 101 M 293, 54 P2d 129 (1936), affirmed 299 US 159, 81 L Ed 95, 57 S Ct 132 (1936). See also Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 101 M 268, 54 P2d 117 (1936).

Constitutionality: Chapter 79, L. 1917, was not unconstitutional because of alleged discrimination between corporations whose business is wholly within this state and those whose business is not wholly within this state, such discrimination being necessary to attain reasonable equality of burdens between the two. Equitable Life Assurance Co. v. Hart, 55 M 76, 173 P 1062 (1918).

Applicable to Every Corporation: The purpose of Ch. 79, L. 1917, being the imposition of a license fee of 1% upon the net income of every corporation in the state for the privilege of doing business as such, without regard to the character of the business, insurance corporations were intended to be within its purview. Equitable Life Assurance Co. v. Hart, 55 M 76, 173 P 1062 (1918).

Effect of Other State Fees — No Double Taxation: Chapter 79, L. 1917, did not operate to repeal section 40-1302, R.C.M. 1947 (now repealed), requiring insurance corporations to pay certain license fees before commencing to do business in this state. The license fee required of insurance corporations by Ch. 79, L. 1917, and section 40-1302, R.C.M. 1947 (now repealed), did not constitute a case of double taxation, the impositions, though upon the same persons, not being for the same thing. Equitable Life Assurance Co. v. Hart, 55 M 76, 173 P 1062 (1918).

Collateral References

84 C.J.S. Taxation §§170, 171.

71 Am. Jur. 2d State and Local Taxation §§254 through 257, 285 through 302, 446, 471.

State taxation of nonresidents and foreign corporations for business carried on both within and without state. 130 ALR 1188.

Meaning of "association" and "joint-stock company" within statute taxing associations or joint-stock companies as corporations. 108 ALR 340 and 144 ALR 1050, supplemented by 166 ALR 1461.

Power of state to extend its taxing power by its declared policy of domesticating foreign corporations. 100 ALR 1216.

15-31-102. Organizations exempt from tax — unrelated business income not exempt.

Compiler's Comments

2005 Amendment: Chapter 163 deleted former (1)(o) that read: "(o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 114 in (1)(n) inserted "section 584(a) of the Internal Revenue Code"; and in (3) near beginning after "Internal Revenue Code" deleted "of 1954". Amendment effective October 1, 2003.

1997 Amendments — Composite Section: Chapter 42 in (1)(l) and (3) inserted parenthetical references to United States Code sections of the Internal Revenue Code; in (3) substituted "unrelated business taxable income" for "unrelated business income"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 368 inserted (1)(n) regarding a common trust fund; and made minor changes in style. Amendment effective April 23, 1997.

Chapter 382 inserted (1)(o) regarding a foreign capital depository; and made minor changes in style.

Style changes were slightly different in the chapters. In each case, the codifier chose the more appropriate.

1997 Statement of Intent: See statement of intent attached to Ch. 382, L. 1997, under compiler's comments to 15-31-101.

Effective Date — Retroactive Applicability: Section 2, Ch. 368, L. 1997, provided: "[This act] is effective on passage and approval [approved April 23, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1985 Amendment: Inserted (1)(m) exempting farmers' market associations.

1981 Amendment: Inserted (1)(l) exempting DISC corporations with valid IRC section 991 elections.

Administrative Rules

ARM 42.23.103 Exemptions.

Case Notes

Church Society Engaged in Agriculture Not Exempt: A corporation described as an international church society which devotes itself to farming, stock growing, and all other branches of agriculture, in which members live communal lives in colonies, which is devoted exclusively to agricultural pursuits for the livelihood of its members, and in which income is used to provide for the needs of its members and for the acquisition of additional property, is not exempt from the corporation license tax on the basis of the exemption granted to corporations organized exclusively for religious purposes or the exemption to corporations exclusively organized for holding title to and collecting income from property, or under the exemption granted to labor, agricultural, or horticultural organizations. St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960).

Law Review Articles

The Exemption of Cooperatives From Income Taxation, Magill, 21 Mont. L. Rev. 155 (1960).

Income Tax Exemption of Co-ops, Brannan, 21 Mont. L. Rev. 145 (1960).

Taxability of Property of Mutual Irrigation Company, 1 Mont. L. Rev. 94 (1940).

Collateral References

Taxation *key* 1018.

84 C.J.S. Taxation §§170, 171.

71 Am. Jur. 2d State and Local Taxation §§480 through 482.

Blue Cross, Blue Shield, or other hospital or medical service corporation. 88 ALR 2d 1414.

Exemption of charitable organization from income taxes. 108 ALR 302.

15-31-103. Research and development firms exempt from taxation — application.

Compiler's Comments

1991 Amendment: At end of (2)(b)(ii) and (2)(b)(iii) substituted "35-1-216" for "35-1-202"; and at end of (2)(b)(iv) substituted "35-1-215" for "35-1-203". Amendment effective January 1, 1992.

Administrative Rules

ARM 42.23.112 Research and development — application and eligibility.
ARM 42.23.113 Research and development firm — exemption period.
ARM 42.23.114 Reorganizations.
ARM 42.23.116 Unrelated income.

15-31-111. Return to be filed — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) in second sentence after "income" substituted "disclosed by the return" for "returned"; in (3)(a) in second and third sentences inserted reference to penalty and at end of third sentence substituted "15-31-510(2)" for "15-31-510"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1997 Amendment: Chapter 51 in (3)(a), in second sentence at end, substituted "15-31-510" for "15-31-510(3)". Amendment effective March 13, 1997.

1995 Amendment: Chapter 54 throughout section substituted "license tax" for "license fee"; in (3)(a) substituted second and third sentences regarding payment of tax and interest for former second sentence that read: "The application is to be made on such forms as the department shall prescribe"; and made minor changes in style. Amendment effective February 9, 1995.

Effective Date — Retroactive Applicability: Section 3, Ch. 54, L. 1995, provided: "[This act] is effective on passage and approval [approved February 9, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Administrative Rules

ARM 42.9.301 Pass-through entity information returns for partnerships.
ARM 42.9.401 Pass-through entity information returns for S. corporations.
ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.
ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.
ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.
ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.
ARM 42.9.540 Pass-through entity returns for REMIC.
ARM 42.23.301 Period covered by return.
ARM 42.23.302 Extension of filing time.
ARM 42.23.312 Filing requirements for inactive corporations.

Case Notes

Statute of Limitations Applicable to Claims for Corporate License Tax Refunds: The statutory time limit within which to claim a refund of corporate license taxes, as provided in 15-31-509, begins running on the date established in subsection (2) of this section. Although this section

allows a taxpayer to automatically extend for up to 6 months the period of time for filing, the extension is not included in determining when the limitations period begins to run. The extension simply gives the taxpayer additional time to prepare the return; it does not change the day prescribed for filing the return. Norfolk Holdings, Inc. v. Dept. of Revenue, 249 M 40, 813 P2d 460, 48 St. Rep. 569 (1991).

Power of Corporation Failing to Comply: The fact that a corporation does not comply with this section and has ceased to do business does not prevent it from redeeming its property sold at delinquent tax sale. Stensvad v. Ottman, 123 M 158, 208 P2d 507 (1949).

Collateral References

Taxation *key* 121.
84 C.J.S. Taxation §184.
71 Am. Jur. 2d State and Local Taxation §§589 through 595.
Tax returns as official records with respect to admissibility in evidence. 50 ALR 2d 1206.

15-31-112. Taxable period.

Collateral References

Taxation *key* 121.
84 C.J.S. Taxation §174.
71 Am. Jur. 2d State and Local Taxation §578.

15-31-113. Gross income and net income.

Compiler's Comments

1995 Amendment: Chapter 278 in (1)(a)(i), at end, inserted "and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered"; and made minor changes in style. Amendment effective March 29, 1995.

Effective Date — Retroactive Applicability: Section 5, Ch. 278, L. 1995, provided: "[This act] is effective on passage and approval [approved March 29, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1981 Amendment: In (1)(a) substituted "including" for "but shall include"; inserted subsection (1)(a)(ii) including gain from liquidation of corporations not recognized under federal law; and inserted subsection (1)(b) excluding gain from liquidation of corporations recognized under federal law.

Statement of Intent: The statement of intent attached to HB 415 (Ch. 483, L. 1981) provided: "House Bill 415 is intended to address a problem that arises under the Montana individual income tax laws and corporation license and income tax laws due to the relationship between the Montana adjusted gross income under the federal income tax laws. Under present law the liquidation of a corporation holding property in Montana can cause gain on the sale of the property to pass through to the stockholders of the corporation. If the stockholders are not subject to Montana tax on this gain passing through, the state loses the revenue on what is essentially a state transaction, namely the sale of Montana property. This result occurs because of operation of the federal tax laws relating to corporation liquidations. House Bill 415 addresses this situation by requiring the liquidating corporation to recognize that portion of the gain from a corporate liquidation under sections 331 or 337 [331 through 337] of the Internal Revenue Code that passes through to stockholders, either individual or corporate, who are not subject to Montana tax, either individual income tax or corporate license tax, on the gain passed through pursuant to federal law. Because the provisions of House Bill 415 require recognition of gain at the corporate level, it is also necessary to remove this gain from the income of the stockholders, in order to avoid the possibility of double taxation.

For the example we have a corporation L that owns property in Montana. The stockholders of L are an out-of-state corporation, S; an out-of-state individual, I; and a resident individual, R, each with an equal interest. Corporation L sells the property with a gain of $3,000,000 and liquidates pursuant to sections 331 through 337 of the Internal Revenue Code. Under present law, R, as a resident, would pay tax on $1,000,000, but S and I would not be subject to Montana tax on the $1,000,000 passing through to them pursuant to federal law. Corporation L would not be subject to Montana tax. Under House Bill 415, R would remain subject to tax on $1,000,000, but Corporation L would now become subject to tax on the $2,000,000 (that portion of the gain passing through to persons not subject to Montana income or license tax)."

Administrative Rules

ARM 42.23.106 Treatment of gains from certain liquidation.

Case Notes

Dividend Deduction Not Prohibited by Amendment — Incorporation of Federal Law: Where the appellants, six holding companies, each owning 80% or more of the voting stock of a commercial bank, appealed a decision of the District Court reversing a decision of the State Tax Appeal Board allowing the appellants to deduct the dividends received from their subsidiaries, the Supreme Court held that a 1973 amendment to the corporation license tax law did not alter the interrelationship found to exist in such cases as Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972), between the corporation license tax law and the Internal Revenue Code. The deductions claimed by the appellants are allowed by the Internal Revenue Code, which has been incorporated by reference into the corporation license tax law. Because those deductions are not specifically prohibited by that law, they must be allowed. Baker Bancorporation, Inc. v. Dept. of Revenue, 202 M 94, 657 P2d 89, 39 St. Rep. 2350 (1982).

Net Operating Loss — Incorporation of Federal Law: Prior to the 1971 amendment to 15-31-114 that specifically provided for a net operating loss deduction, a net operating loss deduction was allowable since 15-31-113 incorporates section 172 of the Federal Internal Revenue Code for the purposes of determining net income. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Net Operating Loss — No Retroactive Repeal: The 1971 amendment to 15-31-114 did not retroactively repeal the net operating loss deduction allowed under the definition of net income in 15-31-113. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Cooperative Corporations — Patronage Dividends: Cooperative corporations doing business in Montana and subject to corporation license tax may exclude or deduct from gross income any amounts paid as patronage dividends. Fulton v. Farmers Union Grain Terminal Ass'n, 140 M 523, 374 P2d 231 (1962).

Collateral References

Taxation *key* 121.

84 C.J.S. Taxation §184.

71 Am. Jur. 2d State and Local Taxation §§255, 289, 291, 446, 447.

Dividend in kind or stock dividend as affecting corporation income tax. 7 ALR 2d 750.

Deduction on account of exempt securities in taxation of corporations or their shareholders. 57 ALR 899, supplemented in 65 ALR 878.

15-31-114. Deductions allowed in computing income.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 114 in (1)(g) near end inserted "26 U.S.C. 170"; and in (3) near beginning substituted "851(g)" for "851(h)" and after references to Internal Revenue Code inserted references to U.S.C. sections. Amendment effective October 1, 2003.

Chapter 482 in (1)(g)(i) near middle after "subsection (1)(g)(ii)" inserted "or (1)(g)(iii)"; inserted (1)(g)(iii) providing that only a qualified charitable gift annuity, as defined in 33-20-701, is deductible; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 11, Ch. 482, L. 2003, provided: "[This act] applies to charitable contributions made after [the effective date of this act]." Effective April 24, 2003.

2001 Amendment: Chapter 574 inserted (1)(h) concerning per capita livestock fees; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 278 inserted (3) regarding allowable deductions for certain dividends paid by a regulated investment company or fund; adjusted subsection references; and made minor changes in style. Amendment effective March 29, 1995.

Effective Date — Retroactive Applicability: Section 5, Ch. 278, L. 1995, provided: "[This act] is effective on passage and approval [approved March 29, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1989 Amendments: Chapter 538 at end of (2)(b) substituted reference to 15-31-119 for language stating method of computing net operating loss deduction (see 1987 MCA for text). Amendment effective April 14, 1989.

Chapter 617 in (2)(a) inserted last sentence prohibiting depreciation or amortization deduction on title plant as defined in 33-25-105(15).

Effective Date — Retroactive Applicability: Section 6, Ch. 538, L. 1989, provided: "[This act] is effective on passage and approval [approved April 14, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Applicability: Section 6, Ch. 617, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1987 Amendment: Deleted former (6) that read: "(6) Light vehicle license fees, as provided by 61-3-532, and fees in lieu of taxes for motorcycles and quadricycles, as provided by 61-3-541, paid within the year"; and made corresponding changes to internal references.

1985 Amendment: In (6) after "61-3-532", inserted "and fees in lieu of taxes for motorcycles and quadricycles, as provided by 61-3-541" (effective January 1, 1986).

1983 Amendment: Inserted (9) allowing a deduction for computer equipment donated to Montana schools.

1981 Amendments: Chapter 574 inserted (8) allowing charitable contribution deduction.

Chapter 614 inserted (6) allowing deduction for light vehicle license fees.

Administrative Rules

Title 42, chapter 23, subchapter 4, ARM Deductions.

ARM 42.23.418 Deductions for corporate donations of computer equipment to schools.

Case Notes

Premerger Net Operating Loss Deduction by Corporation — Prohibition Constitutional: Petitioner GBN appealed from a District Court order upholding a decision by the Department of Revenue, which, pursuant to this section (prior to 1989 amendment), disallowed a deduction from taxable income by the surviving corporation of the net operating losses sustained by the merged corporations prior to the date of the merger. The Supreme Court held that the provision was a reasonable tax classification that did not unconstitutionally discriminate against the surviving corporation in a merger of corporations. The provision applied equally to all entities falling within the same classification and prevented all merged corporations from deducting premerger net operating losses. GBN, Inc. v. Dept. of Revenue, 249 M 261, 815 P2d 595, 48 St. Rep. 715 (1991).

Multistate Taxpayers Engaged in Unitary Business: The Supreme Court held that when corporate taxpayers are engaged in a unitary business, sales by the corporation of temporary cash investments are not to be reported by them for Montana's corporation license tax or income tax purposes as included in gross sales; except for the net gain from such sales, the total amounts of these sales should be excluded from the formula determining the unitary business's income for corporation license tax reporting. Am. Tel. & Tel. Co. v. St. Tax Appeal Bd., 241 M 440, 787 P2d 754, 47 St. Rep. 403 (1990).

Retroactive Calculation of Tax — Unconstitutional: Plaintiffs contended that a change in net operating loss law was unconstitutionally retroactive. Plaintiff, Havre Federal Savings and Loan Association, had incurred a net operating loss in each of the 5 years from 1974 through 1978. The challenged portion of the statute was enacted in 1979. Under the previous law, the plaintiff carried forward its net operating losses and applied them to its 1979 return, which resulted in no net income for that year. The Department of Revenue, acting under the authority of the challenged subsection, recalculated plaintiff's net income for the years 1974 through 1978, which resulted in no net operating losses to carry forward. The Supreme Court held that the change in law was retroactive in effect and therefore unconstitutional. The State cannot change a law in 1979 and compel a recalculation of tax returns filed for 1974 through 1978 based on the new law effective for the first time in 1979. First Fed. S&L Ass'n v. Dept. of Revenue, 200 M 358, 654 P2d 496, 39 St. Rep. 1802 (1982).

Bond Reserve Account Disallowed Under Bank Shares Tax: Under former law, when bank had suffered no actual loss in its bond account, or actively traded or sold its bonds, it was improper for the bank to create a reserve for possible bond losses and segregate this amount from its undivided profits for bank shares tax purposes, as a bank may not claim a deduction for a bond loss reserve account on the principle that a liability does not accrue as long as it remains contingent. Mont. Nat'l Bank of Roundup v. Dept. of Revenue, 167 M 429, 539 P2d 722 (1975).

Bad Debt as Loss — Deduction — Reserve: A bad debt sustained and charged off within a year is a loss under this section. Although federal law authorizes a deduction from gross income for a reserve for bad debts, when the Code attempted to specifically deal with a particular deduction and restricted bad debt deductions to only those sustained and charged off within a year, there could be no deduction by a bank of a bad debt reserve. First Fed. S & L Ass'n v. St. Tax Appeal Bd., 167 M 33, 535 P2d 183 (1975).

Net Operating Loss — Incorporation of Federal Law: Prior to the 1971 amendment to 15-31-114 that specifically provided for a net operating loss deduction, a net operating loss deduction was allowable since 15-31-113 incorporates section 172 of the Federal Internal Revenue Code for the purposes of determining net income. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Net Operating Loss — No Retroactive Repeal: The 1971 amendment to 15-31-114 did not retroactively repeal the net operating loss deduction allowed under the definition of net income in 15-31-113. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Dividends of Building and Loan Associations: Dividends paid by building and loan associations are deductible from gross income in determining corporation license taxes. Home Bldg. & Loan Ass'n v. Fulton, 141 M 113, 375 P2d 312 (1962).

Cooperative Corporations — Patronage Dividends:

Cooperative corporations doing business in Montana and subject to corporation license tax may exclude or deduct from gross income any amounts paid as patronage dividends. Fulton v. Farmers Union Grain Terminal Ass'n, 140 M 523, 374 P2d 231 (1962).

Dividends paid on capital stock outstanding are not a proper deduction in determining the net income of a cooperative association organized under Title 35, ch. 15, for taxation purposes, such dividends being neither an expense nor a payment of interest on indebtedness, but patronage dividends which it must pay under 35-15-411 in apportioning its earnings, are in effect refunds or rebates to customers whether stockholders or not, and are to be treated as a necessary expense in computing net income upon which to pay a license tax. Gallatin Farmers Co. v. Shannon, 109 M 155, 93 P2d 953 (1939).

Deduction of Refund to Government: When a government contractor's liability to make a refund to the government was certain under the laws relating to renegotiation, the estimated amount of the contractor's liability thereunder was an allowable deduction as an expense incurred in computing the state corporation license tax of the contractor on the accrual basis although the exact amount was not known or presently due during the taxable year but such amount was determined later and the adjustment made. Birch & Sons Constr. Co. v. Porter, 117 M 232, 157 P2d 777 (1945).

Accounting Methods: Keeping accounts and making returns on the accrual basis, as distinguished from cash basis, import that it is the right to receive and not the actual receipt that determines inclusion of the amount in gross income. Birch & Sons Constr. Co. v. Porter, 117 M 232, 157 P 777 (1945).

Doing Business in State: Under former law, a Minnesota corporation engaged in the coal mining business in Montana was entitled to certain deductions under section 2297, R.C.M. 1921, although it maintained its general office in Minneapolis, where the meetings of the stockholders and directors were held and from where the business was directed, to which office money was sent for deposit and where it received interest and dividends from invested funds and disbursed same to its stockholders. The State Treasurer was in error in claiming that the corporation, by reason of the above facts, was partly engaged in business in Montana and partly in Minnesota, and therefore subject to a higher fee. Cottonwood Coal Co. v. Junod, 73 M 392, 236 P 1080 (1925).

Collateral References

Taxation *key* 376.

84 C.J.S. Taxation §§184, 557.

71 Am. Jur. 2d State and Local Taxation §§518 through 544.

Construction and application of state corporate income tax statutes allowing net operating loss deductions. 33 ALR 5th 509.

Charitable contributions by public utility as part of operating expense. 59 ALR 3d 941.

Inclusion of investments in stock of other corporations in fixing base for taxation of corporation as double taxation. 11 ALR 2d 232.

Income of subsidiary as taxable to it or parent corporation. 10 ALR 2d 576.

Right to deduction where one taxpayer acquires control of or utilizes another to evade taxes through creation or use of net operating loss. 9 ALR 2d 423.

Bank's right to amount which it has been required by banking authorities to write down or charge off in respect of securities held by it. 100 ALR 702.

Deductibility as business expense of contributions by corporation for benevolent, charitable, or religious purposes. 68 ALR 742, supplemented in 111 ALR 1226.

Deduction of salaries in computing income tax on corporations. 15 ALR 1316, supplemented in 145 ALR 834.

15-31-115. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes.

Compiler's Comments

2005 Amendment: Chapter 130 deleted former second sentence that read: "Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of

1979, which law repealed the exclusion of such income from the tax base of the corporation license tax." Amendment effective October 1, 2005.

Preamble: The preamble to Ch. 673, L. 1983, provided: "WHEREAS, the Montana Corporation License Tax Act (Title 15, chapter 31, part 1) was intended, after the enactment of Chapter 634, Laws of 1979, to require all corporations to report and pay a tax upon all income derived from obligations of the United States or its agencies or instrumentalities as permitted by Title 31, section 742, United States Code; and

WHEREAS, the Montana Supreme Court on September 23, 1982 (petition for rehearing denied December 6, 1982), decided in the case cited below that such income must be excluded from the measure of the subject tax; and

WHEREAS, the Legislature disagrees with the Montana Supreme Court's decision in the case of First Federal Savings and Loan Association, a Federally Chartered Association, et al., Plaintiffs and Appellants v. Department of Revenue, et al., Defendants and Respondents, Cause No. 81-528, and has filed, through its Revenue Oversight Committee [now Revenue and Transportation Interim Committee], an Amicus Curiae brief in support of the position of the Department of Revenue; and

WHEREAS, the Department of Revenue is presently seeking to have the United States Supreme Court review the matter, and at this time other decisions are also being reviewed by the United States Supreme Court that might have a bearing on the issue of the taxability of such income; and

WHEREAS, in the interim uncertainty exists as to the taxability of such income and claims for refund of tax and returns of income will be made by corporations based upon the exclusion of such income; and

WHEREAS, the Legislature desires to maintain approximately the current level of revenue to state and local government; and

WHEREAS, immediate legislative action is necessary.

THEREFORE, it is the intent of the Legislature to proportionately reduce the allowable deductions to all corporations for all taxable periods for which interest income is excluded or claim for refund of tax is made upon such exclusion under claim of right under federal law."

Retroactive Effect: Section 6, Ch. 673, L. 1983, provided, in pertinent part: "Sections 1 and 3 of this act [codified to 15-31-115 and 15-31-116 (15-31-116 now repealed)] apply retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law."

Case Notes

Interest Income From Federal Obligations — Tax on Privilege and Income: Plaintiffs appealed from a summary judgment granted to defendant. Defendant had included the interest income from investments in several federal obligations in net income for purposes of computing plaintiffs' license tax. The District Court relied on 31 U.S.C. §742, which contains an exception allowing states to levy a franchise tax on the income from federal obligations. The defendant contended that the Montana corporation license tax is a franchise tax on the privilege of doing business in Montana, with the tax based upon or measured by the net income of the taxpayer. The Supreme Court held that the tax is on the privilege and the net income. Defendant was attempting to tax indirectly income that it could not tax directly. The interest income from exempt federal obligations was not includable in net income for the purpose of calculating the Montana corporation license tax. First Fed. S&L Ass'n v. Dept. of Revenue, 200 M 358, 654 P2d 496, 39 St. Rep. 1802 (1982).

15-31-117. Tax deductibility.

Administrative Rules

ARM 42.2.401 Small business liability funds.

15-31-118. Taxable liability on termination of independent liability fund.

Compiler's Comments

2001 Amendment: Chapter 111 substituted "33-27-119(3)" for "33-27-119(2)". Amendment effective October 1, 2001.

Administrative Rules

ARM 42.2.401 Small business liability funds.

15-31-119. Net operating losses — carryovers and carrybacks.

Compiler's Comments

1995 Amendment: Chapter 278 in (6)(c) and (10) deleted obsolete dates; inserted (12) disallowing the net operating loss deduction in the case of a regulated investment company or fund; and made minor changes in style. Amendment effective March 29, 1995.

Effective Date — Retroactive Applicability: Section 5, Ch. 278, L. 1995, provided: "[This act] is effective on passage and approval [approved March 29, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Effective Date — Retroactive Applicability: Section 6, Ch. 538, L. 1989, provided: "[This act] is effective on passage and approval [approved April 14, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Administrative Rules

ARM 42.23.413 Carryovers of net operating losses.

ARM 42.23.414 Filing in connection with net operating losses.

Case Notes

Premerger Net Operating Loss Deduction by Corporation — Prohibition Constitutional: Petitioner GBN appealed from a District Court order upholding a decision by the Department of Revenue, which, pursuant to 15-31-114 (prior to 1989 amendment), disallowed a deduction from taxable income by the surviving corporation of the net operating losses sustained by the merged corporations prior to the date of the merger. The Supreme Court held that the provision was a reasonable tax classification that did not unconstitutionally discriminate against the surviving corporation in a merger of corporations. The provision applied equally to all entities falling within the same classification and prevented all merged corporations from deducting premerger net operating losses. GBN, Inc. v. Dept. of Revenue, 249 M 261, 815 P2d 595, 48 St. Rep. 715 (1991).

Retroactive Calculation of Tax — Unconstitutional: Plaintiffs contended that a change in net operating loss law was unconstitutionally retroactive. Plaintiff, Havre Federal Savings and Loan Association, had incurred a net operating loss in each of the 5 years from 1974 through 1978. The challenged portion of the statute was enacted in 1979. Under the previous law, the plaintiff carried forward its net operating losses and applied them to its 1979 return, which resulted in no net income for that year. The Department of Revenue, acting under the authority of the challenged subsection, recalculated plaintiff's net income for the years 1974 through 1978, which resulted in no net operating losses to carry forward. The Supreme Court held that the change in law was retroactive in effect and therefore unconstitutional. The State cannot change a law in 1979 and compel a recalculation of tax returns filed for 1974 through 1978 based on the new law effective for the first time in 1979. First Fed. S&L Ass'n v. Dept. of Revenue, 200 M 358, 654 P2d 496, 39 St. Rep. 1802 (1982).

Net Operating Loss — Incorporation of Federal Law: Prior to the 1971 amendment to 15-31-114 that specifically provided for a net operating loss deduction, a net operating loss deduction was allowable since 15-31-113 incorporates section 172 of the Federal Internal Revenue Code for the purposes of determining net income. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Net Operating Loss — No Retroactive Repeal: The 1971 amendment to 15-31-114 did not retroactively repeal the net operating loss deduction allowed under the definition of net income in 15-31-113. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Collateral References

71 Am. Jur. 2d State and Local Taxation §§587, 588.

15-31-121. Rate of tax — minimum tax — distribution of revenue.

Compiler's Comments

2003 Amendment: Chapter 521 inserted (4) providing that portion of tax collections from water's-edge corporations be allocated to department of public health and human services for fiscal year 2005; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

1999 Amendment: Chapter 51 in (1) deleted second and third sentences that read: "The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971"; deleted former (4) that read: "(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add,

as a surtax for tax year 1988, 4% of the tax liability, and the amount so derived is the amount due the state"; and made minor changes in style. Amendment effective March 15, 1999.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, in (4) substituted "for tax year 1992, 2.3% of the tax liability and, as a surtax for tax year 1993, 4.7%" for "for tax year 1988, 4%"; and inserted (5) concerning deposit of surtax proceeds.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Retroactive Applicability — Termination: Section 39(1), Ch. 15, Sp. L. July 1992, provided that this section applies to tax years beginning after December 31, 1991, and before January 1, 1994. This section terminates upon receipt of taxes for tax year 1993.

1989 Special Session Amendment: In (4) substituted "as a surtax, 5%" for "as a surtax for tax year 1988, 4%". Amendment effective August 11, 1989, and terminates January 1, 1991.

Applicability — Termination: (1) Section 99(4), Ch. 11, Sp. L. June 1989, provided that this section applies to tax years and tax revenues collected on or after January 1, 1990.

(2) Section 102, Ch. 11, Sp. L. June 1989, provided that the amendment to this section terminates January 1, 1991.

1987 Amendment: At beginning of (1) inserted exception clause and in second sentence substituted "subsection (1)" for "part"; inserted (2) relating to tax rate for water's-edge election; and inserted (4) relating to surtax. Amendment applicable to taxable years beginning after December 31, 1987.

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

ARM 42.23.101 Extent of tax liability.
ARM 42.23.117 Surtax.
ARM 42.26.305 Water's-edge — tax rates.

Collateral References

84 C.J.S. Taxation §169, et seq.
71 Am. Jur. 2d State and Local Taxation §§268, 300 through 302, 468.

15-31-122. Alternative gross sales tax.

Administrative Rules

ARM 42.26.101 Alternative tax.

Collateral References

Taxation *key* 168.
71 Am. Jur. 2d State and Local Taxation §§255, 289, 447.
Computation of income tax on nonresident or foreign corporation. 156 ALR 1370.
State taxation in respect of businesses of nonresidents and foreign corporations carried on both within and without the state. 130 ALR 1183.

15-31-124. New or expanded industry credit — definitions.

Compiler's Comments

2003 Amendment: Chapter 405 in definition of manufacturing at end of (b) substituted "15-6-225" for "90-4-102". Amendment effective October 1, 2003.

2001 Amendment: Chapter 591 in definition of manufacturing inserted (b) concerning electrical energy production from an alternative renewable energy source; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

1999 Amendment: Chapter 51 in (3) after "described in the" substituted "North American Industry Classification System Manual prepared" for "standard industrial classification manual of 1972"; and made minor changes in style. Amendment effective March 15, 1999.

1991 Amendment: In definition of new corporation, in first sentence of (a) after "state", substituted subsections (a)(i) through (a)(iii) concerning qualifying entities for former language

that read: "and manufacturing a product not currently manufactured or substantially similar to a product currently manufactured by that corporation or any affiliate corporation in this state", in (b)(i), after "existing corporation", inserted "that has been engaged in manufacturing", and in (b)(ii), after "affiliate of", substituted "an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation" for "which 50% or more is owned or controlled by the same person, corporation, or association"; and made minor changes in style. Amendment effective April 27, 1991.

Effective Date — Applicability: Section 5, Ch. 694, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies to taxable years beginning after December 31, 1991."

Section Not Codified: Section 84-1519, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 435, L. 1975.

Administrative Rules

Title 42, chapter 4, subchapter 16, ARM Corporation — new and expanded industry credit.

Collateral References

71 Am. Jur. 2d State and Local Taxation §549.

15-31-125. Determination of tax credit.

Administrative Rules

Title 42, chapter 4, subchapter 16, ARM Corporation — new and expanded industry credit.

15-31-127. Department duties.

Administrative Rules

Title 42, chapter 4, subchapter 16, ARM Corporation — new and expanded industry credit.

15-31-130. Tax credit for health insurance premiums paid — eligible small employers — corporations.

Compiler's Comments

Effective Date: Section 21, Ch. 595, L. 2005, provided that this section is effective July 1, 2005.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

15-31-131. Credit for dependent care assistance and referral services.

Compiler's Comments

2001 Amendment: Chapter 540 in (2)(a) increased the percentage amount of allowable credit against taxes for dependent care assistance from 20% to 25% and increased dollar amount of credit allowed for day-care assistance from $1,250 to $1,575; inserted (3) allowing a tax credit to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist certain employees to obtain dependent care; in (10) at end of introductory clause after "subsection (1)" inserted "or (3)"; and made minor changes in style. Amendment effective May 1, 2001.

Retroactive Applicability: Section 7, Ch. 540, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000."

1997 Amendment: Chapter 42 in (1), (2)(b), (3), (6), (8), and (9)(a) inserted parenthetical references to United States Code sections of the Internal Revenue Code; in (1) deleted reference to section 89(k) of the Internal Revenue Code; in (9) deleted definition of Internal Revenue Code that read: ""Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989"; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1991 Amendment: In (2)(a), near beginning, increased amount of allowable credit from 15% to 20%; at beginning of (4)(a) substituted "to the extent" for "if"; at beginning of (4)(b) inserted "if the amount"; and made minor changes in style. Amendment effective April 15, 1991.

Retroactive Applicability: Section 2, Ch. 416, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Applicability: Section 6, Ch. 706, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

Administrative Rules

ARM 42.26.101 Alternative tax.

15-31-132. Tax credit for providing disability insurance for employees.

Compiler's Comments

2001 Amendment: Chapter 7 in introductory clause after "disability insurance" deleted "[issued under Title 33, chapter 22, part 12, and]"; and made minor changes in style. Amendment effective October 1, 2001.

Code Commissioner Clarification: In introductory clause, the Code Commissioner inserted brackets around the phrase "issued under Title 33, chapter 22, part 12, and" to reflect the repeal of that part by Ch. 531, L. 1997. The bracketed phrase has no effect because of the repeal.

Retroactive Applicability: Section 9, Ch. 606, L. 1991, provided: "[Sections 6 and 7] [15-31-132 and 15-30-129] apply retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Date: Section 10(1), Ch. 606, L. 1991, provided: "[Sections 1 through 3 and 5 through 7] [33-22-1201 through 33-22-1203 (all repealed), 33-22-1205 (now repealed), 15-31-132, and 15-30-129] are effective July 1, 1991."

Administrative Rules

ARM 42.4.2802 Disability insurance premiums credit.

15-31-133. Credit for day-care facilities.

Compiler's Comments

Effective Date: Section 6, Ch. 540, L. 2001, provided: "[This act] is effective on passage and approval." Approved May 1, 2001.

Retroactive Applicability: Section 7, Ch. 540, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000."

15-31-134. Empowerment zone new employees — tax credit.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

15-31-135. Contribution by small business corporation.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 5, Ch. 542, L. 1991, provided: "[This act] is effective on passage and approval [approved April 22, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

15-31-136. Contribution by partnership.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 5, Ch. 542, L. 1991, provided: "[This act] is effective on passage and approval [approved April 22, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

15-31-137. Small business corporation and partnership credit for alternative fuel conversion.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 617, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved May 6, 1993.

15-31-141. Consolidated returns — computation and procedure — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (6)(b)(i) in second and third sentences inserted reference to penalty; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendment: Chapter 124 in (6)(a) in first and second sentences substituted "tax period" for "taxable year"; substituted (6)(b)(i) allowing affiliated group filing consolidated return an automatic 6-month time extension for filing return, requiring tax and interest to be paid when return is filed, and requiring interest to be added as statutorily provided for former language that read: "A 1-month to 6-month extension of time is automatically allowed for filing a return if on or before the due date of the return, an application for an extension is made by the corporation. The application must be made on forms prescribed by the department"; inserted (6)(b)(ii) authorizing department to grant additional time extension for filing tax return whenever department judges good cause exists; and made minor changes in style. Amendment effective March 25, 2003.

Applicability: Section 3, Ch. 124, L. 2003, provided: "[This act] applies to tax returns due after [the effective date of this act]." Effective March 25, 2003.

1997 Amendment: Chapter 369 in (2), at end of first sentence after "department", deleted "of revenue"; in (2)(b), near beginning after "group", deleted "are incorporated and"; deleted former (6) that read: "(6) (a) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.

(b) In accordance with subsection (6)(a), financial institutions are prohibited from filing consolidated returns under this section"; and made minor changes in style. Amendment effective April 23, 1997.

Retroactive Applicability: Section 4(2), Ch. 369, L. 1997, provided: "[Section 1] [amending 15-31-141] applies retroactively, within the meaning of 1-2-109, to tax years after December 31, 1996."

1991 Amendment: Inserted (7) providing a procedure for filing a short-period corporation license tax return by corporations permitted to file a consolidated return. Amendment effective March 18, 1991.

Retroactive Applicability: Section 2, Ch. 86, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1987 Amendment: In (2), near middle of first sentence, inserted exception clause; inserted (2)(b) relating to corporations in affiliated group operating exclusively in Montana; inserted (3) regarding binding nature of election; in (6)(b) changed reference to subsection (5)(a) to reference to subsection (6)(a); and made minor changes in phraseology.

Applicability of Subsection (5): Section 6, Ch. 673, L. 1983, provided, in pertinent part: "Section 2 of this act [codified as 15-31-141(5)] applies to taxable periods beginning after December 31, 1982."

Administrative Rules

ARM 42.23.311 Filing requirements upon merger or consolidation.

Case Notes

Consolidated Returns — Discretion: The plaintiffs, parent-subsidiary corporations, were not conducting a unitary business as defined by this section. Furthermore, since this section is permissive rather than mandatory, defendant did not abuse its discretion in denying a request for permission to file a consolidated return. Baker Nat'l Ins. Agency v. Dept. of Revenue, 175 M 9, 571 P2d 1156 (1977).

Collateral References

85 C.J.S. Taxation §1699.

71 Am. Jur. 2d State and Local Taxation §593.

15-31-142. Reports upon merger of corporations.

Administrative Rules

ARM 42.23.311 Filing requirements upon merger or consolidation.

Collateral References

84 C.J.S. Taxation §169, et seq.

Validity and construction of state statute making successor corporation liable for taxes of predecessor. 65 ALR 3d 1181.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-31-143. Return and payment on corporate dissolution.

Compiler's Comments

1999 Amendment: Chapter 69 in (1) at beginning of first sentence substituted "Each corporation" for "It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation"; in (2) substituted "ceases to do business in Montana shall, upon the dissolution" for "cease to do business in Montana at any time during any year shall, before such dissolution"; and made minor changes in style. Amendment effective March 15, 1999.

Administrative Rules

ARM 42.23.313 Filing requirements upon dissolution, withdrawal, or cessation of business.

Case Notes

Period Covered by Tax: Under former law, when foreign corporation engaged in business in the state from April 1934, continuously until December 1937, when it ceased doing business, having paid the corporation license tax fee in 1935, 1936, and 1937, refusing to pay in 1938 on the ground that its 1937 payment was for 1937, the state erroneously contended the 1937 payment was for 1936. Under this section (before amendment), the tax is an excise or license and not an income tax, the tax paid in 1937 being for the year 1937 measured by the company's business done in 1936, and not having done any business in 1938 it owed nothing to the state. St. v. J. C. Maguire Constr. Co., 113 M 324, 125 P2d 433 (1942).

15-31-150. Credit for research expenses and research payments.

Compiler's Comments

2003 Amendment: Chapter 114 in (1)(b)(iv) substituted "26 U.S.C. (41)(h)(1)(B)" for "26 U.S.C. 41(h)"; and in (6)(d) substituted "26 U.S.C. 41(b)(2)(C)" for "26 U.S.C. 42(b)(2)(C)". Amendment effective October 1, 2003.

Effective Date: Section 4, Ch. 444, L. 1999, provided that this section is effective April 22, 1999.

Retroactive Applicability: Section 5, Ch. 444, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Administrative Rules

ARM 42.4.3202 Credit for increasing research activities.

ARM 42.4.3203 Information required of multistate business claiming credit for increasing research activities.

15-31-151. Credit for preservation of historic buildings.

Compiler's Comments

Applicability: Section 4, Ch. 545, L. 1997, provided: "[Sections 1 and 2] [15-31-151 and 15-30-180] apply to tax years beginning after December 31, 1997."

Administrative Rules

ARM 42.4.2902 Computation of tax credit for preservation of historic properties.

ARM 42.4.2903 Computation of tax credit for preservation of historic property for married taxpayers.

ARM 42.4.2904 Ownership of historic property.

15-31-152. Credit for equity capital investment.

Compiler's Comments

Severability: Section 21, Ch. 537, L. 2005, was a severability clause.

Effective Date: Section 22, Ch. 537, L. 2005, provided: "[This act] is effective July 1, 2005."

15-31-161. Credit for contribution by corporations to qualified endowment — recapture of credit — deduction included as income.

Compiler's Comments

2005 Amendment: Chapter 4 inserted (2) regarding requirements if a charitable gift is recovered by a corporation during any tax year; and made minor changes in style. Amendment effective February 23, 2005, and terminates December 31, 2007.

Retroactive Applicability: Section 6, Ch. 4, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Deletion of Termination Date and Repeal of July 1, 2003, Version: Section 1, Ch. 205, L. 2003, amended sec. 11, Ch. 24, Sp. L. August 2002, by deleting the April 30, 2004, termination date applicable to the version of this section that was to be effective July 1, 2003. Section 2, Ch. 205, L. 2003, repealed the version of this section that was to be effective July 1, 2003. Amendment effective April 2, 2003.

2002 Amendment: (Temporary version) Chapter 24 in first sentence reduced percentage of gift credit from 20% to 13.3% and in second sentence reduced maximum credit from $10,000 to $6,600. Amendment effective August 28, 2002, and terminates June 30, 2003.

(Version applicable July 1, 2003) Chapter 24 in first sentence increased percentage of gift credit from 20% to 26.7% and in second sentence increased maximum credit from $10,000 to $13,400. Amendment effective August 28, 2002, and terminates April 30, 2004.

Applicability: Section 10, Ch. 24, Sp. L. August 2002, provided: "(1) [Sections 1, 3, 5, and 7] [temporary versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162] apply to charitable gifts made on or after [the effective date of this act]." Effective August 28, 2002.

"(2) [Sections 2, 4, 6, and 8] [versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162 applicable on July 1, 2003] apply to charitable gifts made on or after July 1, 2003."

2001 Amendment: Chapter 226 near middle of first sentence after "equal to" substituted "20% of a charitable gift" for "50% of a charitable gift". Amendment effective October 1, 2001.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Preamble: The preamble attached to Ch. 537, L. 1997, provided: "WHEREAS, charitable endowments are permanent savings accounts, the income from which is perpetually committed to charitable purposes; and

WHEREAS, Montana-based charitable endowments can grow over time to become significant resources capable of funding many unanticipated and unmet needs of, and creating new opportunities for, Montana's citizens and their communities; and

WHEREAS, Montana's relatively weak tradition of endowed philanthropy can be demonstrated by comparing our state with the other 49 states, in that Montana ranks 44th in population and 41st in per capita income, but ranks 48th in foundation assets and 49th in foundation giving; and

WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over the contributor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contributor to a charity prior to the contributor's death; and

WHEREAS, although planned gifts would appear to offer genuine financial potential for creating and expanding charitable endowments in Montana, in reality, planned gifts are so infrequently contributed in Montana that endowments in our state are not growing as fast as they are in other states; and

WHEREAS, planned gifts might be used more in funding charitable endowments in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, income distributed from endowments can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, local charitable endowments currently exist in almost every Montana community, and the existence of these widespread endowments offers everyone in Montana an opportunity to contribute endowed funding for their local communities; and

WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana communities by developing creative solutions to help individual communities meet growing needs and by helping these communities find transitions to self-sufficiency; and

WHEREAS, earnings from charitable endowments in Montana are distributed by volunteer boards of diverse community leaders to meet emerging community needs in such areas as education, arts and culture, social services, economic development, and health and the environment; and

WHEREAS, government cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] [15-30-166, 15-30-167, 15-31-161, and 15-31-162] to qualified permanent endowments held by tax-exempt organizations or by banks or trust companies on behalf of tax-exempt organizations; and

WHEREAS, for the purpose of renewing the tax credit created by [this act] [15-30-166, 15-30-167, 15-31-161, and 15-31-162], it is the intent of the 55th Legislature that the state's cost of administering the tax credit may not exceed 5% of the total annual credits claimed."

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

15-31-162. Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment — recapture of credit — deduction included as income.

Compiler's Comments

2005 Amendment: Chapter 4 in (1) in second sentence after "members" deleted "or managers" and in third sentence after "member" deleted "or manager"; inserted (2) regarding requirements of a small business corporation, partnership, or limited liability company if a charitable gift is recovered by the entity during any tax year; and made minor changes in style. Amendment effective February 23, 2005, and terminates December 31, 2007.

Retroactive Applicability: Section 6, Ch. 4, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Deletion of Termination Date and Repeal of July 1, 2003, Version: Section 1, Ch. 205, L. 2003, amended sec. 11, Ch. 24, Sp. L. August 2002, by deleting the April 30, 2004, termination date applicable to the version of this section that was to be effective July 1, 2003. Section 2, Ch. 205, L. 2003, repealed the version of this section that was to be effective July 1, 2003. Amendment effective April 2, 2003.

2002 Amendment: (Temporary version) Chapter 24 in third sentence reduced maximum credit from $10,000 to $6,600. Amendment effective August 28, 2002, and terminates June 30, 2003.

(Version applicable July 1, 2003) Chapter 24 in third sentence increased maximum credit from $10,000 to $13,400. Amendment effective August 28, 2002, and terminates April 30, 2004.

Applicability: Section 10, Ch. 24, Sp. L. August 2002, provided: "(1) [Sections 1, 3, 5, and 7] [temporary versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162] apply to charitable gifts made on or after [the effective date of this act]." Effective August 28, 2002.

"(2) [Sections 2, 4, 6, and 8] [versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162 applicable on July 1, 2003] apply to charitable gifts made on or after July 1, 2003."

2001 Amendment: Chapter 226 near end of first sentence after "as defined in 35-8-102" inserted "carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity". Amendment effective October 1, 2001.

The amendments to this section made by Ch. 143, L. 2001, were rendered void by sec. 6, Ch. 226, L. 2001, a coordination section.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

Part 3
Allocation and Apportionment of Income

Part Administrative Rules

ARM 42.23.211 Use of separate accounting method.

ARM 42.23.212 Basis for disposition of property.

Title 42, chapter 26, subchapter 2, ARM Multistate Tax Commission allocation and apportionment regulations.

Title 42, chapter 26, subchapter 4, ARM Special rules related to installment sales.

Title 42, chapter 26, subchapter 5, ARM Public law 86-272.

Title 42, chapter 26, subchapter 6, ARM Railroads.

Title 42, chapter 26, subchapter 7, ARM Trucking.

Title 42, chapter 26, subchapter 8, ARM Airlines.

Title 42, chapter 26, subchapter 9, ARM Special rules for construction contracts.

Title 42, chapter 26, subchapter 10, ARM Publishing companies — apportionment.

Title 42, chapter 26, subchapter 11, ARM Television and radio broadcasting.

Part Case Notes

Department Decision to Include Overflight Mileage in Apportionment Formula — Noncompliance With MAPA: The unilateral administrative decision of a Department of Revenue auditor to include an airline's nonstop flyover mileage in the numerator of the statutory apportionment formula qualified as a rule under 2-4-102 and was subject to the notice and hearing requirements of 2-4-302 in order to be valid under the Montana Administrative Procedure Act. NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676, 43 St. Rep. 959 (1986).

Inapplicable if Gross Business Within the State Not Determined: Under former law, the predecessor to this part did not apply to an action to recover taxes paid by a domestic corporation where controversy was whether interest on obligations of nonresidents, collected outside the state and forwarded to the principal office in Montana should be considered as income within the state, since, until the interest payments had been determined to be income within or without the state, the gross business within and without the state could not be established, and until these two factors were known, the method of segregation formerly provided by the statute could not be applied. Mont. Life Ins. Co. v. Shannon, 106 M 500, 78 P2d 946 (1938).

Part Collateral References

Taxation *key* 121, 1001 through 1005.

84 C.J.S. Taxation §§170, 184.

71 Am. Jur. 2d State and Local Taxation §§305, 456, 576, 577.

Computation of income tax on nonresident or foreign corporation. 156 ALR 1370.

State taxation in respect of businesses of nonresidents and foreign corporations carried on both within and without the state. 130 ALR 1183.

Constitutionality of discrimination between domestic corporations as regards to taxation based on fact of whether their business is wholly within state, wholly out of state, or partially within and partially without. 122 ALR 983.

15-31-301. Corporations subject to allocation and apportionment.

Administrative Rules

ARM 42.26.203 Consistency and uniformity in reporting required.

ARM 42.26.205 Two or more businesses of a single taxpayer.

ARM 42.26.210 Income taxable in another state.

Title 42, chapter 26, subchapter 7, ARM Trucking.

Title 42, chapter 26, subchapter 9, ARM Special rules for construction contracts.

Case Notes

Unitary Business Assessment Upheld: After the Supreme Court's decision upholding the State Tax Appeal Board's ruling that assessment as a unitary business was proper, in Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 4147 (1981), Ward was purchased by Russell Stover Candies, Inc. Russell Stover appealed to the U.S. Supreme Court, which vacated judgment and remanded to Montana for further consideration in light of two recent cases in which the U.S. Supreme Court held subsidiaries to be separate businesses, and since no relationship existed between the subsidiary and the transaction of business in the taxing state, due process was violated. The Montana court distinguished the cases, saying the Montana ranches were active operations of Ward and were formally part of the Ward corporation. The most important factor, however, was that the ranches had very little independence from the overall Ward operation. They had no capacity to operate independently. All bookkeeping and all major decisions were controlled by the home office. The state was correct in taxing Ward, based on appropriation of Ward's total income. Russell Stover Candies, Inc. v. Dept. of Revenue, 204 M 122, 665 P2d 198, 40 St. Rep. 712 (1983).

Federal Due Process Not Violated: The state's taxation of income derived in interstate commerce meets federal due process requirements since the corporation availed itself of the privilege of doing business within the state and was a unitary business within and without the state; citing Mobil Oil Corp. v. Comm'r of Taxes, 445 US 425, 63 L Ed 2d 510, 100 S Ct 1223 (1980). Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 2147 (1981).

Similar Administrative Rule in Effect Before 1974: Although subsection (2) of 15-31-301 was created by a 1974 amendment, it applies to the period of dispute (1971-1975) because a similar administrative rule was in effect prior to the amendment and the rule was not inconsistent with the section as it existed prior to amendment. Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 2147 (1981).

Unitary Business — Cattle Ranches and Paper Products Operation: A corporation consisted of seven divisions; five divisions outside the state produced and marketed paper products; two divisions within the state operated cattle ranches. The corporation was considered a unitary business within and without the state for purposes of apportionment of business income. The in-state operations were dependent upon the out-of-state operations for administrative services, management decisions, and financial assistance when ranch funds were insufficient; they contributed to out-of-state operations by providing short-term investment income and tax writeoffs. Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 2147 (1981).

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-302. Definitions.

Administrative Rules

ARM 42.26.202 Definitions.

ARM 42.26.206 "Business" and "nonbusiness" income defined.

ARM 42.26.207 Determination of business and nonbusiness income.

ARM 42.26.241 through 42.26.244 Treatment of "compensation".

ARM 42.26.251 through 42.26.254 Treatment of "sales".

Case Notes

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-303. When taxable in another state.

Compiler's Comments

1985 Amendment: At end of (2) inserted "subject the taxpayer to a net income tax".

Administrative Rules

ARM 42.26.209 and 42.26.211 When taxpayer "subject to" tax in another state.
ARM 42.26.210 Income taxable in another state.
ARM 42.26.212 State taxing jurisdiction.

15-31-304. Allocation of nonbusiness income.

Administrative Rules

ARM 42.26.208 Proration of deductions.
ARM 42.26.307 Apportionment and allocation generally.

Case Notes

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-305. Apportionment of business income.

Administrative Rules

ARM 42.23.211 Use of separate accounting method.
ARM 42.23.212 Basis for disposition of property.
Title 42, chapter 26, subchapter 2, ARM Multistate Tax Commission income allocation and apportionment regulations.
ARM 42.26.204 Combined report for affiliated corporations.
ARM 42.26.208 Proration of deductions.
ARM 42.26.307 Apportionment and allocation generally.
ARM 42.26.308 Apportionment formula.
ARM 42.26.401 Special rules related to installment sales.
ARM 42.26.402 Unreported income on installment obligation in year of dissolution.

Case Notes

Use of State-to-State Method in Calculating Sales Factor Applicable to Delivery of Intrastate Packages: The State Tax Appeal Board properly applied the state-to-state revenue analysis method, although misnamed the adjusted revenue method, in calculating the sales factor applicable in determining revenue earned from intrastate packages both picked up and delivered in Montana. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

Nonstop Flyover Miles — No Authority for Inclusion in Numerator of Apportionment Formula: The language of 15-31-312 and ARM 42.26.264 expresses no intent to consider activity other than that in Montana; therefore, the Department of Revenue had no statutory authority to include in the numerator of the apportionment formula those miles flown by an airline as nonstop flights that did not take off or land in Montana or have contact with the state. NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676, 43 St. Rep. 959 (1986).

Unitary Business Assessment Upheld: After the Supreme Court's decision upholding the State Tax Appeal Board's ruling that assessment as a unitary business was proper, in Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 4147 (1981), Ward was purchased by Russell Stover Candies, Inc. Russell Stover appealed to the U.S. Supreme Court, which vacated judgment and remanded to Montana for further consideration in light of two recent cases in which the U.S. Supreme Court held subsidiaries to be separate businesses, and since no relationship existed between the subsidiary and the transaction of business in the taxing state, due process was violated. The Montana court distinguished the cases, saying the Montana ranches were active operations of Ward and were formally part of the Ward corporation. The most important factor, however, was that the ranches had very little independence from the overall Ward operation. They had no capacity to operate independently.

All bookkeeping and all major decisions were controlled by the home office. The state was correct in taxing Ward, based on appropriation of Ward's total income. Russell Stover Candies, Inc. v. Dept. of Revenue, 204 M 122, 665 P2d 198, 40 St. Rep. 712 (1983).

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-306. Definition of property factor.

Administrative Rules

ARM 42.26.231 Property factor in general.
ARM 42.26.232 Property used to produce business income.
ARM 42.26.233 Consistency in reporting with respect to property.
ARM 42.26.262 Special computations related to property factor.

15-31-307. Values used for property factor.

Administrative Rules

ARM 42.26.235 Valuation of owned property.
ARM 42.26.236 Valuation of rented property.
ARM 42.26.237 Averaging property values.

15-31-308. Definition of payroll factor.

Administrative Rules

ARM 42.26.244 Numerator of payroll factor.

15-31-309. Payroll factor for compensation in this state.

Administrative Rules

ARM 42.26.244 Numerator of payroll factor.

15-31-310. Definition of sales factor.

Administrative Rules

ARM 42.26.251 through 42.26.254 Sales factor in general.
ARM 42.26.259 Sale of tangible and intangible property — computation of sales factor.
ARM 42.26.263 Special computations related to sales factor.

Case Notes

Use of State-to-State Method in Calculating Sales Factor Applicable to Delivery of Intrastate Packages: The State Tax Appeal Board properly applied the state-to-state revenue analysis method, although misnamed the adjusted revenue method, in calculating the sales factor applicable in determining revenue earned from intrastate packages both picked up and delivered in Montana. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

15-31-311. Sales factor for sales in this state.

Administrative Rules

ARM 42.26.251 Sales factor in general.
ARM 42.26.255 Sales of tangible personal property.
ARM 42.26.256 Sales of tangible personal property to federal government.
ARM 42.26.257 Sales other than sales of tangible personal property.
ARM 42.26.259 Sale of tangible and intangible property — computation of sales factor.

Case Notes

Use of State-to-State Method in Calculating Sales Factor Applicable to Delivery of Intrastate Packages: The State Tax Appeal Board properly applied the state-to-state revenue analysis method, although misnamed the adjusted revenue method, in calculating the sales factor applicable in determining revenue earned from intrastate packages both picked up and delivered in Montana. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

15-31-312. Apportionment formula — relief provisions.

Administrative Rules

ARM 42.26.264 Special computations related to freight and passenger carriers.
ARM 42.26.308 Water's-edge — apportionment formula.
Title 42, chapter 26, subchapter 9, ARM Special rules for construction contracts.

Case Notes

Mileage Method as Inequitable Representation of State Business Activity: This section requires an equitable representation of a taxpayer's business activity in the state. However, in this case, the mileage method promulgated in an administrative rule implementing this section was not an equitable method of calculating defendant's income-producing activity for the sales factor portion of the formula. Defendant's petition for an alternative method of apportionment under this section was appropriate. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

Multistate Taxpayers Engaged in Unitary Business: The Supreme Court held that when corporate taxpayers are engaged in a unitary business, sales by the corporation of temporary cash investments are not to be reported by them for Montana's corporation license tax or income tax purposes as included in gross sales; except for the net gain from such sales, the total amounts of these sales should be excluded from the formula determining the unitary business's income for corporation license tax reporting. Am. Tel. & Tel. Co. v. St. Tax Appeal Bd., 241 M 440, 787 P2d 754, 47 St. Rep. 403 (1990).

Nonstop Flyover Miles — No Authority for Inclusion in Numerator of Apportionment Formula: The language of this section and an administrative rule implementing it expresses no intent to consider activity other than that in Montana; therefore, the Department of Revenue had no statutory authority to include in the numerator of the apportionment formula those miles flown by an airline as nonstop flights that did not take off or land in Montana or have contact with the state. NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676, 43 St. Rep. 959 (1986).

15-31-313. Rules.

Administrative Rules

ARM 42.23.211 Use of separate accounting method.

ARM 42.23.212 Basis for disposition of property.

ARM 42.23.313 Filing requirements upon dissolution, withdrawal, or cessation of business.

Title 42, chapter 26, subchapter 2, ARM Multistate Tax Commission allocation and apportionment regulations.

ARM 42.26.307 through 42.26.309 Water's-edge — apportionment.

Title 42, chapter 26, subchapter 4, ARM Special rules related to installment sales.

Title 42, chapter 26, subchapter 5, ARM Public law 86-272.

Title 42, chapter 26, subchapter 6, ARM Railroads.

Title 42, chapter 26, subchapter 7, ARM Trucking.

Title 42, chapter 26, subchapter 8, ARM Airlines.

Title 42, chapter 26, subchapter 9, ARM Special rules for construction contracts.

Title 42, chapter 26, subchapter 10, ARM Publishing companies — apportionment.

Title 42, chapter 26, subchapter 11, ARM Television and radio broadcasting.

Case Notes

Mileage Method as Inequitable Representation of State Business Activity: Section 15-31-312 requires an equitable representation of a taxpayer's business activity in the state. However, in this case, the mileage method promulgated in an administrative rule implementing 15-31-312 was not an equitable method of calculating defendant's income-producing activity for the sales factor portion of the formula. Defendant's petition for an alternative method of apportionment under 15-31-312 was appropriate. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-321. Definitions.

Compiler's Comments

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

Title 42, chapter 26, subchapter 3, ARM Water's-edge.

Collateral References

71 Am. Jur. 2d State and Local Taxation §456.

15-31-322. Water's-edge election — inclusion of tax havens.

Compiler's Comments

2003 Amendment: Chapter 521 inserted (1)(f) identifying tax havens; inserted (2) requiring department to biennially update countries that may be considered tax havens; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

ARM 42.26.301 Water's-edge election.
ARM 42.26.306 Applicability.
ARM 42.26.310 Disregarding or modifying water's-edge election.
ARM 42.26.311 Certain corporations includable in water's-edge combined return.

15-31-323. Apportionment factors — inclusion of tax havens.

Compiler's Comments

2003 Amendment: Chapter 521 near beginning of (1) substituted "15-31-322(1)(a) through (1)(e)" for "15-31-322(1) and (5)"; inserted (2) providing that income shifted to tax haven is subject to apportionment; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

ARM 42.26.307 Apportionment and allocation generally.
ARM 42.26.308 Apportionment formula.
ARM 42.26.309 Apportionment factors.

15-31-324. Water's-edge election period — consent — change of election.

Compiler's Comments

2003 Amendment: Chapter 521 in (1) inserted last sentence requiring disclosure of identity of taxpayer and affiliated corporation in which taxpayer owns controlling interest, including corporation incorporated in tax haven; in (2) inserted exception clause; deleted former (2)(a) that read: "(a) No water's-edge election may be made for an income year beginning before October 1, 1987"; inserted (4) allowing taxpayer to rescind election for tax periods after October 1, 2003; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

Title 42, chapter 26, subchapter 3, ARM Water's-edge.
ARM 42.26.301 Water's-edge election.
ARM 42.26.302 Procedure.
ARM 42.26.303 Revocation or nonrenewal of water's-edge elections.
ARM 42.26.310 Disregarding or modifying water's-edge election.

15-31-325. Treatment of dividends.

Compiler's Comments

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules
ARM 42.26.312 Treatment of dividends for purposes of water's-edge combined return.

15-31-326. Domestic disclosure spreadsheet — inclusion of tax havens.

Compiler's Comments
2003 Amendment: Chapter 521 inserted (2) allowing department to require disclosure for tax havens; and made minor changes in style. Amendment effective October 1, 2003.
Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."
Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."
Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules
ARM 42.26.304 Domestic disclosure spreadsheet.

Part 4
Corporation Income Tax

Part Law Review Articles
Montana's Tax Appeals Process: A Guide Through the Maze, Woodgerd, 51 Mont. L. Rev. 190 (1990).

Part Collateral References
Taxation *key* 1015, 1016.
85 C.J.S. Taxation §1693, et seq.
71 Am. Jur. 2d State and Local Taxation §450.
Validity under federal Constitution of state tax measured by income of foreign corporation. 67 ALR 2d 1322.
Validity under import-export clause of federal Constitution of state tax on corporations. 20 ALR 2d 152.
Dividend in kind or stock dividend as affecting corporation's income tax. 7 ALR 2d 750.
Computation of income tax on nonresident or foreign corporations. 156 ALR 1370.
State taxation in respect of businesses of nonresidents and foreign corporations carried on both within and without the state. 130 ALR 1183.
Constitutionality of discrimination between domestic corporations as regards to taxation based on fact of whether their business is wholly within state, wholly out of state, or partially within and partially without state. 122 ALR 983.

15-31-401. Application of license and income taxes.

Compiler's Comments
1987 Amendment: In (1), at beginning of second sentence, inserted exception clause; and inserted (2) exempting certain net income of research and development firms.

Collateral References
85 C.J.S. Taxation §§1706 through 1708.

15-31-403. Rate of tax imposed — income from sources within state defined — alternative tax.

Compiler's Comments
1987 Amendment: At beginning of (1) inserted exception clause.

Collateral References
Taxation *key* 1062.
85 C.J.S. Taxation §§1698, 1718, 1719.
71 Am. Jur. 2d State and Local Taxation §471.

15-31-404. Offset for license taxes — income tax collected considered license tax.

Compiler's Comments
2003 Amendment: Chapter 114 in three places deleted part 2 from the parts of chapter referred to; and made minor changes in style. Amendment effective October 1, 2003.

Collateral References
85 C.J.S. Taxation §1778.

15-31-405. Information return — period for assessment of tax.

Compiler's Comments

2003 Amendment: Chapter 114 in second sentence deleted part 2 from the parts of chapter referred to. Amendment effective October 1, 2003.

Collateral References

85 C.J.S. Taxation §1699.

71 Am. Jur. 2d State and Local Taxation §589.

15-31-406. License tax sections incorporated by reference.

Compiler's Comments

1993 Amendment: Chapter 135 in (2), in list of statutory references, deleted references to 15-31-507 and 15-31-508 and inserted reference to 15-31-511; and made minor changes in style.

1989 Amendment: In (2) inserted reference to 15-31-119. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 6, Ch. 538, L. 1989, provided: "[This act] is effective on passage and approval [approved April 14, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1987 Amendment: Changed "15-31-541 through 15-31-543" to "15-31-541 and 15-31-543".

Additional Sections Incorporated by Reference: Sections 10, 11, 15, and 18 of Ch. 564, L. 1987, were codified in Title 15, chapter 31, pursuant to the codification instruction in sec. 22(3), Ch. 564, L. 1987. Because these sections apply to both corporation license taxes and corporation income taxes, the Code Commissioner codified the sections in Title 15, chapter 31, part 1 (corporation license taxes), as 15-31-117 and 15-31-118 and included them in Title 15, chapter 31, part 4 (corporation income taxes), by adding 15-31-117 and 15-31-118 to the list of sections in 15-31-406 incorporated by reference in part 4.

1981 Amendment: Substituted "15-31-525, 15-31-526" for "15-31-525 through 15-31-527" in (2).

Commissioner Correction: Section 84-6906, R.C.M. 1947, contained a reference to section 84-1501.4, R.C.M. 1947, which had been repealed by sec. 2, Ch. 23, L. 1971. In recodification this reference was deleted. See the Official Report of the Code Commissioner, 1979.

Part 5
Administration and Collection

Part Compiler's Comments

Section Not Codified: Section 84-723, R.C.M. 1947, which transferred the duty of collecting the corporation license tax from the State Treasurer to the Department of Revenue, was not codified. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1927, as amended by sec. 13, Ch. 516, L. 1973, and sec. 7, Ch. 286, L. 1977.

Part Collateral References

Taxation *key* 1071 through 1104.

85 C.J.S. Taxation §973, et seq.

71 Am. Jur. 2d State and Local Taxation §§596 through 607; 72 Am. Jur. 2d State and Local Taxation §§737 through 761, 763 through 811.

15-31-501. Department rules.

Administrative Rules

ARM 42.2.401 Small business liability funds.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Title 42, chapter 4, ARM Tax credits.

ARM 42.4.201 Individual — energy conservation installation credit — definitions.

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

ARM 42.4.4105 Alternate renewable energy generation facilities exemption — less than one megawatt.

ARM 42.4.4106 Appeal rights.

ARM 42.4.4107 Commercial use for income tax.

Title 42, chapter 9, subchapter 3, ARM Partnerships.

Title 42, chapter 9, subchapter 4, ARM S. corporations.

Title 42, chapter 9, subchapter 5, ARM Disregarded entities.

Title 42, chapter 23, ARM Corporation license tax — general provisions.
Title 42, chapter 26, ARM Corporation license tax — multistate activities.

Case Notes

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

Review of Rules by Writ of Prohibition Improper: A Writ of Prohibition issued by a District Court is improper as a means of reviewing regulations promulgated under the authority of this section. State ex rel. Fulton v. District Court, 139 M 573, 366 P2d 435 (1961).

15-31-502. Assessment and payment of tax — estimated tax payment — amount of required installments.

Compiler's Comments

1993 Amendment: Chapter 92 in (2)(a), in first sentence before "$5,000", substituted "is" for "can reasonably be expected to be"; in (2)(a)(i) and (2)(a)(ii) substituted installment due date schedules for former (2)(a) that set forth in table format the percentage of estimated tax due for each quarter; substituted (2)(b) clarifying annual required payments for former (2)(b) that read: "If after paying any installment of estimated tax the taxpayer makes a new estimate, the amount of each installment, if any, is the amount that would have been paid if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing:

(i) the difference between:

(A) the amount of estimated tax required to be paid before the date on which the new estimate was made; and

(B) the amount of estimated tax that would have been required to be paid before that date if the new estimate had been made when the first estimate was made:

(ii) by the number of installments remaining to be paid on or after the date on which the new estimate was made"; and made minor changes in style.

Applicability: Section 4(1), Ch. 92, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Rulemaking Authority: Section 4(2), Ch. 92, L. 1993, provided: "The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993."

1989 Special Session Amendment: In (1) deleted second and third sentences that read: "If the tax is not paid on or before the due date, there shall be assessed a penalty of 10% of the amount of the tax unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted or otherwise, interest shall be added thereto at the rate of 12% per annum from the due date until paid"; inserted (2) requiring quarterly estimated payments by taxpayers subject to corporate license or income tax who have annual state tax liabilities of or in excess of $5,000; inserted (3) providing that applicability of section to taxable years of less than 12 months is pursuant to Department rules; inserted (4) allowing corporation election to pay estimated tax before due date; and made minor change in phraseology. Amendment effective July 17, 1989.

Severability: Section 13, Ch. 9, Sp. L. June 1989, was a severability clause.

Applicability: Section 15, Ch. 9, Sp. L. June 1989, provided that this section applies to taxable years beginning after December 31, 1989.

1981 Amendment: Increased the interest on delinquent corporate license tax from 9% to 12%.

Applicability: Section 2, Ch. 182, L. 1981, provided: "This act applies to corporate taxes under Title 15, chapter 31, that become due on or after May 15, 1981, or that become due prior to May 15, 1981, and remain unpaid on or after May 15, 1981. The 12% rate is applied to unpaid tax commencing on May 15, 1981."

Administrative Rules

ARM 42.2.501 Application of partial payments.
Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.
ARM 42.23.605 Penalty and interest.
ARM 42.23.606 Quarterly estimated tax payments.
ARM 42.23.608 Basis for not waiving quarterly estimated tax underpayment interest.
ARM 42.23.609 Short period returns.

Collateral References

85 C.J.S. Taxation §1777, et seq.

71 Am. Jur. 2d State and Local Taxation §596; 72 Am. Jur. 2d State and Local Taxation §§737, 738, 742 through 748.

What amounts to "reasonable cause" for failure to file, or delay in filing, tax return. 3 ALR 2d 617.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceedings. 13 ALR Fed. 877.

15-31-503. Deficiency assessment — notice — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) in first sentence at beginning inserted reference to penalty and after "assessment" substituted "is calculated" for "shall bear interest", inserted second sentence related to adding penalty and interest to deficiency, and in third sentence substituted "subsection (1)" for "this subsection"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, inserted second sentence relating to review under 15-1-211, and deleted remainder of subsection that read: "Within 30 days after the mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer"; and in (2) deleted first sentence that read: "When a deficiency is determined and the tax becomes final, the department shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Administrative Rules

ARM 42.23.605 Penalty and interest.

Case Notes

Evidentiary Hearing Not Contemplated: Section 15-31-503 does not contemplate an evidentiary hearing but merely an opportunity for the taxpayer to request a review of the administrative procedures used to calculate the assessment and to present evidence in support of his tax calculations. Thus, the Department of Revenue is not entitled to further discovery after entering a deficiency assessment and before the protest hearing, and the MAPA does not apply. W.R. Grace & Co. v. Dept. of Revenue, 173 M 339, 567 P2d 913 (1977).

Collateral References
85 C.J.S. Taxation §§1760, 1761.
71 Am. Jur. 2d State and Local Taxation §§597, 598; 72 Am. Jur. 2d State and Local Taxation §761.

15-31-504. Estimated tax on failure to file.

Collateral References
85 C.J.S. Taxation §§1699, 1760, 1761.
71 Am. Jur. 2d State and Local Taxation §596.

15-31-505. Subpoenas — investigation of income, and shifting.

Collateral References
85 C.J.S. Taxation §§1757, 1765, et seq.
71 Am. Jur. 2d State and Local Taxation §596.

15-31-506. Copy of federal return required — report of amended federal return.

Compiler's Comments
1999 Amendment: Chapter 68 in second sentence substituted "the corporation shall file an amended Montana return with the department" for "the corporation shall report such proposed change or correction to the department"; in third sentence substituted "an amended Montana return" for "an amended return"; and made minor changes in style. Amendment effective March 15, 1999.
Retroactive Applicability: Section 6, Ch. 68, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Administrative Rules
ARM 42.23.303 Change in federal tax or return.

Collateral References
85 C.J.S. Taxation §1699.
71 Am. Jur. 2d State and Local Taxation §589.

15-31-509. Periods of limitation.

Compiler's Comments
1999 Amendment: Chapter 68 in (1)(b) substituted "an amended Montana return" for "a report of changes in federal taxable income or an amended return"; and made minor changes in style. Amendment effective March 15, 1999.
Retroactive Applicability: Section 6, Ch. 68, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."
1997 Amendment: Chapter 51 in (1), in first sentence, in (1)(b), and in (2) decreased "5 years" to "3 years"; inserted (3) providing for the claim period for a refund or credit based upon an overpayment attributable to a net loss carryback adjustment; inserted (4) pertaining to the period for which a claim for a net operating loss will remain open; and made minor changes in style. Amendment effective March 13, 1997.
1983 Amendments: Chapters 79 and 222 both changed "15-31-542" to "15-31-544" near beginning of (1).

Administrative Rules
ARM 42.23.303 Change in federal tax or return.
ARM 42.23.601 Refunds and credits.

Case Notes
Statute of Limitations Applicable to Claims for Corporate License Tax Refunds: The 5-year statutory time limit within which to claim a refund of corporate license taxes (as provided in this section prior to 1997 amendment) begins running on the date established in 15-31-111(2). Although 15-31-111 allows a taxpayer to automatically extend for up to 6 months the period of time for filing, the extension is not included in determining when the limitations period begins to run. The extension simply gives the taxpayer additional time to prepare the return; it does not change the day prescribed for filing the return. Norfolk Holdings, Inc. v. Dept. of Revenue, 249 M 40, 813 P2d 460, 48 St. Rep. 569 (1991).
Corporate License Tax — Limitations on Assessment Where No Return — No Revival of Impliedly Repealed Section by Internal Reference: The 2-year Statute of Limitations in 27-2-211 applied to the assessment of corporate license tax for corporations that failed to file a return for the reason that the Supreme Court in St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960),

had held that sec. 1, Ch. 209, L. 1945 (amending 15-31-526), had superseded sec. 9, Ch. 166, L. 1933 (enacting 15-31-542), as to the time limitation and the Legislature, in sec. 2, Ch. 186, L. 1963 (enacting 15-31-509), though referencing 15-31-542 on an exception, had not used language to revive it; therefore 15-31-542 remained superseded or repealed. (But see 15-31-544.) Caterpillar Tractor Co., Inc. v. Dept. of Revenue, 194 M 537, 633 P2d 618, 38 St. Rep. 1245 (1981).

Limitation of Powers of Department — Extension Agreement: An agreement to extend the 5-year (now 3-year under 1997 amendment) period to give notice of a tax deficiency does not permit the Department of Revenue to give notice after expiration of the extension period. This section acts as a limitation on the powers of the Department and is not solely a Statute of Limitations that may be tolled simply by filing a notice of tax deficiency during the applicable period or an extension thereof. Anaconda Co. v. Dept. of Revenue, 178 M 254, 583 P2d 421 (1978).

Limitation on Action of Board: Under 15-31-526, prior to the 1963 amendment, the Board of Equalization (now Department of Revenue) was limited to going back no more than 5 (now 3 years under 1997 amendment) years to recover corporation license taxes alleged to be due. St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960).

Collateral References

85 C.J.S. Taxation §§1779 through 1781.

71 Am. Jur. 2d State and Local Taxation §§596, 597; 72 Am. Jur. 2d State and Local Taxation §§784, 785.

15-31-510. Estimated payments — tax returns — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) near end substituted "is assessed interest as provided in 15-1-216" for "there is charged interest in the amount of 12% a year"; in (2) at beginning substituted "In addition to the interest assessed" for "Except as provided", substituted "15-31-111" for "15-31-545", and inserted reference to penalty; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (1) substituted "there is charged interest in the amount of 12% a year calculated" for "there is assessed a 20% a year underpayment interest penalty calculated"; in (1)(b) and (1)(d) near beginning substituted "interest" for "the interest penalty" and after "installment may not be" substituted "charged" for "imposed"; in (2) at beginning inserted exception clause; and at end substituted "as provided in 15-1-216" for "at the rate of 12% a year from the due date until paid"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 51 deleted former (2) that read: "If the tax for any corporation is not paid on or before the due date of the return as provided in 15-31-111(2) or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3), there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was due to reasonable cause and not to neglect"; in (2) substituted "as provided in 15-31-545" for "under 15-31-111(2)"; and made minor changes in style. Amendment effective March 13, 1997.

Retroactive Applicability: Section 8, Ch. 51, L. 1997, provided: "[Sections 1 and 4] [15-31-545, now repealed, and 15-31-510] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendment: Chapter 54 at beginning of (1)(a) deleted "For purposes of this subsection (a)"; in (2), near middle after "15-31-111(2)", inserted "or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3)"; in (3), near beginning, substituted "chapter" for "section" and after "when due" inserted "under 15-31-111(2)"; and made minor changes in style. Amendment effective February 9, 1995.

Effective Date — Retroactive Applicability: Section 3, Ch. 54, L. 1995, provided: "[This act] is effective on passage and approval [approved February 9, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1993 Amendment: Chapter 92 in (1)(a), near beginning after "underpayment is", substituted "the amount of the required installment set forth in 15-31-502 that exceeds the amount" for "in excess of the amount of the installment that would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for the year over the amount"; in (1)(b), after "tax were", deleted "the lesser of the following"; deleted former (1)(b)(i) and (1)(b)(ii) precluding payment of the interest penalty if the estimated tax required to be paid was the lesser of the tax shown on the return of the corporation for the preceding taxable year if a return showing a liability for tax was filed for the preceding taxable year and the preceding year was a taxable year of 12 months or an amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; and made minor changes in style.

Applicability: Section 4(1), Ch. 92, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Rulemaking Authority: Section 4(2), Ch. 92, L. 1993, provided: "The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993."

Severability: Section 13, Ch. 9, Sp. L. June 1989, was a severability clause.

Effective Date: Section 16, Ch. 9, Sp. L. June 1989, provided that this section is effective July 17, 1989.

Applicability: Section 15, Ch. 9, Sp. L. June 1989, provided that this section applies to taxable years beginning after December 31, 1989.

Administrative Rules

ARM 42.2.501 Application of partial payments.

ARM 42.23.605 Penalty and interest.

ARM 42.23.607 Computation of quarterly estimated tax underpayment interest.

ARM 42.23.608 Basis for not waiving quarterly estimated tax underpayment interest.

15-31-511. Confidentiality of tax records.

Compiler's Comments

2005 Amendment: Chapter 595 inserted (3)(f) related to small business health insurance tax credit; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

15-31-521. Closing agreements.

Compiler's Comments

Section Not Codified — Merger: Section 84-6909, R.C.M. 1947, which authorizes closing agreements with respect to liability for the corporation income tax, was merged with this section and was not codified as a separate section in the MCA. Citation may be made to sec. 3, Ch. 353, L. 1977.

Collateral References

85 C.J.S. Taxation §1777, et seq.

71 Am. Jur. 2d State and Local Taxation §596; 72 Am. Jur. 2d State and Local Taxation §§756, 757.

15-31-522. When immediate payment demanded.

Administrative Rules

ARM 42.2.501 Application of partial payments.

ARM 42.23.603 Jeopardy assessment.

Collateral References

85 C.J.S. Taxation §§1041 through 1043, 1779, 1780.

71 Am. Jur. 2d State and Local Taxation §599; 72 Am. Jur. 2d State and Local Taxation §779.

15-31-523. Suspension or forfeiture on delinquency.

Compiler's Comments

1981 Amendment: In (2), inserted "when" before "such record" in the last sentence.

Collateral References

Taxation *key* 840.

85 C.J.S. Taxation §1782.

71 Am. Jur. 2d State and Local Taxation §606; 72 Am. Jur. 2d State and Local Taxation §759.

15-31-524. Reviver of corporation after suspension or forfeiture.

Compiler's Comments

1987 Amendment: In two places increased fee to $15 from $5.

Case Notes

Contract Made During Suspension: Statute providing that reviver shall be without prejudice to any action, defense, or right that has accrued by reason of original suspension or forfeiture relates to right of corporation to do business rather than to nonenforceability of contract made by corporation while suspended. Mfr. Acceptance Corp. v. Krsul, 151 M 28, 438 P2d 667 (1968).

15-31-525. Levy upon and sale of property.

Compiler's Comments

1981 Amendment: Substituted "tax is not paid when due" for "tax is not paid within 60 days after the same becomes due" near the beginning of the section; substituted "the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for a procedure that required the department to issue a warrant directly to the sheriff commanding him to levy and sell the property of the taxpayer.

Collateral References

85 C.J.S. Taxation §§1037 through 1040, 1779, 1780.

71 Am. Jur. 2d State and Local Taxation §§596, 599; 72 Am. Jur. 2d State and Local Taxation §§771 through 773.

15-31-526. Action by attorney general.

Compiler's Comments

1983 Amendment: After "Action may be brought", deleted "at any time".

Case Notes

Corporate License Tax — Limitations on Assessment Where No Return — No Revival of Impliedly Repealed Section by Internal Reference: The 2-year Statute of Limitations in 27-2-211 applied to the assessment of corporate license tax for corporations that failed to file a return for the reason that the Supreme Court in St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960), had held that sec. 1, Ch. 209, L. 1945 (amending 15-31-526), had superseded sec. 9, Ch. 166, L. 1933 (enacting 15-31-542), as to the time limitation and the Legislature, in sec. 2, Ch. 186, L. 1963 (enacting 15-31-509), though referencing 15-31-542 on an exception, had not used language to revive it; therefore 15-31-542 remained superseded or repealed. (But see 15-31-544.) Caterpillar Tractor Co., Inc. v. Dept. of Revenue, 194 M 537, 633 P2d 618, 38 St. Rep. 1245 (1981).

Limitation: Under this section, prior to the 1963 amendment, the Board of Equalization (now Department of Revenue) was limited to going back no more than 5 years to recover corporation license taxes alleged to be due. St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960).

Collateral References

72 Am. Jur. 2d State and Local Taxation §780.

15-31-531. Credit for overpayment — interest on overpayment.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) near middle inserted reference to 15-1-216; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for

delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1981 Amendment: Substituted "interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due" for "interest shall be allowed on overpayments at the rate of 6% per annum" near the beginning of (2).

Applicability: Section 4, Ch. 589, L. 1981, provided: "This act applies to claims for refunds or credits that were made within the time period for submission of claims that is permitted under this act even though the claim may have been submitted after the 5-year period provided in 15-30-149, prior to amendment, had expired."

Interim Study Bill: House Bill 17 (Ch. 589, L. 1981) was the result of an interim study conducted by the Revenue Oversight Committee (now Revenue and Transportation Interim Committee), reported in "Revenue Oversight Committee: Miscellaneous Studies", published by the Montana Legislative Council, November 1980.

Collateral References

85 C.J.S. Taxation §§1763, 1764.

71 Am. Jur. 2d State and Local Taxation §§608 through 611.

15-31-532. Application for refund — appeal from denial.

Compiler's Comments

1991 Amendment: At end of first sentence, after "notify the taxpayer", substituted "as provided in 15-1-211" for "accordingly", deleted former second and third sentences that read: "At the expiration of 30 days from the mailing of the notice, the department's action shall become final unless within the 30-day period the taxpayer appeals in writing from the action of said department to the state tax appeal board. If such appeal is made, the board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the board shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Collateral References

85 C.J.S. Taxation §1765, et seq.

71 Am. Jur. 2d State and Local Taxation §610.

15-31-543. Forfeiture of right to engage in business — penalties.

Compiler's Comments

2005 Amendment: Chapter 594 deleted former (1) that read: "(1) If a corporation fails to file a return at the time specified in 15-31-502 or files a false or fraudulent return, the corporation is liable to a penalty of not more than $5,000 to be recovered by an action in a court of competent jurisdiction"; in (1) in first sentence near end substituted "license tax" for "license fee" and after "penalties" inserted "interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for

delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (1) at end substituted "not more than $5,000 to be recovered by an action in a court of competent jurisdiction" for "not exceeding $5,000"; in (2) at beginning of first sentence inserted "A corporation that purposely fails to file a return at the time specified in 15-31-502 or that purposely files a false or fraudulent return" and in last sentence after "may be enforced" deleted "by the attorney general"; in (3) in first sentence substituted "is liable for the penalty imposed by 15-1-216" for "shall be liable to a penalty of not more than $100"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Collateral References

Taxation *key* 838, 839.

85 C.J.S. Taxation §1782.

71 Am. Jur. 2d State and Local Taxation §606; 72 Am. Jur. 2d State and Local Taxation §§759 through 761, 763 through 770.

15-31-544. Action on false or fraudulent return.

Compiler's Comments

1983 Amendment: Deleted former (1), which read: "Except as provided in subsection (2), an action to collect a past-due tax imposed pursuant to this chapter or to enforce a provision of this chapter must be brought within 5 years of the due date of the tax or the date of filing the return, whichever is later."; near beginning, after "taxpayer" inserted "files a fraudulent return or"; and after "fails to file the return" substituted "the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment" for "an action to collect the tax may be brought at any time. Whenever a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department."

Applicability: Section 3, Ch. 222, L. 1983, provided: "This act applies to tax years beginning after December 31, 1982, and to all prior tax years for which the liability for taxes has not been discharged by statute."

Severability: Section 3, Ch. 222, L. 1983, was a severability clause.

Case Notes

Corporate License Tax — Limitations on Assessment Where No Return — No Revival of Impliedly Repealed Section by Internal Reference: The 2-year Statute of Limitations in 27-2-211 applied to the assessment of corporate license tax for corporations that failed to file a return for the reason that the Supreme Court in St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960), had held that sec. 1, Ch. 209, L. 1945 (amending 15-31-526), had superseded sec. 9, Ch. 166, L. 1933 (enacting 15-31-542), as to the time limitation and the Legislature, in sec. 2, Ch. 186, L. 1963 (enacting 15-31-509), though referencing 15-31-542 on an exception, had not used language to revive it; therefore 15-31-542 remained superseded or repealed. (But see 15-31-544.) Caterpillar Tractor Co., Inc. v. Dept. of Revenue, 194 M 537, 633 P2d 618, 38 St. Rep. 1245 (1981).

15-31-552. Corporation license dissolution or withdrawal certificates and tax clearance certificates furnished.

Compiler's Comments

1999 Amendment: Chapter 69 in (1) at beginning inserted "For purposes of voluntary withdrawal or dissolution as set forth in 35-1-944" and substituted "a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal" for "a certificate to the effect that all taxes have been paid, that a return has been filed, and that all information has been supplied as required by the provisions of this chapter"; inserted (2) providing for issuance of a tax clearance certificate; and made minor changes in style. Amendment effective March 15, 1999.

1991 Amendment: After "Upon request of a corporation" deleted "and upon the payment of $1". Amendment effective April 26, 1991.

Retroactive Applicability: Section 4, Ch. 658, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to January 1, 1991.

Part 6
Lists of Corporations

15-31-603. List of entities furnished by secretary of state.

Compiler's Comments

2005 Amendment: Chapter 273 in introductory clause near beginning of first sentence substituted "the 15th day of each month" for "December 31 of each year" and after "shall" substituted "provide a list of all new corporations" for "direct a list of all corporations"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 143 in introductory clause in first sentence at beginning inserted "On or before December 31 of each year", near middle after "all corporations" inserted "limited partnerships, limited liability companies, and limited liability partnerships", and near end inserted references to Title 35, chapters 4, 5, 8, 9, 10, and 12; in (1) and (2) at end substituted "entity" for "corporation"; in (3) near end substituted "agent of the entity in Montana, if applicable" for "agent of the corporation in Montana"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1989 Amendment: In (4), after "department", inserted "of revenue" and at end deleted "to administer the purposes of this part"; and made minor changes in phraseology.

Part 7
Bank, Moneyed Capital, and Shares Exempt

15-31-703. Moneyed capital and shares of banks exempt.

Collateral References

Taxation *key* 228.

Part 9
Movie and TV Industries and Related Media — Tax Incentives

Part Compiler's Comments

Severability: Section 14, Ch. 593, L. 2005, was a severability clause.

Effective Date: Section 15, Ch. 593, L. 2005, provided that this part is effective on passage and approval. Approved May 6, 2005.

Applicability: Section 16, Ch. 593, L. 2005, provided: "(1) Except as provided in subsection (2), [this act] applies to state-certified productions approved after [the effective date of this act] [effective May 6, 2005].

(2) [Sections 6 through 10] [15-31-906 through 15-31-910] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Termination — Carryforward: Section 17, Ch. 593, L. 2005, provided: "[This act] terminates January 1, 2010, but an unused credit under [section 7] [15-31-907] may be carried forward for use on returns for tax years beginning before January 1, 2014, subject to use, limitations on the amount of the credit, carryforward, and recapture provisions of the credit effective on December 31, 2009."

CHAPTER 32
ENERGY-RELATED AND ECOLOGICAL TAX INCENTIVES

Part 1
Investment in Energy Conservation or Alternative Energy

Part Compiler's Comments

Coordination: Section 8, Ch. 576, L. 1977, read: "If House Bill 70 [Ch. 566] is enacted, then in lieu of the amendments to 84-301 enacted by this act, classes fifteen and eighteen in House Bill 70 [Ch. 566] shall be further amended by deleting references to capital investments in recognized nonfossil forms of energy generation and in building for an energy conservation purpose." House Bill 70 was enacted by Ch. 566, L. 1977, thus giving effect to sec. 8, Ch. 576, L. 1977.

Part Collateral References

Taxation *key* 1031.
85 C.J.S. Taxation §1738, et. seq.
71 Am. Jur. 2d State and Local Taxation §518.

15-32-102. Definitions.

Compiler's Comments

2003 Amendment: Chapter 155 in definition of low emission wood or biomass combustion device after "means a" substituted "wood-burning appliance:

(a) certified by the U.S. environmental protection agency pursuant to 40 CFR 60.533; or

(b) that uses wood pellets as its primary source of fuel" for "noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203". Amendment effective March 26, 2003.

Saving Clause: Section 3, Ch. 155, L. 2003, was a saving clause.

Retroactive Applicability: Section 5, Ch. 155, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001."

2001 Amendment: Chapter 591 inserted definition of alternative energy system; in definition of recognized nonfossil forms of energy generation in (a) after "sources" inserted "including electricity", inserted (a)(v) through (a)(vii) concerning geothermal energy, fuel cells, and alternative energy systems, and in (b) after "from" inserted "biomass or"; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

1997 Amendments: Chapter 42 rearranged definitions in alphabetical order; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 200 in definition of building, after "mobile home", inserted "or manufactured home". Amendment effective January 1, 1998.

1995 Amendment: Chapter 418 in (6)(a)(ii), (6)(a)(iii), and (6)(b) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendments: Chapter 467 in definition of low emission wood or biomass combustion device, in introductory clause, substituted reference to noncatalytic stove or furnace for reference to stove or furnace or a catalytic converter added to a stove or furnace, at beginning of (a)(i) inserted "is specifically designed to burn", after "wood" inserted "pellets", and after "biomass" inserted "pellets", in (a)(ii), before "emission", inserted "a particulate" and decreased allowable emission rate from 6 to 4.1 grams per hour, inserted (a)(iii) regarding air-to-fuel ratio, and inserted (b) establishing emission rate for a noncatalytic stove or furnace that burns wood or other nonfossil biomass; in definition of recognized nonfossil forms of energy generation deleted former (c) that read: "(c) a low emission wood or biomass combustion device"; and made minor changes in style. Amendment effective April 17, 1991.

Chapter 646 inserted definition of geothermal system. Amendment effective April 26, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 467, L. 1991, provided: "A statement of intent is required for this bill because it is anticipated that rulemaking proceedings will be required for implementation.

Montana currently has nine communities that exceed the state and federal ambient air quality standards for particulate matter smaller than 10 microns in diameter (PM-10) and two communities that exceed carbon monoxide standards. Several other communities have PM-10 concentrations approaching the ambient standards.

It is the intention of the legislature that the tax credit available for the cost of purchasing and installing a low emission wood or biomass combustion device be restricted to only the most efficient devices available on the market. While replacing older wood stoves with newer low-emission wood stoves may reduce ambient levels of PM-10, carbon monoxide, and other pollutants, the legislature finds that the current tax incentives do not encourage the improvements in efficiency and reductions in pollutants that will be required in the future to improve air quality.

While it restricts the availability of these tax incentives, the legislature finds it appropriate to increase the amount of the incentive available for those devices that qualify. This action is intended to stimulate the availability of the more efficient devices and further promote their use. Changes are also being made, as appropriate, to preserve the application of other incentives to the installation and production of these devices."

Applicability: Section 5, Ch. 467, L. 1991, provided: "[This act] applies to taxable years beginning after December 31, 1991, and before January 1, 1996."

Retroactive Applicability: Section 4, Ch. 646, L. 1991, provided that the amendment to this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1989 Amendment: At beginning of (6)(b) inserted "a system"; at beginning of (6)(c) substituted "low-emission" for "low emission" and at end deleted "and also means"; and reoutlined subsection (6) and made minor changes in punctuation and phraseology.

1985 Amendment: Inserted definition of "Low emission wood or biomass combustion device"; and in (6) after "solid wood wastes", inserted "a low emission wood or biomass combustion device".

Administrative Rules

ARM 42.19.1104 Property tax exemption for nonfossil energy system.

Attorney General's Opinions

"Nonresidential Structure" to Refer to Entire System: The exemption given to each "nonresidential structure" in 15-6-201 refers to each energy generating system, not to its individual parts. The reference to nonfossil forms of energy generation is defined in 15-32-102 to be a system for capturing or converting energy into usable sources. The legislative intent behind 15-6-201 indicates the intention of encouraging, through tax incentives, the development of alternative energy systems. Whether a single structure contains all the components that generate energy, thereby making it a system, must be made on a case-by-case basis. 40 A.G. Op. 6 (1983).

15-32-103. Deduction for energy-conserving investments.

Compiler's Comments

1989 Amendment: In (2), after "approval of the department", deleted "of an application".

1981 Amendment: Deleted "adjusted gross individual income allowed in computing taxable income under chapter 30 or from" after "deductions from" near the beginning of (1).

Administrative Rules

ARM 42.23.421 Deduction for investment for energy conservation.

ARM 42.23.422 Determination of capital investment for energy conservation.

ARM 42.23.423 Types of appropriate investments for energy conservation purposes.

15-32-104. Limitations on deduction and credit.

Compiler's Comments

2003 Amendment: Chapter 524 deleted former (1) that read: "(1) capital investments made after January 1, 1975"; deleted former (3) that read: "(3) a ceiling of $100,000 in tax savings per year to any one person or firm"; and made minor changes in style. Amendment effective April 26, 2003.

1981 Amendment: Inserted "and 15-32-109" after "15-32-103" in the first sentence.

15-32-105. Application to new construction — rules.

Compiler's Comments

1981 Amendment: Inserted "or credit" after "no deduction" in the first sentence of (1).

Commissioner Correction: Because of rearrangement by codification, the language in subsection (2) was modified by the Code Commissioner, 1979.

Statement of Intent: The statement of intent attached to HB 534 (Ch. 652, L. 1979) provided: "In adopting rules to determine the eligibility for tax credits of recognized nonfossil forms of energy generation that produce passive solar heat, the department shall rely on the standards adopted, if any, by the Internal Revenue Service pursuant to the National Energy Act and on those adopted by the states of California and New Mexico. The department of revenue shall adapt these standards to fit passive solar systems suited for Montana's climate.

A passive solar system includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building. Thus, the conventional amount of south-facing windows or a standard mass wall could not be included as part of a passive solar system, but additional south-facing windows or additional thickenings to a standard mass wall used for solar heat storage could be included."

Administrative Rules

ARM 42.4.203 Deduction or credit for investment for energy conservation.

ARM 42.4.204 Determination of capital investment for energy conservation.

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

15-32-106. Procedure for obtaining benefit of deduction or credit.

Compiler's Comments

2003 Amendment: Chapter 338 in fourth sentence in two places substituted "department of labor and industry" for "department of administration". Amendment effective October 1, 2003.

1995 Amendment: Chapter 418 in third sentence, in two places, substituted "department of environmental quality" for "department of natural resources and conservation"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In first sentence substituted "a tax credit" for "tax treatment" and deleted a reference to 15-32-103; deleted former second sentence that read: "Application shall be made to the department of revenue"; in second sentence substituted "a deduction or credit under 15-32-103 or 15-32-109" for "an application"; and in each of the last three sentences substituted "a deduction or credit" for "an application".

1981 Amendment: Inserted "or 15-32-109" after "15-32-103" at the end of the first sentence.

15-32-107. Loans by utilities and financial institutions — tax credit for interest differential for loans made prior to July 1, 1995.

Compiler's Comments

1993 Amendment: Chapter 535 deleted former (1) authorizing public utility to install energy conservation systems in dwellings and to accept repayments in installments (see 1993 Session

Law for text); deleted former (2) that read: "(2) A financial institution, as defined in 32-6-103, may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district"; in (1), near beginning, substituted "subsection (4)" for "subsection (6)", after "institution" substituted "that lent money or made qualifying installations" for "lending money", and after "section" inserted "as it read prior to July 1, 1995"; at end of (4) substituted "subsection (1)" for "subsection (3)"; and made minor changes in style. Amendment effective July 1, 1995.

1987 Amendment: In (4) increased credit from $500,000 to $750,000.

1983 Amendment: In (3), inserted exception clause at beginning of subsection; and inserted (6) disallowing a tax credit for a public utility whose conservation investments are placed in the rate base.

1981 Amendment: Deleted "The utility shall charge interest equivalent to a rate between 5% and 7% per year on the declining balance of the sum advanced for installation of" and inserted "and" after "conservation materials" in the last sentence of (1); raised the amount of tax credit in (4) from $200,000 to $500,000.

15-32-109. Credit for energy-conserving expenditures.

Compiler's Comments

2003 Amendment: Chapter 524 in (1) near beginning deleted reference to subsection (3); in (2) after "credit" deleted "or the sum of the credits"; deleted former (3) that read: "(3) The credit allowed under this section may be used as a carryforward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year"; and made minor changes in style. Amendment effective April 26, 2003.

2001 Amendment: Chapter 591 in (1) at end substituted "for 25% of the taxpayer's expenditure for a capital investment in the physical attributes of a building or the installation of a water, heating, or cooling system in the building, so long as either type of investment is for an energy conservation purpose in an amount not to exceed $500" for "a portion of his expenditure for a capital investment in a building for an energy conservation purpose, determined as follows:

(a) in the case of an expenditure for a residential building, the lesser of:

(i) $150; or

(ii) 5% of the expenditure; and

(b) in the case of an expenditure for a building not used as a residence, the lesser of:

(i) $300; or

(ii) 5% of the expenditure"; and substituted (3) concerning carryforward of credit for "There is no carryback or carry-forward of the credit permitted under this section, and the credit must be applied in the year the expenditure is incurred, as determined by the taxpayer's accounting method." Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

Administrative Rules

ARM 42.4.201 Individual — energy conservation installation credit — definitions.
ARM 42.4.202 Individual income tax credit for energy conserving expenditures.
ARM 42.4.203 Deduction or credit for investment for energy conservation.
ARM 42.4.204 Determination of capital investment for energy conservation.
ARM 42.4.4101 Definitions.

15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations.

Compiler's Comments

2005 Amendment: Chapter 455 in (1) at beginning of first sentence after "taxpayer" inserted "or a person constructing a new residence", near middle after "dwelling" inserted "or in a residence constructed by the taxpayer", and after "chapter 30" inserted "or 31", inserted second sentence providing that only one credit may be claimed for a residence, in third sentence after "chapter 30" inserted "or 31", and inserted fifth sentence providing that a credit is not allowed under this section for expenditures claimed as a deduction under 15-32-103. Amendment effective January 1, 2006.

Applicability: Section 3, Ch. 455, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

2003 Amendment: Chapter 39 in (1) near middle of first sentence after "tax credit" deleted "as provided in subsection (3)". Amendment effective February 20, 2003.

2001 Amendment: Chapter 591 in (1) at end of first sentence substituted "not to exceed $1,500" for "up to $250 per year for 4 years" and substituted second and third sentences concerning carryforward of credit and year of application of credit for "The credit may not exceed the taxpayer's income tax liability for the taxable year in which the credit is claimed"; and deleted former (3) that read: "(3) The tax credit allowed under this section is deductible from the taxpayer's income tax liability for the taxable year in which the installation costs were incurred and for the next 3 taxable years succeeding the taxable year in which the installation costs were incurred. There is no carryback or carryforward of the credit permitted under this section." Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

Effective Date — Retroactive Applicability: Section 4, Ch. 646, L. 1991, provided: "[This act] is effective on passage and approval [approved April 26, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Part 2
Tax Credit for Installing Alternative Energy System

Part Administrative Rules

Title 42, chapter 4, subchapter 1, ARM Individual — tax credits for alternative energy systems.

Title 42, chapter 4, subchapter 2, ARM Individual — energy conservation installation credit.

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

Part Collateral References

Taxation *key* 1047.

71 Am. Jur. 2d State and Local Taxation §549.

15-32-201. Amount of credit — to whom available.

Compiler's Comments

2001 Amendment: Chapter 591 in (1) near middle after "dwelling" substituted "after December 31, 2001, is entitled to claim a tax credit in an amount equal to the cost of the system, including installation costs, less grants received, not to exceed $500" for "prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 1/2% of the next $3,000 of the cost of the system, including installation costs, less grants received"; in (2) near beginning substituted reference to 15-32-102 for reference to 15-32-102(5)(a), after "dwelling" substituted "after December 31, 2001" for "prior to January 1, 1996", and near middle substituted "equal to the cost of the system, including the installation costs, not to exceed $500" for "equal to 20% of the first $1,000 and 10% of the next $3,000 of the cost of the system, including the installation costs"; and deleted former (3) that read: "(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102(5)(b), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30." Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

1997 Amendment: Chapter 42 in (2) and (3) adjusted subsection references to 15-32-102. Amendment effective March 12, 1997.

1993 Amendment: Chapter 10 in (2) substituted "15-32-102(6)(a)" for "15-32-102(5)(a)"; in (3) substituted "15-32-102(6)(b)" for "15-32-102(5)(b)"; and made minor changes in style.

1991 Amendment: Inserted (2) and (3) establishing a tax credit for taxpayers who install certain low emission wood or biomass combustion devices prior to January 1, 1996. Amendment effective April 17, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 467, L. 1991, provided: "A statement of intent is required for this bill because it is anticipated that rulemaking proceedings will be required for implementation.

Montana currently has nine communities that exceed the state and federal ambient air quality standards for particulate matter smaller than 10 microns in diameter (PM-10) and two communities that exceed carbon monoxide standards. Several other communities have PM-10 concentrations approaching the ambient standards.

It is the intention of the legislature that the tax credit available for the cost of purchasing and installing a low emission wood or biomass combustion device be restricted to only the most efficient devices available on the market. While replacing older wood stoves with newer low-emission wood stoves may reduce ambient levels of PM-10, carbon monoxide, and other pollutants, the legislature finds that the current tax incentives do not encourage the improvements in efficiency and reductions in pollutants that will be required in the future to improve air quality.

While it restricts the availability of these tax incentives, the legislature finds it appropriate to increase the amount of the incentive available for those devices that qualify. This action is intended to stimulate the availability of the more efficient devices and further promote their use. Changes are also being made, as appropriate, to preserve the application of other incentives to the installation and production of these devices."

Applicability: Section 5, Ch. 467, L. 1991, provided: "[This act] applies to taxable years beginning after December 31, 1991, and before January 1, 1996."

1985 Amendment: Substituted "January 1, 1993" for "December 31, 1986" in two places.

Effective Date — Applicability: Section 5, Ch. 513, L. 1985, read: "This act is effective on passage and approval and applies to taxable years beginning after December 31, 1984, and before January 1, 1993." Chapter 513, L. 1985, was approved April 17, 1985.

1983 Amendment: Substituted "December 31, 1986" for "December 31, 1982" in two places.

Applicability of Amendatory Act: Section 6, Ch. 480, L. 1983, read: "This act applies to taxable years beginning after December 31, 1982."

Administrative Rules

ARM 42.4.104 Energy generating systems installed to existing structures.
ARM 42.4.105 Energy generating systems integral to structure's original construction.
ARM 42.4.106 Other energy generating systems.

15-32-202. Taxable years in which credit may be claimed — carryover.

Administrative Rules

ARM 42.4.104 Energy generating systems installed to existing structures.
ARM 42.4.105 Energy generating systems integral to structure's original construction.
ARM 42.4.106 Other energy generating systems.

15-32-203. Department to make rules.

Compiler's Comments

2003 Amendment: Chapter 155 deleted former (2) that read: "(2) The department of environmental quality shall adopt rules establishing emission testing and emission certification standards for low emission wood or biomass combustion devices and shall maintain a list of the devices that are certified"; and made minor changes in style. Amendment effective March 26, 2003.

Saving Clause: Section 3, Ch. 155, L. 2003, was a saving clause.

Retroactive Applicability: Section 5, Ch. 155, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001."

1995 Amendment: Chapter 418 in (2) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

1985 Amendment: Inserted (2) directing Department of Health and Environmental Sciences to adopt rules establishing emission testing and certification standards.

Statement of Intent: The statement of intent attached to Ch. 513, L. 1985, provided: "A statement of intent is required for this bill because section 3 [amending 15-32-203] grants rulemaking authority to the department of health and environmental sciences [now department of environmental quality] to promulgate rules establishing emission testing and emission certification standards for low emission wood or biomass combustion devices and listing such devices that are certified.

It is the intent of the legislature that the department review and incorporate into its rules, as appropriate, the testing criteria and procedures for wood stove certification contained in sections 340-21-100 through 340-21-190 of the Oregon Administrative Rules. None of the rules adopted by the department to implement this bill may regulate the use of wood stoves. The rules may only address certification procedures for determining qualification for a tax credit for the installation of low emission wood or biomass combustion devices."

Part 3
Tax Deduction for Purchasing Montana-Produced Organic Fertilizer and Inorganic Fertilizer Produced as Byproduct

15-32-301. Purpose.

Compiler's Comments

1997 Amendment: Chapter 218 near middle, after "municipalities", inserted "and inorganic matter produced as byproducts of industrial or mining activity"; after "fertilizer" inserted "and inorganic fertilizer produced as a byproduct"; and at end inserted "commercially produced".

Effective Date — Retroactive Applicability: Section 5, Ch. 218, L. 1997, provided: "[This act] is effective on passage and approval [approved April 8, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

15-32-302. Definitions.

Compiler's Comments

1997 Amendment: Chapter 218 inserted definition of inorganic fertilizer produced as a byproduct; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 5, Ch. 218, L. 1997, provided: "[This act] is effective on passage and approval [approved April 8, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

15-32-303. Deduction for purchase of Montana-produced organic or inorganic fertilizer.

Compiler's Comments

1997 Amendment: Chapter 218 near end, after "organic fertilizer", inserted "and inorganic fertilizer produced as a byproduct".

Effective Date — Retroactive Applicability: Section 5, Ch. 218, L. 1997, provided: "[This act] is effective on passage and approval [approved April 8, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

Part 4
Alternative Energy Generation

15-32-401. Purpose and statement of policy.

Compiler's Comments

2001 Amendment: Chapter 591 in five places substituted reference to alternative energy for reference to wind energy; in third sentence after "secure" substituted "alternatively generated" for "wind-generated"; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

15-32-402. Commercial or net metering system investment credit — alternative energy systems.

Compiler's Comments

2003 Amendment — Coordination: Chapter 524 in (1) before "property" deleted "certain depreciable", after "property" substituted "that is depreciable" for "qualifying", and after "under" deleted "section 38 of"; in (2) after "expenditures" deleted "that qualify under section 38 of the Internal Revenue Code of 1954, as amended"; and made minor changes in style. Amendment effective April 26, 2003.

Pursuant to sec. 5(2)(b), Ch. 524, L. 2003, a coordination section, in (1) after "defined in" substituted "15-6-225" for "90-4-102".

The amendments to this section made by Ch. 159, L. 2003, and Ch. 405, L. 2003, were rendered void by sec. 5(1) and (2)(a), Ch. 524, L. 2003, a coordination section.

Retroactive Applicability: Section 7, Ch. 524, L. 2003, provided: "[Sections 1 and 4] [amendments to 15-6-225 and 15-32-402] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001."

2001 Amendment: Chapter 591 in (1) near middle after "commercial system" substituted "or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102" for "located in Montana which generates electricity by means of wind power"; and in (1)(a), (1)(b), and (1)(c) substituted "alternative energy" for "wind energy". Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, and 15-32-402] apply to tax years beginning after December 31, 2001."

Administrative Rules

ARM 42.4.4107 Commercial use for income tax.

15-32-404. Carryover of credit.

Compiler's Comments

2003 Amendment: Chapter 609 in (1) in second sentence near end before "has been deducted" deleted "subject to the limitation of 15-32-403". Amendment effective July 1, 2005.

2001 Amendment: Chapter 541 in (1) at beginning of third sentence inserted exception clause; inserted (2) allowing extension of a tax credit through the 15th year under certain circumstances; and made minor changes in style. Amendment effective January 1, 2002.

Administrative Rules

ARM 42.4.201 Definitions.

ARM 42.4.4101 Definitions.

ARM 42.4.4107 Commercial use for income tax.

ARM 42.4.4108 Property tax exemption — noncommercial electrical generation machinery and equipment.

ARM 42.4.4109 Wind energy tax credits for generation facilities located in exterior boundaries of Montana Indian reservation — tribal employment agreement.

15-32-405. Exclusion from other tax incentives.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 532 in second sentence after "allowed by" substituted "15-6-224" for "15-6-201(4)". Amendment effective October 1, 2005.

Chapter 584 in second sentence after "15-6-201" substituted "(5)" for "(4)". Amendment effective May 6, 2005. The Ch. 532 amendment rendered this amendment void.

Retroactive Applicability: Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2003 Amendments — Composite Section: Chapter 114 in second sentence substituted "15-6-201(4)" for "15-6-201(3)". Amendment effective October 1, 2003.

Chapter 159 near end of first sentence deleted references to 15-30-162 and 15-31-123; in second sentence substituted "15-6-201(4)" for "15-6-201(3)"; and made minor changes in style. Amendment effective March 28, 2003.

1983 Amendment: Section 8, Ch. 648, L. 1983, deleted bracketed language, which read: "[and the credits provided in SB 241]".

15-32-407. Rules authorized.

Administrative Rules

Title 42, chapter 4, subchapter 2, ARM Individual — energy conservation installation credit.

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

Part 5
Mineral and Coal Exploration Incentives

Part Compiler's Comments

Effective Date: Section 12, Ch. 538, L. 1999, provided: "[This act] [15-32-501 through 15-32-510] is effective on passage and approval." Approved April 30, 1999.

Retroactive Applicability: Section 13, Ch. 538, L. 1999, provided: "[This act] [15-32-501 through 15-32-510] applies retroactively, within the meaning of 1-2-109, to December 31, 1998."

15-32-503. Exploration incentive credit.

Compiler's Comments

2003 Amendment: Chapter 338 near beginning of (1) after "certified expenditures" deleted "of each". Amendment effective October 1, 2003.

15-32-507. Credit limitation.

Compiler's Comments

2003 Amendment: Chapter 338 in first sentence near beginning after "credit" substituted "for each distinct mining operation" for "for a specific exploration activity", before "$20 million" inserted "a total of", and after "$20 million" inserted "for all exploration activities under 15-32-503". Amendment effective October 1, 2003.

Part 6
Recycling of Material

Part Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 542, L. 1995, provided: "This bill extends by 6 years the termination date for the recycling tax credit provided for in 15-32-602 and the recycling tax deduction provided for in 15-32-610. It also expands the application of the credit to include investments in equipment used to treat soils contaminated by hazardous wastes. In order to implement the tax credit for capital investments in property purchased to collect or process reclaimed material, including soil that has been contaminated by hazardous wastes, provided for under 15-32-602, the department of revenue shall make a determination about the equipment and processes that qualify. It is the intent of the legislature that the department of health and environmental sciences [now department of environmental quality], upon request, assist the department of revenue in making that determination."

Extension of Termination Date: Section 4, Ch. 542, L 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

Effective Date — Applicability — Rulemaking: Section 8, Ch. 712, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] [Title 15, ch. 32, part 6] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purposes of promulgating administrative rules to implement [sections 1 through 5] [Title 15, ch. 32, part 6], [this act] [Title 15, ch. 32, part 6] is effective on passage and approval."

Termination: Section 9, Ch. 712, L. 1991, provided: "[This act] [Title 15, ch. 32, part 6] terminates December 31, 1995."

15-32-601. Definitions.

Compiler's Comments

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

2001 Amendment: Chapter 398 deleted former (4)(a)(ii) that read: "(ii) soil that has been contaminated by hazardous wastes to the extent that treatment of those wastes is required as defined in 75-10-403"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Extension of Termination: Section 1, Ch. 411, L. 1997, amended sec. 5, Ch. 542, L. 1995, by extending the termination date imposed by that section to December 31, 2001. Effective April 28, 1997.

1995 Amendment: Chapter 542 inserted definition of process; in definition of reclaimable material inserted (a)(ii) regarding contaminated soil; and made minor changes in style. Amendment terminates December 31, 1997.

Extension of Termination Date: Section 4, Ch. 542, L 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

Termination: Section 5(1), Ch. 542, L. 1995, provided: "[Sections 1 through 3] [amending 15-32-601 through 15-32-603] terminate December 31, 1997."

Applicability: Section 6, Ch. 542, L. 1995, provided: "[This act] applies to tax years beginning and to depreciable property purchased after December 31, 1995."

1993 Amendment: Chapter 568 inserted definition of postconsumer material; in definition of reclaimable material inserted second sentence that read: "Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material"; and in definition of recycled material, before "reclaimed", deleted "at least 90%" and at end inserted "as provided in 15-32-609".

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Administrative Rules

ARM 42.4.2601 Definitions.

15-32-602. Amount and duration of credit — how claimed.

Compiler's Comments

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

2001 Amendment: Chapter 398 in (2) near beginning after "Subject to" deleted "15-32-603(3) and" and deleted former last sentence that read: "If qualifying property was purchased prior to January 1, 1992, but on or after January 1, 1990, a taxpayer is entitled to a credit for tax year 1992"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Extension of Termination: Section 1, Ch. 411, L. 1997, amended sec. 5, Ch. 542, L. 1995, by extending the termination date imposed by that section to December 31, 2001. Effective April 28, 1997.

1995 Amendment: Chapter 542 in (2), at beginning of first sentence, substituted "15-32-603(3)" for "15-32-603(2)", inserted reference to subsection (4) of this section, and near middle, after "credit", substituted "as provided in subsection (3) for" for "in an amount equal to 25% of"; inserted (3) and (4) regarding credit that may or may not be claimed for investments in depreciable property; and made minor changes in style. Amendment terminates December 31, 1997.

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

Termination: Section 5(1), Ch. 542, L. 1995, provided: "[Sections 1 through 3] [amending 15-32-601 through 15-32-603] terminate December 31, 1997."

Applicability: Section 6, Ch. 542, L. 1995, provided: "[This act] applies to tax years beginning and to depreciable property purchased after December 31, 1995."

Administrative Rules

ARM 42.4.2605 Period covered for reclamation and recycling credit.

15-32-603. Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.

Compiler's Comments

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

2001 Amendment: Chapter 398 deleted former (2) and (3) that read: "(2) A credit for depreciable property that treats soil contaminated by hazardous wastes applies only to property that treats contaminated soil and not to auxiliary property.

(3) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 2002"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Extension of Termination and Exception: Section 1, Ch. 411, L. 1997, amended sec. 5, Ch. 542, L. 1995, by extending the termination date imposed by that section and by extending the exception to the termination date to December 31, 2001. Effective April 28, 1997.

1995 Amendment: Chapter 542 inserted (2) regarding a credit for depreciable property that treats contaminated soil; in (3), at end, substituted "before January 1, 1998" for "on or after January 1, 1990, but before January 1, 1996"; and made minor changes in style.

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

Termination — Exception: Section 5, Ch. 542, L. 1995, provided: "(1) [Sections 1 through 3] [amending 15-32-601 through 15-32-603] terminate December 31, 1997.

(2) Notwithstanding subsection (1), 15-32-603(3), as numbered by [this act], which reads: "A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 1998.", is deleted in its entirety on December 31, 1997."

Applicability: Section 6, Ch. 542, L. 1995, provided: "[This act] applies to tax years beginning and to depreciable property purchased after December 31, 1995."

1993 Amendment: Chapter 568 inserted (1)(d)(i) and (1)(d)(ii) providing exceptions for reclaimed material that is industrial waste; and made minor changes in style.

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Administrative Rules

ARM 42.4.2602 Additional deduction for purchase of recycled material.

ARM 42.4.2604 Credit for investments in depreciable equipment or machinery to collect, process, or manufacture product from reclaimed material or process soils contaminated by hazardous wastes.

15-32-604. Limitation of credit.

Compiler's Comments

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

15-32-609. Recycled material qualifying for deduction — purpose — rulemaking.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 568, L. 1993, provided: "A statement of intent is included in this bill because [section 2] [15-32-609] requires rulemaking by the department of revenue. The department is to conduct rulemaking to define the recycled materials that qualify for a tax deduction under 15-32-610.

The goal of amending 15-32-601 and of adopting rules to implement the amendment is to reduce solid waste and pollution. The greater the quantity of material reclaimed, the longer

landfills will last and the less pollution they will create. The best way to reduce landfill material is to reclaim postconsumer material for reuse. The rules of the department should provide for using the maximum postconsumer reclaimed material content possible when defining the reclaimed material eligible for additional tax deduction.

It is intended that the department keep abreast of the recycling industry and try to encourage maximum use of recycled materials through the use of the tax deduction. The department should define recycled material by the amount and type of reclaimable material, as defined in 15-32-601, that it contains. The amount of material may be measured by volume, weight, fiber content, or other applicable standard. Recycled material may also be defined by the type of reclaimed material it contains, such as postconsumer, de-inked, or other applicable type.

The amounts and types of reclaimed material should follow industry standards so that industry labeling, as certified by appropriate bodies, can be used by purchasers to ensure that the products they are purchasing meet departmental deductibility definitions."

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Administrative Rules

ARM 42.4.2601 Definitions.

ARM 42.4.2602 Additional deduction for purchase of recycled material.

15-32-610. Deduction for purchase of recycled material.

Compiler's Comments

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

1993 Amendment: Chapter 568 near middle increased allowable deductible amount from 5% to 10% of the taxpayer's expenditures.

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Administrative Rules

ARM 42.4.2602 Additional deduction for purchase of recycled material.

15-32-611. Department to make rules.

Compiler's Comments

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

1995 Statement of Intent: The statement of intent attached to Ch. 542, L. 1995, provided: "This bill extends by 6 years the termination date for the recycling tax credit provided for in 15-32-602 and the recycling tax deduction provided for in 15-32-610. It also expands the application of the credit to include investments in equipment used to treat soils contaminated by hazardous wastes. In order to implement the tax credit for capital investments in property purchased to collect or process reclaimed material, including soil that has been contaminated by hazardous wastes, provided for under 15-32-602, the department of revenue shall make a determination about the equipment and processes that qualify. It is the intent of the legislature that the department of health and environmental sciences [now department of environmental quality], upon request, assist the department of revenue in making that determination."

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

1991 Statement of Intent: The statement of intent attached to Ch. 712, L. 1991, provided: "A statement of intent is necessary for this bill because [section 5] [section 6 after amendment, now this section] grants rulemaking authority to the department of revenue. This bill allows rulemaking to proceed prior to the effective date of the act to allow the department ample time prior to the time the bill goes into effect to hold hearings and elicit the views of taxpayers, the public, and groups interested in the reclamation and recycling of materials.

The legislature expects the department to adopt rules that will promote the reclamation of materials that would normally be discarded, by encouraging the collection, processing, and reuse of reclaimable and recycled materials by businesses.

The bill addresses four levels of business involvement in the reclamation and recycling of materials:

(1) Retail businesses are encouraged to purchase equipment to collect reclaimable material from consumers.

(2) Recyclers are encouraged to purchase equipment to collect reclaimable material from businesses and other sources and process the material.

(3) Manufacturers are encouraged to purchase equipment to manufacture products from reclaimed material.

(4) All businesses are offered an additional business-related tax deduction to use recycled products in the course of their business.

The scope of the business activity to qualify for a tax credit should be broad. Retail grocery stores and other businesses should be encouraged to collect reclaimable material by receiving a tax credit for equipment they purchase to collect the material, even if they do not directly receive a business-related profit from the equipment or collection operation. Recyclers are encouraged to purchase collection and processing equipment, and manufacturers are encouraged to purchase equipment to make products from reclaimed material.

The rules should be inflexible in allowing dual roles for equipment—the qualifying equipment should be used primarily for the purposes of this bill. The rules should be flexible in determining the specifics of what are to be defined as reclaimable materials and recycled materials. The in-state advantages to building industry based upon reclamation and recycling may have local and interstate benefits that far outweigh the cost of a tax credit and additional deduction."

Administrative Rules

Title 42, chapter 4, subchapter 26, ARM Individual and corporation — recycle credit against individual and corporation license taxes.

Part 7
Biodiesel Production

Part Compiler's Comments

Effective Date: Section 7, Ch. 524, L. 2005, provided that this part is effective July 1, 2005.

15-32-703. Biodiesel blending and storage tax credit — recapture — report to interim committee.

Compiler's Comments

Effective Date: Section 11, Ch. 525, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

Retroactive Applicability: Section 12(1), Ch. 525, L. 2005, provided: "(1) [Section 1] [15-32-703] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

CHAPTER 33
SMALL BUSINESS INVESTMENT INCENTIVES

Part 1
Small Business Investment Companies — Tax Exemptions

15-33-102. Purpose.

Compiler's Comments

2001 Amendment: Chapter 523 in second and third sentences after "manufacturing" inserted "technology, technology infrastructure, power generation", in second sentence at end after "companies" deleted "when the alternative investments for private risk capital are natural resource ventures, which often yield extremely high rates of return", and in third sentence at end after "processing" substituted "companies" for "given the hardship caused many Montana

communities by their reliance on an economic base dominated by single, large industries"; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 42.23.110 Determination of qualified investments.

15-33-103. Definition.

Administrative Rules

ARM 42.15.213 Small business corporation dividend and capital gain exclusion.

ARM 42.23.107 Definitions.

ARM 42.23.108 Conditions for exemption for dividends.

15-33-104. Reporting — recordkeeping by the department.

Administrative Rules

ARM 42.23.109 Reporting requirements.

15-33-105. Rulemaking authority.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 834 (Ch. 571, L. 1981), provided: "Section 5 of House Bill 834 [15-33-105] provides the Department of Revenue with rulemaking authority relating to Small Business Investment Corporations in Montana. In enacting this legislation, it is the intent of the Legislature that the Department of Revenue will adopt rules that ensure the proper reporting of investments in SBIC's and rules to establish eligibility for the capital gains and dividend treatment allowed by House Bill 834."

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

ARM 42.23.107 Definition of small business investment company.

ARM 42.23.108 Conditions for tax exemptions for dividends from investment in small business investment company.

ARM 42.23.109 Reporting requirements for small business investment company.

ARM 42.23.110 Determination of qualified investments by small business investment company.

15-33-106. Capital gains — dividends exempted.

Administrative Rules

ARM 42.23.108 Conditions for exemption for dividends.

CHAPTER 35
COAL SEVERANCE TAX

Chapter Case Notes

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Coal Severance Tax Not in Contravention of Federal Constitutional or Statutory Policy: The Montana coal severance tax in its present form is a lawful exercise of this state's taxing authority. The Montana Supreme Court upheld the tax stating that, whether as a question of this state's power to levy any tax or its power to levy a tax at the rate set forth, there has been no preemption by the federal government in the field of coal severance taxation, or any national policy derived from Congressional enactments pursuant to the constitution with which Montana's tax conflicts. Commonwealth Edison Co. v. St., 189 M 191, 615 P2d 847, 37 St. Rep. 1192 (1980).

Chapter Law Review Articles

Limitations on State Power to Tax Natural Resource Development on Indian Reservation, Dockins, 43 Mont. L. Rev. 217 (1982).

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Chapter Collateral References

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Reappraising Montana's Coal Severance Tax, 1984 Interim Report, Montana Legislative Council.

Report of the Coal Tax Oversight Committee, 1977-1978 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Compiler's Comments

Severability: Section 17, Ch. 525, L. 1975, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications." This clause applies to most of the sections in this part.

Part Administrative Rules

Title 42, chapter 25, subchapter 5, ARM Gross proceeds on coal production.

Part Case Notes

1999 Coal Producer's License Tax Violative of Constitutional Coal Severance Tax Provisions: By simple majority vote, the 1999 Legislature passed House Bill No. 260, which created a license tax on the production of coal and allocated revenue from the tax to various state programs. Several legislators challenged the validity of the new tax, contending that by creating a license tax on the same taxable event for which the state coal severance tax is imposed and then providing a credit against the severance tax in an amount slightly greater than the amount of the license tax, the Legislature simply diverted what in substance and character are coal severance taxes to purposes other than the coal tax trust fund, in violation of Art. IX, sec. 5, Mont. Const. The Supreme Court agreed, noting that the only difference between the coal severance tax and the coal producer's license tax was the purpose for which each was allocated. A tax on the production of natural resources is characterized by the nature of the activity upon which the tax is imposed, and the effect of a legislative assessment is more important than its label in determining the character of the tax. Legislative imposition of a tax can become unlawful when done to accomplish an unlawful end, which was the case in this instance because the coal producer's license tax diverted production-based coal severance taxes for an unconstitutional purpose. Although the Legislature has the authority to determine the percentage of the coal severance tax, in this case, the Legislature simply gave a different name to the same tax and thereby diverted revenue to causes other than the coal tax trust fund. A coal severance tax by any other name is just as dedicated. By diverting and allocating coal severance tax revenue in a manner contrary to the requirement in Art. IX, sec. 5, and by doing so without the required three-fourths vote of each house of the Legislature, House Bill No. 260 violated the constitution; thus, the state was enjoined from enforcing House Bill No. 260. Montanans for the Coal Trust v. St., 2000 MT 13, 298 M 69, 996 P2d 856, 57 St. Rep. 73 (2000). See also Oliver Iron Co. v. Lord, 262 US 172, 67 L Ed 929, 43 S Ct 526 (1923), Gomillion v. Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960), and Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

History of Crow Case:

In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV), reversed and remanded in Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Part Collateral References

Taxation *key* 63, 158.

84 C.J.S. Taxation §§95 through 98.

71 Am. Jur. 2d State and Local Taxation §§218, 614.

15-35-101. Legislative findings and declarations of purpose.

Compiler's Comments

2001 Amendment: Chapter 399 inserted (1)(h) concerning coal used for production of electricity near the mine; inserted (2)(d) concerning advantages of electrical generation near coal mines; at end of (1)(e) inserted "and by encouraging the use of coal to produce electricity in modern generating plants near the coal mine"; and made minor changes in style. Amendment effective January 1, 2002.

Applicability: Section 4, Ch. 399, L. 2001, provided: "[This act] applies to coal produced after December 31, 2001."

1987 Amendment: In (1)(e) substituted "subbituminous coal and lignite coal in Montana have sufficiently different markets and value and therefore require different production taxes" for "coal in Montana, when subbituminous and recoverable by strip mining, is in sufficient demand that at least one-third of the price it commands at the mine may go to the economic rents of royalties and production taxes"; and deleted former (1)(f) that read: "(f) coal in the lignite form is in less demand and producers of lignite are able to pay lesser amounts of royalty and production tax than producers of subbituminous can pay".

Collateral References

Taxation *key* 25.

71 Am. Jur. 2d State and Local Taxation §190.

15-35-102. Definitions.

Compiler's Comments

2001 Amendment: Chapter 7 in definition of energy conversion process substituted "electrical energy" for "electric energy"; and in version effective January 1, 2006, made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 318 inserted definition of Btu; inserted definition of coal enhancement facility; in definition of contract sales price deleted former (a) through (d) that set specific contract sales price for years 1984 through 1987 (see 1995 Session Law for text); inserted definition of feedstock; and made minor changes in style. Amendment effective April 3, 1995, and terminates December 31, 2005.

Applicability: Section 4, Ch. 318, L. 1995, provided that this section applies to coal produced during calendar year 1995 and in subsequent years.

1993 Amendment: Chapter 580 inserted definition of extended depth auger method; in definition of strip mining inserted "but does not include the extended depth auger method of mining"; and made minor changes in style. Amendment effective July 1, 1993, and terminates June 30, 1997.

1989 Amendment: In definition of base consumption level and in definition of base production level inserted "applies only for the term of an agreement in effect as of December 31, 1984, and". Amendment effective February 24, 1989.

Retroactive Applicability: Section 6, Ch. 31, L. 1989, provided in part: "(1) [This act] . . . applies retroactively, within the meaning of 1-2-109, to January 1, 1989.

(2) [This act] applies to all coal severance tax revenue recorded on or after January 1, 1989, regardless of when the tax obligation accrued."

1987 Amendments: Chapter 370 in (12), after ""Strip mining"" deleted "or "surface mining"" and inserted "and includes "surface mining"".

Chapter 608 substituted "(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators" for "(2) "Base consumption level" for a purchaser means the greater of:

(a) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators"; inserted (2)(b) that reads: "If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii)"; at beginning of (3)(a) inserted "Except as provided in subsection (3)(b)" and at end inserted "lesser of"; and inserted (3)(a)(ii) and (3)(b) that read: "(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i)."

1985 Amendment: Inserted definitions of agreement, base consumption level, base production level, broker, incremental production, purchaser, and qualified purchaser.

1983 Amendment: In (1) inserted "Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton."

Administrative Rules

ARM 42.25.501 Definitions.

ARM 42.25.1702 and 42.25.1703 Base consumption level — jointly owned facilities.

15-35-103. Severance tax — rates imposed.

Compiler's Comments

2005 Amendment: Chapter 415 deleted former (b) that read: "(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:

(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.

(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment"; deleted former (3) that read: "(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule"; and made minor changes in style. Amendment effective April 25, 2005.

2001 Amendment: Chapter 399 inserted (1)(b) providing that rate of taxation is one-third of the applicable rate in subsection (1)(a) if the conditions contained in subsections (1)(b)(i) and (1)(b)(ii) are met; and made minor changes in style. Amendment effective January 1, 2002.

Applicability: Section 4, Ch. 399, L. 2001, provided: "[This act] applies to coal produced after December 31, 2001."

1999 Amendment: (Temporary version) Chapter 51 in (1) at beginning deleted "Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit"; and deleted former (6) that read: "(6) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202"; and made minor changes in style.

(Version effective January 1, 2006) In (1) at beginning deleted "Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit"; deleted former (1)(a), (1)(b), and introductory clause of (1)(c) containing tables setting rates for surface and underground mining based on heating quality of coal (see 1997 MCA for text); deleted former (5) that read: "(5) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202"; and made minor changes in style. Amendment effective March 15, 1999.

1995 Amendment: Chapter 318 deleted (1)(a) and (1)(b) that set tax schedule for coal produced after June 30, 1988, through June 30, 1991 (see 1995 Session Law for text); inserted (5) exempting 2 million tons of coal produced as feedstock; and made minor changes in style. Amendment effective April 3, 1995, and terminates December 31, 2005.

Applicability: Section 4, Ch 318, L. 1995, provided that this section applies to coal produced during calendar year 1995 and in subsequent years.

1993 Amendment: Chapter 580 in (1)(c) inserted tax on extended depth auger mining. Amendment effective July 1, 1993, and terminates June 30, 1997.

1989 Amendment: At beginning of (1) substituted reference to 15-35-202 for "Except as provided in subsection (2)"; deleted former (1)(a), (1)(b), (1)(c), (2)(a)(i), (2)(a)(ii), and part of (2)(b) that read:

"(a) Fiscal Years 1988 and 1989:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or 30% of value	12 cents or 4% of value

(b) Fiscal Year 1990:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 13% of value	5 cents or 3% of value
7,000-8,000	22 cents or 25% of value	8 cents or 4% of value

8,000-9,000	34 cents or 25% of value	10 cents or 4% of value
Over 9,000	40 cents or 25% of value	12 cents or 4% of value

(c) Fiscal Year 1991 and Thereafter:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 13% of value	5 cents or 3% of value
7,000-8,000	22 cents or 20% of value	8 cents or 4% of value
8,000-9,000	34 cents or 20% of value	10 cents or 4% of value
Over 9,000	40 cents or 20% of value	12 cents or 4% of value

(2) (a) (i) On or before October 1, 1988, the department shall determine the total number of tons of coal produced in Montana and sold from July 1, 1987, through June 30, 1988. If the department finds that these sales exceed 32.2 million tons (which is the average total yearly coal sales for calendar years 1983, 1984, 1985, and 1986), the rate of the coal severance tax is as set forth in subsections (2)(b) through (2)(d).

(ii) If any facility that burned Montana coal at any time from July 1, 1987, to June 30, 1988, does not operate during a portion of that period due to mechanical failure or catastrophic act of God, the department shall determine the average monthly sales of Montana coal to the facility during its operation and multiply this figure by 12. The department shall include the product of this calculation in making its determination of coal produced in Montana and sold from July 1, 1987, through June 30, 1988.

(b) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state from July 1, 1988, through June 30, 1990, is"; inserted introductory phrase in (1)(a) and substituted severance tax levels for those in former (2)(b) that read:

"Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 17% of value	5 cents or 3% of value
7,000-8,000	22 cents or 25% of value	8 cents or 4% of value
8,000-9,000	34 cents or 25% of value	10 cents or 4% of value
Over 9,000	40 cents or 25% of value	12 cents or 4% of value";

substituted introductory phrase in (1)(b) for former (2)(c) that read: "(c) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state from July 1, 1990, through June 30, 1991, is"; substituted severance tax levels in (1)(b) for those in former (2)(c) that read:

"Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 13% of value	5 cents or 3% of value
7,000-8,000	22 cents or 20% of value	8 cents or 4% of value
8,000-9,000	34 cents or 20% of value	10 cents or 4% of value
Over 9,000	40 cents or 20% of value	12 cents or 4% of value";

substituted introductory phrase in (1)(c) for former (2)(d) that read: "(d) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state after June 30, 1991, is"; substituted severance tax levels in (1)(c) for those in former (2)(d) that read:

"Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 13% of value	5 cents or 3% of value
7,000-8,000	22 cents or 15% of value	8 cents or 4% of value
8,000-9,000	34 cents or 15% of value	10 cents or 4% of value
Over 9,000	40 cents or 15% of value	12 cents or 4% of value";

and made minor changes in form. Amendment effective February 24, 1989.

Retroactive Applicability: Section 6, Ch. 31, L. 1989, provided in part: "(1) [This act] . . . applies retroactively, within the meaning of 1-2-109, to January 1, 1989.

(2) [This act] applies to all coal severance tax revenue recorded on or after January 1, 1989, regardless of when the tax obligation accrued."

1987 Amendment: At beginning of (1) inserted exception clause; at beginning of (1)(a) inserted "Fiscal Years 1988 and 1989"; inserted (1)(b) relating to fiscal year 1990; inserted (1)(c) relating to fiscal year 1991; inserted (2) relating to reduced rates if sales exceed 32.2 million tons; and made minor changes in phraseology.

1985 Amendment: Inserted definition of broker.

1983 Amendment: In (3), increased amount of coal exempt from severance tax from 20,000 tons to 50,000 tons; and after "calendar year" inserted the exception for taxation on amounts produced in excess of 50,000 tons.

Nonseverability: Section 3, Ch. 303, L. 1983, provided: "It is the intent of the Legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid, and the prior law as reflected in sections 15-6-208 and 15-35-103 prior to the passage of this act shall remain in full force and effect."

Administrative Rules

ARM 42.4.201 Individual — energy conservation installation credit — definitions.

ARM 42.4.4101 Individual, corporations, and property — alternative energy production — definitions.

ARM 42.4.4102 Electrical generation and transmission facility — qualification and publication.

ARM 42.4.4103 Electrical generation and transmission facility — reporting.

ARM 42.4.4104 Electrical generation and transmission facility — verification.

ARM 42.4.4112 Records required — audit.

ARM 42.4.4113 Request for information.

ARM 42.25.1701 Third party intermediary defined.

ARM 42.25.1707 Determination of contract sale price.

Case Notes

1999 Coal Producer's License Tax Violative of Constitutional Coal Severance Tax Provisions: By simple majority vote, the 1999 Legislature passed House Bill No. 260, which created a license tax on the production of coal and allocated revenue from the tax to various state programs. Several legislators challenged the validity of the new tax, contending that by creating a license tax on the same taxable event for which the state coal severance tax is imposed and then providing a credit against the severance tax in an amount slightly greater than the amount of the license tax, the Legislature simply diverted what in substance and character are coal severance taxes to purposes other than the coal tax trust fund, in violation of Art. IX, sec. 5, Mont. Const. The Supreme Court agreed, noting that the only difference between the coal severance tax and the coal producer's license tax was the purpose for which each was allocated. A tax on the production of natural resources is characterized by the nature of the activity upon which the tax is imposed, and the effect of a legislative assessment is more important than its label in determining the character of the tax. Legislative imposition of a tax can become unlawful when done to accomplish an unlawful end, which was the case in this instance because the coal producer's license tax diverted production-based coal severance taxes for an unconstitutional purpose. Although the Legislature has the authority to determine the percentage of the coal severance tax, in this case, the Legislature simply gave a different name to the same tax and thereby diverted revenue to causes other than the coal tax trust fund. A coal severance tax by any other name is just as dedicated. By diverting and allocating coal severance tax revenue in a

manner contrary to the requirement in Art. IX, sec. 5, and by doing so without the required three-fourths vote of each house of the Legislature, House Bill No. 260 violated the constitution; thus, the state was enjoined from enforcing House Bill No. 260. Montanans for the Coal Trust v. St., 2000 MT 13, 298 M 69, 996 P2d 856, 57 St. Rep. 73 (2000). See also Oliver Iron Co. v. Lord, 262 US 172, 67 L Ed 929, 43 S Ct 526 (1923), Gomillion v. Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960), and Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

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History of Crow Case:

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After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV), reversed and remanded in Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Applicability of Tax to Adjustment Portion of Coal Sales Price — Commerce Clause: The contract sales price for coal was adjusted when the actual BTU content of the coal was different from the BTU content warranted by seller. The warranted BTU content determined the base price of the coal. The adjustment formula took railroad shipping charges into account and was part of the contract sales price. The coal severance and gross proceeds taxes were based on the contract sales price, and the resource indemnity tax was based on the value of the coal at the time of extraction. It was proper for the state to apply the coal severance, gross proceeds, and resource indemnity trust taxes to amounts seller received on upward price adjustments caused by higher BTU content, after deducting from the contract sales price, for purposes of the resource indemnity trust tax, the costs of hauling the coal from the mine to the railroad and preparing the coal for shipment. Seller's claim that it was taxed on the revenue received pursuant to the transportation costs component of the adjustment formula was properly denied in the lower court. Transportation costs were paid by the buyer, not the seller, the transportation cost component of the formula was based on the average transportation rate per ton and did not vary.

The adjustment formula did nothing to alter the actual transportation costs. The claim that the commerce clause of the United States Constitution was violated was properly denied in the lower court because seller did not receive, and thus was not taxed on, any transportation revenue. Westmoreland Resources v. Dept. of Revenue, 263 M 303, 868 P2d 592, 51 St. Rep. 67 (1994).

Coal Severance Tax Not in Contravention of Federal Constitutional or Statutory Policy: The Montana coal severance tax in its present form is a lawful exercise of this state's taxing authority. The Montana Supreme Court upheld the tax stating that, whether as a question of this state's power to levy any tax or its power to levy a tax at the rate set forth, there has been no preemption by the federal government in the field of coal severance taxation, or any national policy derived from Congressional enactments pursuant to the constitution with which Montana's tax conflicts. Commonwealth Edison Co. v. St., 189 M 191, 615 P2d 847, 37 St. Rep. 1192 (1980).

Collateral References

Taxation *key* 40.

53 C.J.S. Licenses §§50 through 57; 84 C.J.S. Taxation §§95 through 98.

71 Am. Jur. 2d State and Local Taxation §§218, 614.

15-35-104. Quarterly statement and payment of tax.

Compiler's Comments

1987 Amendment: Inserted third sentence concerning coal sold to each purchaser.

1981 Amendment: Substituted "signed by the operator if the operator is an individual or" for "verified" in the fourth sentence; inserted "if the operator is a business entity" at the end of the fourth sentence.

Case Notes

Unconstitutionality of Department of Revenue Rule Concerning Confidentiality of Coal Severance Tax Information: Plaintiffs sought information regarding coal severance tax payments that had been routinely supplied to the Department of Revenue by coal mine operators prior to adoption of ARM 42.2.701 (now repealed), which declared certain information, such as tax returns that taxpayers are required to submit to the Department and Department-prepared documents that identify taxpayers, to be confidential. Plaintiffs challenged the rule on grounds that it violated constitutional and statutory rights to public information. The Department asserted that the rule was adopted to protect taxpayers' constitutional right to privacy and to inform the public of the Department's procedures regarding the confidentiality of tax information. The District Court found that the rule was adopted after balancing the public's right to know with the coal producers' right to privacy and that the producers had a reasonable and ongoing expectation of privacy that outweighed the public's right to know. On appeal, the Supreme Court disagreed, finding ARM 42.2.701 (now repealed) unconstitutional on its face. The rule presumes a wholesale constitutionally protected right to privacy for all taxpayers that prevails over public disclosure without balancing the taxpayers' right to privacy with the public's right to know. Prior to adoption of the rule, coal producers did not have an actual or subjective expectation of privacy in revenue information submitted to the Department. After the rule was adopted, the producers could assert a subjective expectation of privacy. However, based on a facially unconstitutional rule, the expectation was not one society would be willing to recognize as reasonable, especially when the information had been routinely available for nearly 20 years before ARM 42.2.701 (now repealed) was adopted. Neither prong of the two-part privacy test in Great Falls Tribune Co., Inc. v. Day, 1998 MT 133, 289 M 155, 959 P2d 508 (1998), having been met, a constitutionally protected privacy interest in the information was ruled out. Assoc. Press, Inc. v. Dept. of Revenue, 2000 MT 160, 300 M 233, 4 P3d 5, 57 St. Rep. 657 (2000).

Collateral References

Taxation *key* 515 through 543.

85 C.J.S. Taxation §851, et seq.

72 Am. Jur. 2d State and Local Taxation §§737 through 755.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-35-105. Penalty and interest for delinquent tax — waiver.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) at end substituted reference to 15-1-216 for "of 10% of the delinquent amount plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the

severance tax was due to the date of payment"; in (3) substituted "A penalty may be waived by the department pursuant to 15-1-206" for "The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within 15 days, a lien may be filed as set forth in 15-23-704" at the end of the third sentence.

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Collateral References

Taxation *key* 835 through 855.

85 C.J.S. Taxation §1579, et seq.

72 Am. Jur. 2d State and Local Taxation §§759 through 770.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceedings. 13 ALR Fed. 877.

15-35-107. When value of coal may be imputed — procedure.

Compiler's Comments

1983 Amendment: Near beginning of (1), after "department may" inserted "or shall at the request of the taxpayer"; inserted (1)(b) relating to coal mine operators that refine coal to improve its quality; and inserted (2) defining market value F.O.B. mine.

Statement of Intent: The statement of intent attached to Ch. 326, L. 1983, provided: "It is the intent of SB 264 [Ch. 326, L. 1983] to give the Department of Revenue authority to adopt rules to impute the market value of coal prior to drying, cleaning or processing designed to improve the quality of the coal. The rules adopted shall:

1. Allow the taxpayer to pay applicable taxes based on market price of like coal prior to processing.

2. Impute market price regardless of whether the processing takes place at the mine site or not."

Administrative Rules

ARM 42.25.503 Failure to file.

ARM 42.25.512 Imputed value — factors used by department.

ARM 42.25.515 Imputed valuation for refined coal.

ARM 42.25.1706 Imputed valuation for refined coal.

ARM 42.25.1708 Imputed valuation.

Case Notes

Imputed Value of Coal Not Approximate of Market Value Under Market Conditions at Time of Sale — Additional Coal Tax Assessment Reversed: Following three audits of Decker Coal Co. (Decker) for 1987-92, the Department of Revenue assessed additional taxes and interest for years 1987-90. Administrative appeals were denied. Subsequently, there was an additional assessment for 1991-92, and administrative appeals were again denied. Both appeals were consolidated before the State Tax Appeal Board (STAB), which granted the Department's motion for summary judgment. Upon judicial review, the District Court affirmed the STAB decision, and Decker appealed to the Supreme Court. Under the terms of Decker's 1974 long-term coal sales contract with Commonwealth Edison (ComEd), coal was to be supplied at a base price that would be adjusted over time by a predetermined escalator. During the audit period of 1987-92, the base price plus escalators was $24 to $28 a ton. However, during that time, Decker sold coal for $7.50 to $10.42 a ton to two other coal companies, who in turn sold the coal to ComEd under their contract right to outsource coal from an alternative source, in this case Decker. Decker timely paid $8.5 million in taxes on the full contract price and received no additional money or other consideration from the two companies. The Department contended that by selling coal to two other companies, Decker was attempting to contract away its tax obligation on coal mined under its original ComEd contract. Thus, the Department applied the imputed price of $24 to $28 a ton as market value. Decker asserted that during the period in question, it never had an opportunity to sell the coal at the imputed price. Under this section, the Department may impute a value to coal sales rather than relying on contract prices if: (1) it determines that the contract price does not represent an arm's-length agreement; and (2) the imputed value approximates market value.

Both conditions must be satisfied before an imputed value may be assessed. The Department also argued that the statute allows application of factors used under federal tax regulations and that when those factors were applied, the representative market price was established by the original Decker-ComEd contract. The undisputed definition of "market value" in this case, as established by the District Court, was "the price that a willing buyer would pay a willing seller under the market and economic conditions at the time of sale". The only evidence of market value under this definition was presented by Decker's expert, which showed that coal sales in Decker's market area during the time in question ranged from $3.77 to $7.61 a ton; thus, the prices paid to Decker met or exceeded market value. The Department's imputed price erroneously ignored the temporal component of the definition, which required consideration of market factors at the time of sale, and the federal tax language did not suggest that the taxpayer's own actual sales be determinative of current market value regardless of date and price. Thus, the Supreme Court held that Decker's sale of coal to ComEd pursuant to the contract with predetermined escalators was not representative of the market and economic conditions at the time of sale and therefore did not meet the definition of market value. The STAB and Department conclusion that the 1974 contract represented market value was incorrect. Decker showed that the Department's imputed value did not approximate market value f.o.b. mine under market and economic conditions at the time of sale, so the District Court decision affirming STAB was dismissed. Because this issue was dispositive, the court did not address whether the sale price constituted an arm's-length agreement. Decker Coal Co. v. Dept. of Revenue, 2000 MT 125, 299 M 477, 2 P3d 245, 57 St. Rep. 512 (2000).

15-35-108. Disposal of severance taxes.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Chapter 589 in (3) near beginning substituted "8.36%" for "7.75%"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 603 in (3) at beginning of first sentence after "amount of" substituted "5.46%" for "7.75%" and after "legislature for" deleted "local impacts"; inserted (7) crediting 2.9% to the oil, gas, and coal natural resource account; and made minor changes in style. Amendment effective July 1, 2005.

Section 8, Ch. 603, L. 2005, a coordination section, provided: "If House Bill No. 482 and [this act] are passed and approved, then:

(1) the percentage figure referred to in each version of 15-35-108(3) in House Bill No. 482 and [this act] must be 5.46%; and

(2) the percentage figure referred to in each version of 15-35-108 allocating money to the oil, gas, and coal natural resource account must be 2.9%." House Bill No. 482 was approved as Ch. 589, L. 2005, and the changes to this section in sec. 8, Ch. 603, L. 2005, were made accordingly.

Applicability: Section 10, Ch. 603, L. 2005, provided: "[This act] applies to oil and gas production occurring after June 30, 2005."

2003 Amendments — Coordination — Composite Section: (Temporary version) Chapter 32 in (7)(b)(ii) at beginning deleted "for the fiscal year beginning July 1, 2001, $1.25 million, for the fiscal year beginning July 1, 2002, $925,000, and"; in (7)(b)(iii)(C) at beginning deleted "except for the fiscal year beginning July 1, 2002"; deleted former (7)(b)(iv) that read: "(iv) $175,000 to the office of economic development for business recruitment and retention"; in (7)(c) deleted former first two sentences that read: "For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) $3.165 million to the research and commercialization state special revenue account created in 90-3-1002"; and made minor changes in style. Amendment effective July 1, 2003.

(Temporary version) Chapter 351 in (7)(b)(ii) at beginning deleted "for the fiscal year beginning July 1, 2001, $1.25 million, for the fiscal year beginning July 1, 2002, $925,000, and"; in (7)(b)(iii)(C) at beginning deleted "except for the fiscal year beginning July 1, 2002" and after "certified" substituted "regional development corporations" for "communities"; in (7)(c) deleted former first two sentences that read: "For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) $3.165 million to the research and commercialization state special revenue account created in 90-3-1002"; and made minor changes in style. Amendment effective July 1, 2003.

(Version effective July 1, 2005) Chapter 481 in (7)(a) at beginning inserted "Subject to subsection (7)(b)"; inserted (7)(b) allocating interest income from $140 million of the coal severance tax permanent fund to enumerated programs; and made minor changes in style. Amendment effective July 1, 2005, and terminates June 30, 2010.

Pursuant to sec. 4, Ch. 481, L. 2003, a coordination section, in (7)(b)(iii)(C) substituted "certified regional development corporations" for "certified communities".

2002 Amendments — Composite Section: (Temporary version) Chapter 9 at beginning of first sentence of (7)(c) substituted "For the fiscal year beginning July 1, 2001" for "Beginning July 1, 2001" and after "transferred" deleted "annually", inserted second sentence transferring $3.165 million from interest income to research and commercialization account for fiscal year July 1, 2002, and inserted third sentence transferring $3.65 million annually from interest income to research and commercialization account beginning July 1, 2003. Amendment effective August 16, 2002.

(Temporary version) Chapter 12 at beginning of (2) inserted clause concerning 10% allocation to long-range building program account for the fiscal year ending June 30, 2003; at beginning of (3) inserted clause allocating 6.01% to state special revenue account for the fiscal year ending June 30, 2003; at beginning of (4) and (6) inserted clause concerning fiscal years beginning on or after July 1, 2003; in (7)(b)(ii) at beginning inserted clause concerning the fiscal year beginning July 1, 2001, and after "$1.25 million" inserted allocation of $925,000 for the fiscal year beginning July 1, 2002, and language concerning $1.25 million allocation for fiscal years beginning on or after July 1, 2003; in (7)(b)(iii)(C) inserted exception clause concerning the fiscal year beginning July 1, 2002; in (7)(b)(iv) reduced amount from $350,000 to $175,000; and made minor changes in style. Amendment effective August 16, 2002, and terminates June 30, 2005.

(Both versions) Chapter 13 in (3) near beginning of first sentence reduced percentage to 7.75% from 8.36% and near middle after "local impacts" deleted "county land planning". Amendment effective August 16, 2002.

Retroactive Applicability: Section 4, Ch. 9, Sp. L. August 2002, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to transfers in fiscal years beginning July 1, 2001."

Section 7, Ch. 12, Sp. L. August 2002, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2002."

Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

2001 Amendments — Composite Section: Chapter 34 in first sentence of (4) after "allocated to a" substituted "permanent fund account" for "nonexpendable trust fund" and in second sentence after "from this" substituted "permanent fund account" for "trust fund". Amendment effective July 1, 2001.

Chapter 61 in last sentence of (4) and (6) inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

(Temporary version) Chapter 483 deleted former (7)(b)(iii)(A) that read: "(A) $350,000 for business recruitment"; inserted (7)(b)(iv) allocating $350,000 to the office of economic development for business recruitment and retention; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective July 1, 2005) At beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; and made minor changes in style.

Code Commissioner Instruction: Pursuant to sec. 38, Ch. 34, L. 2001, in (7)(c) in temporary version the code commissioner changed "expendable trust fund" to "state special revenue account".

2000 Amendment: (Temporary version) Chapter 10 at beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; at beginning of (7)(a) inserted reference to subsection (7)(b); inserted (7)(b) statutorily appropriating fund interest to specific programs for biennium ending June 30, 2001; and made minor changes in style. Amendment effective May 22, 2000, and terminates June 30, 2001.

(Version effective July 1, 2001) Chapter 10 at beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; at beginning of (7)(a) inserted reference to subsections (7)(b) and (7)(c); inserted (7)(b) statutorily appropriating fund interest to specific

programs on an annual basis; inserted (7)(c) transferring funds to the research and commercialization expendable trust; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2005.

1999 Amendment: Chapter 389 deleted former (7) that read: "(7) Beginning July 1, 1997, and ending June 30, 2007, the amount of 1.3% must be allocated to the long-range building program fund in the debt service fund type to fund the bonds issued for the purchase of the Virginia City and Nevada City property"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendments: Chapter 422 in (3) inserted second and third sentences relating to expenditures from the account and transfers from the account and at beginning of last sentence substituted "Any unreserved fund balance" for "Any cash balance that is unspent". Amendment effective July 1, 1997.

Chapter 469 in (6), in first sentence, substituted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund" for "The amount of 0.63% must be allocated to a nonexpendable trust" and inserted second sentence concerning allocation to trust fund; and inserted (7) concerning allocation to long-range building program fund. Amendment effective July 1, 1997.

Severability: Section 21, Ch. 469, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 18 in introduction, after "15-1-501", deleted reference to subsection (6); in former (3)(d) substituted reference to loan debt service fund for reference to development bond fund; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 442 in subsection allocating to various accounts deleted former introductory clause that read: "Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance"; changed allocation to local impact account from 17 ½% of remainder to 6.65% of total; changed allocation to state equalization aid from 30% of remainder to 11.4% of total; changed allocation to county land planning account from 1% of remainder to 0.38% of total; deleted former subsection allocating 1 ¼% of remainder to credit of renewable resource development bond fund; changed allocation to parks acquisition or maintenance fund from 3 ⅓% of remainder to 1.27% of total; changed allocation to State Library Commission from 1% of remainder to 0.38% of total; changed allocation to conservation districts from 1/2 of 1% of remainder to 0.19% of total; changed allocation to renewable resource loan debt service fund from 1 ¼% of remainder to 0.95% of total; changed allocation to Growth Through Agriculture Act from 2% of remainder to 0.76% of total; changed allocation to cultural and aesthetic trust from 1 ⅔% of remainder to 0.63% of total; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 456 in (2) deleted "Starting July 1, 1987, and ending June 30, 2003", substituted "long-range building program" for "highway reconstruction trust fund", and substituted "established in 17-7-205" for "in the state special revenue fund"; in (3), in introductory clause after "allocation", deleted "to the trust fund" and inserted reference to subsection (2); and made minor changes in style. Amendment effective July 1, 1995. The amendments in (3) were rendered void by Ch. 442.

Chapter 509 in former (3), after "(1)", inserted "and (2)"; in both versions in subsection allocating remaining coal severance tax collections, in (3), substituted "22% to the credit of an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Any cash balance that is unspent at the end of each fiscal year must be deposited in the general fund" for "17 ½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account", deleted former (f) that read: "(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking", deleted (g) that read: "(g) 1/2 of 1% to the state special revenue fund for conservation districts", and deleted (i) that read: "(i) 2% to the state special revenue fund for

the Montana Growth Through Agriculture Act"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Coordination: Section 7, Ch. 442, L. 1995, provided: "If Senate Bill No. 83, House Bill No. 19, House Bill No. 422, House Bill No. 526, or House Bill No. 528 is passed and approved in a form that amends 15-35-108, percentages in that section must be expressed as percentages of total tax collections consistent with [this act]." The amendment to (3) made by Ch. 509 was adjusted accordingly from 22% to 8.36% to reflect the percentage from the total collections and not from the 38% remaining after other allocations.

Amendment Termination: Sections 4 and 5, Ch. 456, L. 1995, amended sec. 1 and sec. 4, Ch. 191, L. 1991, to terminate temporary versions of this section July 1, 1995, rather than July 1, 1993, and July 1, 2003.

1993 Amendments: Chapter 455 near middle of introductory clause, after "must", inserted "in accordance with the provisions of 15-1-501(6)" and after "allocated" deleted "according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated". Amendment effective April 21, 1993.

Chapter 536 in (3)(e) reduced from 3 ⅓% to 0% the amount paid to trust fund for parks; and inserted (3)(k) establishing account for historic and cultural sites. Amendment effective July 1, 1993, and terminates June 30, 1995.

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendments: (Temporary version) Chapter 16 in (2) changed allocation of 12% of coal severance tax collections from the highway reconstruction trust fund account to the general fund for the period beginning July 1, 1992, and ending June 30, 1993.

(Version effective July 1, 1992) Chapter 8 in (3)(j) allocated 42 ½% of 1 ⅔% remaining balance of unallocated coal severance tax collections to the Montana Arts Council for operating costs and 57 ½% to the nonexpendable trust fund. Amendment effective July 1, 1992.

Effective Dates — Termination: Section 3, Ch. 8, Sp. L. January 1992, provided: "[This act] is effective July 1, 1992, and [section 1] [15-35-108] terminates June 30, 1993."

Section 2, Ch. 16, Sp. L. January 1992, provided: "[This act] is effective on passage and approval [approved February 4, 1992] and terminates July 1, 1993."

1991 Amendments: Chapter 16 in (1) corrected citation to subsection of 17-6-203; and made minor changes in style.

Chapter 191 in (2), near beginning, substituted "June 30, 2003" for "June 30, 1993". Amendment effective March 27, 1991.

(Temporary version) Chapter 615 in (3)(e) decreased 5% allocation to a nonexpendable trust fund for parks acquisition and management, protection of works of art in the State Capitol, and other cultural and aesthetic projects, with 1/3 of income from the trust fund to be appropriated for art in the State Capitol and other cultural and aesthetic projects and 2/3 for the acquisition, development, operation, and maintenance of sites and areas described in 23-1-102 to 0% to a nonexpendable trust fund for parks management, with income from the fund to be appropriated for development, operation, and maintenance of sites and areas described in 23-1-102; inserted (3)(j) providing a 1 ⅔% allocation to a nonexpendable trust fund for protection of works of art in the State Capitol and for other cultural and aesthetic projects, with trust income to be appropriated for those purposes; and inserted (3)(k) providing a 3 ⅓% allocation to a special revenue account to be used by Department of Fish, Wildlife, and Parks for the development, operation, and maintenance of state parks and the stabilization and preservation of historic sites within the state park system. Amendment effective July 1, 1991.

(Version effective July 1, 1993) Chapter 615 in (3)(e) decreased 5% allocation to a nonexpendable trust fund for parks acquisition and management, protection of works of art in the State Capitol, and other cultural and aesthetic projects, with 1/3 of income from the trust fund to be appropriated for art in the State Capitol and other cultural and aesthetic projects and 2/3 for the acquisition, development, operation, and maintenance of sites and areas described in

23-1-102 to 3 ⅓% allocation to a nonexpendable trust fund for parks acquisition or management, with income from the fund to be appropriated for the acquisition, development, operation, and maintenance of sites and areas described in 23-1-102; and inserted (3)(j) providing a 1 ⅔% allocation to a nonexpendable trust fund for protection of works of art in the State Capitol and for other cultural and aesthetic projects, with trust income to be appropriated for those purposes.

Termination Date Extended: Section 1, Ch. 191, L. 1991, amended sec. 7, Ch. 541, L. 1983, to read: "Sections 1 through 5 [60-3-216, 60-3-217, and 60-3-218 and the 1983 amendments to 15-35-108 and 17-3-201, now repealed] are effective July 1, 1983, and terminate July 1, 2003." Effective March 27, 1991.

Effective Date — Applicability — Termination Date: Section 4, Ch. 191, L. 1991, provided: "(1) [This act] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] is effective on passage and approval [approved March 27, 1991].

(2) [Section 1] [amending sec. 7, Ch. 541, L. 1983] applies retroactively, within the meaning of 1-2-109, to April 16, 1983.

(3) [Sections 1 through 3] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] terminate July 1, 2003."

Fund Transfer: Section 2, Ch. 615, L. 1991, provided that the Board of Investments shall transfer one-third of the balance as of June 30, 1991, of the nonexpendable trust fund (now a permanent fund account) created in subsection (3)(e) to the nonexpendable trust fund (now a permanent fund account) created in subsection (3)(j) for protection of works of art in the Capitol and for other cultural and aesthetic projects, with the remainder of the subsection (3)(e) fund to be used as provided in subsection (3)(e).

1989 Special Session Amendment: At beginning of (3)(a) deleted "20% to the state special revenue fund to the credit of the education trust fund account and" and at end substituted "state special revenue fund for state equalization aid to public schools of the state" for "education trust fund account"; and in (3)(b) increased percentage for state equalization aid from 10% to 30%. Amendment effective July 1, 1990.

1989 Amendments: Chapter 83 at beginning of (3)(a) deleted "4% until June 30, 1989, to the state special revenue fund to the credit of the local impact account and thereafter" and before "education trust fund account" deleted "local impact and"; at beginning of (3)(b) deleted "44.2% until June 30, 1989, and thereafter"; and at beginning of (3)(e) deleted "after June 30, 1989".

Chapter 626 deleted former (3)(a) that read: "(a) 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account"; and in (3)(a), after "20% to the state special revenue fund to the credit of the", deleted "local impact and". Amendment effective July 1, 1989.

Preamble: The preamble attached to Ch. 626, L. 1989, provided: "WHEREAS, elimination of the allocation of coal severance tax revenues in section 15-35-108, MCA, to the alternative energy and energy conservation research development and demonstration account would allow those revenues to be deposited in the state general fund from which the Legislature can appropriate that money to fund the Department of Natural Resources and Conservation."

Transfer of Cash: Chapter 626, which amended this section by deleting from subsection (3) a provision that 4 ½% of remaining severance taxes go to the credit of the alternative energy research development and demonstration account, contained two new sections providing: "Section 3. Transfer of alternative energy unobligated cash balance to general fund. (1) The unobligated cash balance from the alternative energy and energy conservation research development and demonstration account at the end of fiscal year 1989 is transferred to the general fund.

(2) The department of natural resources and conservation shall retain $10,000 of the unobligated cash balance within the alternative energy and energy conservation research development and demonstration account at the end of fiscal year 1989 to fully fund its appropriations in the 1990-91 biennium.

Section 4. Unobligated cash balance defined. As used in [section 3], "unobligated cash balance from the alternative energy and energy conservation research development and demonstration account" is the fund balance at the end of fiscal year 1989 less all accruals, loan receivables, and any other legal obligations of either the department of natural resources and conservation or the department of commerce that encumber funds in the account."

1987 Amendment: At beginning of section inserted "Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104"; in (2) deleted former first sentence that read: "Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund"; at beginning of (3)(a) deleted "2 ½% until

July 1, 1987, and thereafter"; at beginning of (3)(b) decreased 6% to 4%, changed "July 1, 1987" to "June 30, 1989, to the state special revenue fund to the credit of the local impact account", and after "thereafter" substituted "20% to the state special revenue fund to the credit of the local impact and education trust fund account and 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the education trust fund account" for "37 ½% to the state special revenue fund to the credit of the local impact and education trust fund account"; in (3)(c) increased 30% to 44.2% and changed "July 1, 1987" to "June 30, 1989"; at beginning of (3)(f) deleted "starting July 1, 1986, and ending June 30, 1989, 5% to the general fund, and"; and in (3)(j) substituted "2% to the state special revenue fund for the Montana Growth Through Agriculture Act" for "4% until July 1, 1987, to the highway reconstruction trust fund account in the state special revenue fund".

Severability: Section 13, Ch. 662, L. 1987, was a severability section.

1986 Amendments: Chapter 3 at beginning of (3)(f) inserted 5% appropriation to the general fund and time periods; at beginning of (3)(f)(ii) deleted "starting July 1, 1985, and ending June 30, 1989"; and at end of (3)(f)(ii) after "23-1-102" deleted "and, after June 30, 1989, 2/3 for the acquisition of sites and areas described in 23-1-102 and the development, operation, and maintenance of sites acquired with funds allocated under this subsection".

Chapter 19 in (3)(b) reduced amount allocated until July 1, 1987, from 26% to 6%; and in (3)(c) changed "10%" to "30% until July 1, 1987, and thereafter 10%".

Effective Dates: The 1986 amendment made by Ch. 3 was effective June 30, 1986.

The 1986 amendment made by Ch. 19 was effective July 10, 1986, and applies retroactively to coal mined after April 1, 1986.

1985 Amendments: Chapter 246 in (3)(f)(ii) substituted "starting July 1, 1985, and ending June 30, 1989, 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102 and, after June 30, 1989, 2/3 for the acquisition of sites and areas described in 23-1-102 and the development, operation, and maintenance of sites acquired with funds allocated under this subsection" for "2/3 for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired".

Chapter 715 in (3)(a) substituted "July 1, 1987" for "December 31, 1979"; in (3)(b) substituted "26%" for "26 ½% until July 1, 1979, and thereafter 37 ½%"; and inserted (3)(j) relating to highway reconstruction trust fund account. Amendment effective May 10, 1985, applicable to coal mined on or after April 1, 1985, and terminates July 1, 1987 (secs. 4 and 5, Ch. 715, L. 1985).

Coal Tax Subcommittee Bill: Chapter 246, L. 1985, was introduced by request of the Coal Tax Oversight Subcommittee. See the committee's report entitled: "Reappraising Montana's Coal Severance Tax", Montana Legislative Council, November 1984.

Code Commissioner Changes — Applicability of Allocations: In subsections (1) and (3) the Code Commissioner has deleted references to allocation formulas that are no longer effective. The Code Commissioner inserted in subsection (3)(b) "until July 1, 1987, and thereafter 37 ½%" and in (3)(j) "until July 1, 1987" because of the termination provision in sec. 5, Ch. 715, L. 1985.

1983 Amendments — Termination Date: Chapter 281, throughout section, substituted "state special revenue fund" for "earmarked revenue fund"; in (3)(g), before "credit", deleted "sinking fund to the" and substituted "bond fund" for "bond account"; at beginning of (3)(h), substituted "5% to a nonexpendable trust fund" for "5% to the earmarked revenue fund to the credit of a trust fund"; and in (3)(k), substituted "debt service fund type" for "sinking fund" and "debt service fund" for "sinking account".

Chapter 541 inserted (2) relating to 6% allocation to highway reconstruction for fiscal year 1987 and 12% for fiscal years 1988 to 1993; and in introduction to (3), changed "allocation to the trust fund under subsection (1)" to "allocations provided by subsections (1) and (2)".

Section 7, Ch. 541, L. 1983, provided: "Sections 1 through 5 [60-3-216 through 60-3-218 and 1983 amendments to 15-35-108 and 17-3-201] are effective July 1, 1983, and terminate July 1, 1993."

1981 Amendments: Chapter 479 reduced the amount of the coal severance tax allocated to alternative energy research from 5% to 4 ½% in (2)(b); and inserted subsection (2)(j) relating to earmarked revenue fund for conservation districts.

Chapter 505 reduced the amount of the coal severance tax allocated to the sinking fund to the credit of the renewable resource development bond account from 2 ½% to 1 ¼% in (2)(g); and inserted (2)(k) relating to sinking fund to credit of water development sinking account.

Attorney General's Opinions

"Collection" as Referring to Quarter of Assessment Rather Than Quarter of Payment: The coal tax is assessed on coal mined during the quarter but the payment is not due until 30 days

following the end of the quarter. The term "collection" refers to the assessment rather than the actual payment of the tax. 38 A.G. Op. 72 (1980).

Applicability of Distribution Formula: The distribution formula embodied in Ch. 540, L. 1977, applies only to taxes assessed on coal mined after July 1, 1977. 37 A.G. Op. 73 (1977).

Collateral References

Taxation *key* 906.75.

71 Am. Jur. 2d State and Local Taxation §169.

15-35-112. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must bear interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) at end substituted reference to 15-1-216 for "until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-35-113. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "charged on unpaid taxes provided in 15-1-216" for "charged on deficiency assessments provided in 15-35-112"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-35-121. Penalties for neglect or false statement.

Collateral References

Taxation *key* 838, 839.
85 C.J.S. Taxation §1579, et seq.
72 Am. Jur. 2d State and Local Taxation §§759 through 770.

15-35-122. Rulemaking authority.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 181 (Ch. 581, L. 1979) provided: "It is the intent of the Legislature that the rulemaking authority in existence at the present time exercised by the Department of Revenue shall not be enlarged by the passage of this bill."

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.
Title 42, chapter 4, subchapter 2, ARM Individual — energy conservation installation credit.
ARM 42.25.515 Imputed valuation for refined coal.
Title 42, chapter 25, subchapter 17, ARM Coal consumption tax credit.
ARM 42.25.1701 through 42.25.1704 Jointly owned generating facilities — coal consumption tax.

CHAPTER 36
OIL AND GAS PRODUCTION TAX

Chapter Compiler's Comments

Repayment of Former Foundation Program Money: Section 2, Ch. 299, L. 1993, provided: "(1) Beginning July 1, 1993, and by June 30, 1998, Saco School Districts No. 12A and B, Whitewater School Districts No. 20AA and D, and Malta School Districts No. 14 and A, Phillips County, shall repay any overdistribution of foundation program money [now repealed, see 20-9-315 through 20-9-320, 1991] for school fiscal year 1991 attributable to an overdistribution of local government severance tax revenue in the following amounts, plus interest as provided in subsection (2), based on an annual repayment schedule approved by the superintendent of public instruction:

Saco School District No. 12A	$135,682
Saco School District No. B	102,003
Whitewater School District No. 20AA	121,924
Whitewater School District No. D	73,196
Malta Elementary School District No. 14	12,923
Malta High School District No. A	8,086

(2) A repayment amount under subsection (1) must include interest at the average annual short-term investment pool rate of the preceding fiscal year."

Retroactive Applicability: Section 3, Ch. 299, L. 1993, provided that this section applies retroactively, within the meaning of 1-2-109, to August 11, 1989.

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Case Notes

Lease Not Tract of Land: Gary Drilling Company obtained a declaratory judgment that the production from certain of its wells had to be taxed as new production under a predecessor to this chapter. The Department of Revenue appealed, arguing that it could not be new production because there had been previous production on the tract of land where the company had drilled the wells. The Supreme Court held that the oil was new production because the company operated under a different lease than the one used by the parties that had obtained earlier production on the property. Gary Drilling Co. v. Dept. of Revenue, 250 M 313, 820 P2d 428, 48 St. Rep. 975 (1991).

State Taxation of Indian Trust Properties Valid — No Repeal by Implication Found: Where the plaintiff Indian tribe sought declaratory and injunctive relief against the levy and collection

of certain taxes (now repealed) by the state and several counties on the production of oil and gas owned by the United States in trust for the plaintiff by non-Indian lessees within the boundaries of the plaintiff's reservation, the court held that the provisions of 25 U.S.C. §398 specifically authorized state taxation of oil and gas on tribal lands and that the provisions of the statute had not been impliedly repealed by 25 U.S.C. §396. The sovereign right asserted by the plaintiff to be free from state taxation has been controlled by Congress, and the plaintiff has not shown that there is such a repugnancy between the two federal statutes as to satisfy their burden of proving a congressional intent to repeal the former by enactment of the latter or that there is an ambiguity in the law which should be construed in favor of the plaintiff. Blackfeet Tribe v. St., 507 F. Supp. 446, 38 St. Rep. 238 (D.C. Mont. 1981); reversed in part and remanded for further proceedings by en banc court of appeals, Blackfeet Tribe v. Mont., 729 F2d 1192 (9th Cir. 1984); certiorari granted state to resolve whether Montana may tax Indian royalty interest arising out of leases executed after the adoption of 1938 Act, and U.S. Supreme Court upheld the 9th Circuit decision that state could not tax such royalty interests. Mont. v. Blackfeet Tribe, 105 S Ct 2399 (1985).

Production Under Lease of Trust Patent Indian Land — Prior Tax Laws: The State Board of Equalization (now Department of Revenue) is authorized to levy the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling Santa Rita Oil & Gas Co. v. St. Bd. of Equalization (now Department of Revenue), 101 M 268, 54 P2d 117 (1936), with exception of the royalty owner's net proceeds tax, for the reason that the federal Supreme Court overruled its holdings upon which the state court's former opinion was based.) Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 359, 116 P2d 1012 (1941).

Nature of Tax: Under former law, oil and gas in place is land, and a tax on the income of such oil and gas is a tax on land. A tax on the royalty, which only accrues as a result of the production of oil or gas, is a burden on the production of oil or gas and, therefore, a tax levied and assessed against the gas and oil produced. A tax on royalty is a part of the net proceeds tax arising out of the operation of mines, and the holder of royalty interest is liable for tax thereon in absence of contractual obligation to the contrary. N. Pac. Ry. v. Gas Dev. Co., 103 M 214, 62 P2d 204 (1936).

Estate in Land Created by Lease of Trust Patent Indian Land Held Taxable: Oil and gas leases on Indian lands held under trust patent, in which the oil and gas were reserved for the benefit of the tribe, created an estate in land distinct and separate from the interest held by the federal government, which estate was subject to operators' net proceeds tax and the gross production tax (now repealed). British-American Oil Prod. Co. v. St. Bd. of Equalization, 101 M 293, 54 P2d 129 (1936), affirmed 299 US 159, 81 L Ed 95, 57 S Ct 132 (1936).

Nonresident Royalty Holder: Under former law, the fact that the owner of a royalty interest in an oil well made taxable under sections 2096.1 and 2096.2, R.C.M. 1935 (now repealed), was a nonresident of the state did not render him immune from payment of a tax thereon, the tax imposed upon the royalty as a part of the net proceeds being in lieu of the ad valorem tax on the oil in the ground as a part of the realty and not a personal property tax depending upon the residence of the owner. Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Land Leased From United States: An oil company operating under leases from the United States government and assigned to it, under the terms of which the lessees were given the exclusive right to explore for, extract, and dispose of oil and gas in lands covered by homestead entries for which patents had not issued, is not such an agency or instrumentality of the federal government as to render the license or occupation tax imposed by Ch. 266, L. 1921, invalid. Mid-Northern Oil Co. v. Walker, 65 M 414, 211 P 353 (1922), affirmed, 268 US 45, 69 L Ed 841, 45 S Ct 440 (1925).

Nature of Tax: The tax of 1% of the gross value of crude oil exacted from persons engaged in producing petroleum within the state, by Ch. 266, L. 1921, is not a property tax or imposed for regulatory purposes under the police power but is a revenue measure, and the exaction is a license or occupation tax. Mid-Northern Oil Co. v. Walker, 65 M 414, 211 P 353 (1922), affirmed, 268 US 45, 69 L Ed 841, 45 S Ct 440 (1925).

Chapter Law Review Articles

Limitations on State Power to Tax Natural Resource Development on Indian Reservation, Dockins, 43 Mont. L. Rev. 217 (1982).

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Chapter Collateral References

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 3
Oil and Gas Production Tax Act

Part Compiler's Comments

Effective Date: Section 54, Ch. 451, L. 1995, provided: "(1) Except for the purposes of subsection (2), [this act] is effective January 1, 1996.

(2) For the purposes of promulgating administrative rules, [section 16 [15-36-322] and this section] are effective on passage and approval." Approved April 14, 1995.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

Part Administrative Rules

Title 42, chapter 25, subchapter 18, ARM Natural resources taxes — oil and gas.

Part Case Notes

Absent Equal Protection Violation, No Constitutional Violation for Legislature to Tax or Exempt From Taxation Property Without First Classifying Property: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas while at the same time exempting those properties from a statewide mill levy for education were invalid because the statutes did not classify those properties as required by 15-6-101 and, in addition, created a partial exemption from school funding instead of creating a total exemption. The Supreme Court held that the Legislature is not constitutionally limited to a classification system and that the Legislature is not constitutionally limited to providing tax exemptions for property exclusively within a classification system. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

Conflicting Taxation Statutes Not Invalid: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas were invalid because the statutes did not classify those properties as required by 15-6-101. The Supreme Court held that the specific statutes providing for taxation of coal, oil, and natural gas were superior to and not invalidated by the more general classification statute. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

15-36-303. Definitions.

Compiler's Comments

2005 Amendment: Chapter 592 in definition of stripper oil in (a) in first sentence after "produces" inserted "more than 3 barrels but" and deleted former last sentence that read: "There is no stripper well exemption tax rate if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is more than $38 a barrel"; in definition of stripper well exemption in first sentence inserted stripper well bonus as

defined term and inserted second sentence related to determination of production; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 4, Ch. 592, L. 2005, provided: "[This act] applies to oil produced and sold after June 30, 2005."

2001 Amendments — Composite Section: Chapter 403 in definition of expanded enhanced recovery project, new enhanced recovery project, and secondary recovery project after "December 31, 1993" deleted "and before January 1, 2002"; and made minor changes in style. Amendment effective April 28, 2001.

Chapter 421 in definition of stripper oil near end of second sentence after "stripper tax rate" deleted "including stripper well exemption tax rate" and inserted third sentence eliminating stripper well exemption tax rate when oil price exceeds $38 a barrel; and made minor changes in style. Amendment effective April 28, 2001.

Retroactive Applicability: Section 4, Ch. 421, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to production occurring on or after January 1, 2001."

1999 Amendments — Composite Section — Coordination: Chapter 488 inserted definition of stripper well exemption; and made minor changes in style. Amendment effective April 27, 1999.

Section 4, Ch. 488, L. 1999, a coordination instruction, voided part of the definition of stripper well exemption after "3 barrels a day or less" by deleting: "when the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper well exemption in that quarter. However, the stripper exemption would apply subject to the conditions of subsection (21). The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter."

Chapter 530 deleted definition of stripper exemption that read: ""Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in that quarter. The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter"; substituted definition of stripper oil for former definition that read: ""Stripper oil" means the oil produced from any well that produces less than 10 barrels a day for the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365"; and made minor changes in style. Amendment effective April 30, 1999.

(Temporary version) Chapter 554 in definition of post-1985 well in two places inserted "but before January 1, 1999"; inserted definition of post-1999 well; in definition of qualifying production in (a)(i) inserted "but before January 1, 1999" and inserted (a)(ii) regarding well production on or after January 1, 1999; and made minor changes in style. Amendment effective April 30, 1999, and terminates December 31, 1999.

(Version effective January 1, 2000) In definition of post-1999 well at beginning substituted "Post-1999" for "Post-1985", substituted "on or after January 1, 1999" for "after June 30, 1985, other than horizontally completed or recompleted oil wells drilled after December 31, 1993", and substituted "post-1999" for "post-1985"; in definition of pre-1999 well at beginning substituted "Pre-1999" for "Pre-1985" and at end substituted "January 1, 1999" for "July 1, 1985"; in definition of production decline rate substituted "15-36-304(5)(e)" for "15-36-304(4)(d)"; in definition of qualifying production in first sentence substituted "12 months" for "24 months", substituted "a well" for "any post-1985 well", and substituted December date and language regarding horizontally completed well drilled after December date for "March 31, 1995"; and made minor changes in style.

Effective Date — Applicability: Section 5, Ch. 488, L. 1999, provided: "[This act] is effective on passage and approval [approved April 27, 1999] and applies to oil produced and sold during the quarters beginning after June 30, 1999."

Applicability: Section 7, Ch. 530, L. 1999, provided: "[This act] applies to oil produced and sold after June 30, 1999."

(Version effective January 1, 2000) Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Retroactive Applicability: (Temporary version) Section 19(2), Ch. 554, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to oil and natural gas produced and sold and to wells drilled after December 31, 1998.

Coordination With Other Chapters — Effective Dates: Section 3, Ch. 571, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section.

(1) The definition section, [section 3] [15-36-303], of Senate Bill No. 412, is amended by adding the following definition, in alphabetical order, and renumbering subsequent subsections:

"(20) "Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in that quarter. The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.""

Section 3, Ch. 581, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section.

(1) The definition section, [section 3] [15-36-303], of Senate Bill No. 412 is amended by adding the following definition, in alphabetical order, and renumbering subsequent subsections:

"(19) "Qualifying production" means the first 24 months of production of oil or natural gas from any post-1985 well drilled after March 31, 1995, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production. Qualifying production does not include oil production from a horizontally recompleted well."" Effective January 1, 1996.

Senate Bill No. 412 was enacted as Ch. 451, L. 1995, effective January 1, 1996.

Administrative Rules

ARM 42.25.1806 Allocation of incremental production.

ARM 42.25.1807 Average daily well production calculation.

ARM 42.25.1808 Dually qualified stripper wells and enhanced recovery projects.

15-36-304. Production tax rates imposed on oil and natural gas.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 592 inserted (5)(c)(ii) related to stripper well bonus production; in (6)(d)(i) inserted second sentence related to taxation of stripper well bonus production; inserted (6)(d)(ii) related to stripper well bonus production; in (6)(e) near beginning inserted reference to subsection (6)(d); and made minor changes in style. Amendment effective July 1, 2005.

Chapter 603 in (7)(a) in first sentence after "include the" inserted "total of the" and at end after "82-11-131" inserted "and the derived rate for the oil, gas, and coal natural resource account as determined under subsection (7)(b)"; inserted (7)(b) and (7)(c) regarding imposition of the privilege and license tax and the oil, gas, and coal natural resource tax and notice required of any change in the rate; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 4, Ch. 592, L. 2005, provided: "[This act] applies to oil produced and sold after June 30, 2005."

Section 10, Ch. 603, L. 2005, provided: "[This act] applies to oil and gas production occurring after June 30, 2005."

2003 Amendment: Chapter 522 in (1) at end of second sentence substituted "15-36-331 and 15-36-332" for "15-36-324"; and made minor changes in style. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

2001 Amendment: Chapter 421 in (6)(c) at end of second sentence inserted "other than exempt stripper well production" and inserted third sentence providing for taxation of stripper well exemption production when oil price is less than $38 a barrel; and made minor changes in style. Amendment effective April 28, 2001.

Retroactive Applicability: Section 4, Ch. 421, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to production occurring on or after January 1, 2001."

1999 Amendments — Composite Section — Coordination — Code Commissioner Correction: Chapter 488 inserted (5)(b)(iii) in temporary version and (5)(c) in January 1, 2000, version regarding stripper well exemption production. Amendment effective April 27, 1999.

Chapter 530 in (5)(b) substituted schedule on stripper oil production for former schedule (see 1999 Session Law for former text); and made minor changes in style. Amendment effective April 30, 1999.

(Temporary version) Chapter 554 inserted (2)(d) concerning post-1999 wells; inserted (2)(e) concerning horizontally completed well production; in (3) near middle inserted clause applying subsection (2)(d)(i) to natural gas production from post-1999 well; inserted (4) regarding reduced tax rate under subsection (2)(e)(i); inserted (5)(a)(iii) concerning post-1999 wells; substituted tax schedule in (5)(b) concerning stripper wells for former tax schedule (see 1999 Session Law for former text); inserted (5)(c)(i) concerning post-1985 wells; inserted (5)(c)(ii)(A) and (5)(c)(ii)(B) concerning post-1999 wells; inserted (5)(d)(i)(C) concerning post-1999 wells; inserted (5)(d)(ii)(C) concerning post-1999 wells; in (5)(e)(i) at end inserted "of production"; in (5)(e)(i)(A) inserted reference to post-1985 wells; inserted (5)(e)(i)(B) concerning post-1985 wells; in (5)(e)(ii)(A) inserted reference to post-1985 wells; inserted (5)(e)(ii)(B) concerning post-1999 wells; in (6)(a) inserted clause concerning first 12 months of production from post-1999 well; in (6)(b)(i) inserted clause concerning post-1985 well and first 18 months of production from post-1999 well; in (6)(b)(ii) near middle inserted "from a post-1985 well or post-1999 well"; in (6)(c) in second sentence inserted "and from post-1999 wells"; and made minor changes in style. Amendment effective April 30, 1999, and terminates December 31, 1999.

In (5)(e)(i)(B) after "post-1985" the code commissioner inserted "[1999]" to reflect the apparent intent of the amendment.

Section 17(3)(a), Ch. 554, L. 1999, a coordination instruction, substituted (5)(b)(i) through (5)(b)(iii) for (5)(b)(i) through (5)(b)(iii) as amended by sec. 2, Ch. 488, L. 1999, sec. 2, Ch. 530, L. 1999, and sec. 3, Ch. 554, L. 1999 (see 1999 Session Law for text).

(Version effective January 1, 2000) In (2) substituted tax schedule for natural gas working and nonworking interests for former tax schedule (see 1999 Session Law for former text); in (3) substituted "12 months" for "24 months" and after "production from a" deleted "post-1985"; inserted (4) regarding tax rate on production from horizontally completed well; in (5) substituted tax schedule for oil well working and nonworking interests for former tax schedule (see 1999 Session Law for former text); in (6)(a) substituted "12 months" for "24 months" and after "production from a" deleted "post-1985"; in (6)(b)(i) substituted "18 months" for "24 months"; in (6)(c) substituted "pre-1999 wells" for "pre-1985 wells" and substituted "post-1999 wells" for "post-1985 wells"; and made minor changes in style.

Section 17(3)(b), Ch. 554, L. 1999, a coordination instruction, substituted (5)(b) and (5)(c) for (5)(b) and (5)(c) as amended by sec. 2, Ch. 488, L. 1999, sec. 2, Ch. 530, L. 1999, and sec. 4, Ch. 554, L. 1999 (see 1999 Session Law for text).

Effective Date — Applicability: Section 5, Ch. 488, L. 1999, provided: "[This act] is effective on passage and approval [approved April 27, 1999] and applies to oil produced and sold during the quarters beginning after June 30, 1999."

Applicability: Section 7, Ch. 530, L. 1999, provided: "[This act] applies to oil produced and sold after June 30, 1999."

(Temporary version) Section 19(3), Ch. 554, L. 1999, provided that (5)(b)(i) through (5)(b)(iii) apply to oil produced and sold after June 30, 1999.

(Version effective January 1, 2000) Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Retroactive Applicability: (Temporary version) Section 19(2), Ch. 554, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to oil and natural gas produced and sold and to wells drilled after December 31, 1998, except as provided in sec. 19(3).

1997 Amendment: Chapter 466 in (5)(c), after "incremental production", inserted "from pre-1985 wells and from post-1985 wells" and after "(4)(a)(i)" inserted "and (4)(a)(ii)(C), respectively"; and made minor changes in style. Amendment effective April 30, 1997.

Coordination: Section 3, Ch. 571, L. 1995, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section.

(2) (a) The section imposing tax rates, [section 4] [15-36-304], of Senate Bill No. 412, is amended by amending subsection (4)(b) as follows:

Following: "(ii) post-1985 wells"

Insert: "(iii) stripper exemption production

(A) pre-1985 wells [a%] [b%]

(B) post-1985 wells [a%] [c%]

(b) The rate "a%" is 5 percentage points less than the rate for stripper oil production working interest pre-1985 and post-1985, including all changes to that rate resulting from bills other than [this act]. The rate "b%" is the same rate as stripper oil production nonworking interest pre-1985, including all changes to that rate resulting from bills other than [this act]. The rate "c%" is the same rate as stripper oil production nonworking interest post-1985, including all changes to that rate resulting from bills other than [this act]."""

Section 2, Ch. 573, L. 1995, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is further amended as follows:

(a) The section imposing tax rates, [section 4] [15-36-304] of Senate Bill No. 412, must be amended by subtracting 0.2% from all tax rates for oil and natural gas, for both the working interest and nonworking interest. The 0.2% decrease must be made regardless of other changes to those rates resulting from bills other than [this act].

(b) The section imposing tax rates on natural gas and oil production, [section 4] [15-36-304] of Senate Bill No. 412, is amended by adding the following subsection:

"(6) The tax rates imposed under subsections (2) and (4) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."""

Section 3, Ch. 581, L. 1995, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section. . . .

(2) The section imposing tax rates on natural gas and oil production, [section 4] [15-36-304] of Senate Bill No. 412, is amended to read:

""NEW SECTION. Section 4. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in [section 18].

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) pre-1985 wells	18.75%	15%
(b) post-1985 wells		
(i) first 12 months of qualifying production	~~3.35%~~ 0.7%	15%
(ii) ~~after~~ next 12 months of qualifying production	~~15.35%~~ 12.7%	15%
(iii) after 24 months	15.35%	15%
(c) stripper natural gas pre-1985 and post-1985 wells	11.2%	15%

(3) The reduced tax ~~rate~~ rates under ~~subsection~~ subsections (2)(b)(i) and (2)(b)(ii) ~~on natural gas production~~ for the first ~~12~~ 24 months of natural gas production from a post-1985 well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production		
(i) pre-1985 wells	14.1%	16.5%
(ii) post-1985 wells		
(A) first 12 months of qualifying production	~~5.7%~~ 0.7%	16.5%
(B) ~~after~~ next 12 months of qualifying production	~~12.7%~~ 7.7%	16.5%
(C) after 24 months	12.7%	16.5%
(b) stripper oil production pre-1985 and post-1985 wells	11%	16.5%
(c) horizontally completed well production		
(i) first 18 months of qualifying production	~~5.7%~~ 0.7%	5.7%
(ii) next 6 months of qualifying production	7.7%	12.7%
(iii) after ~~18~~ 24 months	12.7%	12.7%
(d) incremental production		
(i) new or expanded secondary recovery production		
(A) pre-1985 well	8.7%	6.2%
(B) post-1985 well	8.7%	10.7%
(ii) new or expanded tertiary production		
(A) pre-1985 well	6%	15.2%
(B) post-1985 well	6%	9.7%
(e) horizontally recompleted well		
(i) first 18 months	5.7%	5.7%
(ii) after 18 months	12.7%	12.7%

(5) (a) The reduced tax ~~rate~~ rates under ~~subsection~~ subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) ~~on oil production~~ for the first ~~12~~ 24 months of oil production from a post-1985 well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax ~~rate~~ rates under ~~subsection~~ subsections (4)(c)(i) and (4)(c)(ii) on oil production from a horizontally completed well ~~and the reduced tax rate under subsection (4)(e)(i) on oil production from a horizontally recompleted well~~ for the first ~~18~~ 24 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well ~~or as a horizontally recompleted well~~ to the department by the board.

(ii) The reduced tax rate under subsection (4)(e)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (4)(d) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (5)(d), incremental production is taxed at the rate imposed on primary recovery production under subsection (4)(a)(i) for production occurring in that quarter.

(d) For the purposes of subsection (5)(c), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.""

Senate Bill No. 412 was enacted as Ch. 451, L. 1995.

Administrative Rules

ARM 42.25.1803 Treatment of nonworking interests (royalties).

ARM 42.25.1804 Horizontally completed or recompleted wells.

ARM 42.25.1805 Qualification of new or expanded recovery projects.

ARM 42.25.1806 Allocation of incremental production.
ARM 42.25.1807 Average daily well production calculation.
ARM 42.25.1808 Dually qualified stripper wells and enhanced recovery projects.
ARM 42.25.1809 Tax rates.
ARM 42.25.1814 Incentive period.

Collateral References

71 Am. Jur. 2d State and Local Taxation §219.

15-36-305. Determination of gross value of product.

Compiler's Comments

1999 Amendment: Chapter 549 inserted (2) regarding determination of average value of oil; and made minor changes in style. Amendment effective April 30, 1999.

Retroactive Applicability: Section 3, Ch. 549, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

15-36-311. Quarterly payment of tax — statement — failure to pay penalty.

Compiler's Comments

2005 Amendment: Chapter 5 in (2) near middle of first sentence after "produced and sold" deleted "from pre-1985 wells and post-1985 wells". Amendment effective February 23, 2005.

Retroactive Applicability: Section 4, Ch. 5, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to oil and natural gas production occurring in tax years beginning after December 31, 2004."

1999 Amendments — Composite Section: Chapter 427 in (3) substituted "assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206" for "assessed a penalty of 10% of the amount of the tax not paid. If the tax is not paid when due, interest also must be added at the rate of 1% a month or fraction of a month, computed on the total amount of the tax from the due date until paid. The department may waive the 10% penalty if reasonable cause for the failure to pay is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 530 in (2) in first sentence near middle after "sold" inserted "from pre-1985 and post-1985 wells". Amendment effective April 30, 1999.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Section 7, Ch. 530, L. 1999, provided: "[This act] applies to oil produced and sold after June 30, 1999."

Administrative Rules

ARM 42.25.1812 Blackfeet Reservation production.

15-36-313. Procedure to compute tax in absence of statement — estimation of tax — failure to file penalty and interest.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) near beginning substituted "penalty and interest as provided in 15-1-216" for "penalty of 10% of the tax due plus interest at the rate of 1% a month or fraction of a month, computed on the total amount of the tax. Interest must be computed from the date on which the oil and natural gas production taxes were due to the date of payment"; in (2) at end substituted "waive any penalty pursuant to 15-1-206" for "waive the 10% penalty if reasonable cause for the failure to file the statement required by 15-36-311 is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-36-314. Deficiency assessment — local government severance tax deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) in first sentence after "due" deleted "including the amount due for the local government severance tax"; deleted former (2)(a) and (2)(b) that read: "(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.

(b) Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as

current revenue for the purposes of distribution and must be distributed pursuant to 15-36-332"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendment: Chapter 522 at end of (2)(b) substituted "15-36-332" for "15-36-324(12)(a)"; and made minor changes in style. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 51 in (2)(b) at end after "15-36-324" substituted "(11)(a)" for "(8)(a)". Amendment effective March 15, 1999. The code commissioner substituted "(12)(a)" for "(11)(a)" to reflect the version of 15-36-324 effective January 1, 2000.

Chapter 427 in (3) substituted "Penalty and interest must be added to a deficiency assessment as provided in 15-1-216" for "A deficiency assessment must bear interest until paid at the rate of 1% a month or fraction of a month, computed from the original due date of the return"; and made minor changes in style. Amendment effective January 1, 2000.

Retroactive Applicability: Section 101, Ch. 51, L. 1999, provided: "[Sections 35 and 36] [amending 15-36-314 and 15-36-315] apply retroactively, within the meaning of 1-2-109, to April 17, 1997."

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 295 in first sentence of (1), after "due", inserted "including the amount due for the local government severance tax"; inserted (2) requiring collection of deficiency severance tax assessments in same manner as oil and gas deficiency assessments and treating severance taxes collected on oil and gas production between 1988 and 1995 as current revenue; and made minor changes in style. Amendment effective April 17, 1997.

Retroactive Applicability: Section 3, Ch. 295, L. 1997, provided: "[This act] [15-36-314 and 15-36-315] applies retroactively, within the meaning of 1-2-109, to any local government severance tax deficiency assessments or refunds collected or refunded by the department of revenue for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995."

15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment.

Compiler's Comments

2003 Amendment: Chapter 522 throughout section substituted references to 15-36-332 for references to 15-36-324. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 51 in (3) at end after "15-36-324" substituted "(11)(a)" for "(8)(a)". Amendment effective March 15, 1999.

The code commissioner substituted "(12)(a)" for "(11)(a)" to reflect the version of 15-36-324 effective January 1, 2000.

Chapter 427 in (4) substituted "unpaid taxes provided in 15-1-216" for "deficiency assessments provided in 15-36-314"; and made minor changes in style. Amendment effective January 1, 2000.

Retroactive Applicability: Section 101, Ch. 51, L. 1999, provided: "[Sections 35 and 36] [amending 15-36-314 and 15-36-315] apply retroactively, within the meaning of 1-2-109, to April 17, 1997."

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 295 inserted (2) requiring that credit or refunds for overpayment of oil and gas production be withheld from current distributions and requiring Department to demand amount of refund for overpayments from county of original distribution; inserted (3) requiring refund to be treated as current distribution; adjusted subsection references; and made minor changes in style. Amendment effective April 17, 1997.

Retroactive Applicability: Section 3, Ch. 295, L. 1997, provided: "[This act] [15-36-314 and 15-36-315] applies retroactively, within the meaning of 1-2-109, to any local government severance tax deficiency assessments or refunds collected or refunded by the department of revenue for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995."

15-36-322. Rulemaking authority.

Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 451, L. 1995, provided: "(1) A statement of intent is required for this bill because [section 16] [15-36-322] grants the department of revenue authority to adopt rules for the implementation and administration of the new production taxes imposed on oil and natural gas.

(2) The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(a) the forms and other documents required for the reporting and payment of the oil and natural gas production tax;

(b) the definition and clarification of the categories of oil and natural gas subject to taxation;

(c) the requirements for the maintenance of records and other documents required to ensure proper payment of oil and natural gas production taxes;

(d) the process for the estimation and collection of delinquent or unpaid taxes; and

(e) the procedures for the efficient collection of the oil and natural gas production tax.

(3) [This act] takes effect before taxes on the oil and gas net proceeds tax, the local government severance tax, the state oil and gas severance tax, the resource indemnity and ground water assessment tax, and the oil and gas privilege and license tax for certain production periods will have been paid. The legislature intends that the department establish procedures to ensure that all tax liabilities for production occurring before January 1, 1996, are satisfied. The legislature also intends that the department establish procedures for the proper distribution of this tax revenue to all affected governmental entities and funds."

Effective Date: Section 54, Ch. 451, L. 1995, provided: "(1) Except for the purposes of subsection (2), [this act] is effective January 1, 1996.

(2) For the purposes of promulgating administrative rules, [section 16 [15-36-322] and this section] are effective on passage and approval." Approved April 14, 1995.

Administrative Rules

Title 42, chapter 25, subchapter 18, ARM Natural resource taxes — oil and gas.

15-36-326. Oil and natural gas accelerated tax fund.

Compiler's Comments

1999 Amendment: Chapter 554 in (1) in first sentence near middle inserted "as that section read on December 31, 1999"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

15-36-331. Distribution of taxes.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 5 in (3)(a) near beginning of introductory clause after "tax year" substituted "2004" for "2003" and near middle after "(1)(b)" deleted "plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002"; deleted former 2003 schedule of production taxes for each county (see 2005 Session Law for former 2003 schedule); deleted former (4)(a) that read: "(a) for the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund"; near beginning of (4)(a) after "July 1" substituted "2004" for "2003"; and made minor changes in style. Amendment effective February 23, 2005.

Chapter 527 in (2)(a) at beginning inserted exception clause; inserted (2)(c) allocating $50,000 in the 2007 biennium to the legislative services division for a study of split estates; in (3)(a) at beginning substituted "For each tax year" for "For tax year 2003 and succeeding tax years" and deleted the 2003 and 2004 county tax allocations from the table (see 2005 Session Law for former text); deleted former (4)(a) that read: "(a) for the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund"; and made minor changes in style. Amendment effective April 28, 2005, and terminates September 15, 2006.

Chapter 603 inserted (2)(b) requiring deposit of the amount of tax for the oil, gas, and coal natural resource account in the account; in (3)(a) at beginning after "For" substituted "each tax year" for "tax year 2003 and succeeding tax years" and in schedule of county allocations deleted percentages allocated for 2003 and 2004 (see 2005 Session Law for former text); deleted former (4)(a) that read: "(a) for the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund"; in (4)(a) at beginning after "for" substituted "each fiscal year" for "the fiscal year beginning July 1, 2003"; and made minor changes in style. Amendment effective July 1, 2005.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Retroactive Applicability: Section 4, Ch. 5, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to oil and natural gas production occurring in tax years beginning after December 31, 2004."

Applicability: Section 10, Ch. 603, L. 2005, provided: "[This act] applies to oil and gas production occurring after June 30, 2005."

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Effective Date: Section 20, Ch. 522, L. 2003, provided that this section is effective on passage and approval. Approved April 26, 2003.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Administrative Rules

ARM 42.25.1815 Distribution by population.

15-36-332. Distribution of taxes to taxing units — appropriation.

Compiler's Comments

2005 Amendment: Chapter 603 inserted (1)(b) requiring distribution of the oil, gas, and coal natural resource account money by certain dates; inserted (8) requiring distribution of the oil, gas, and coal natural resource account money to counties based on county oil and gas production; in (9) after "units" inserted "and to counties and incorporated cities and towns"; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 10, Ch. 603, L. 2005, provided: "[This act] applies to oil and gas production occurring after June 30, 2005."

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Effective Date: Section 20, Ch. 522, L. 2003, provided that this section is effective on passage and approval. Approved April 26, 2003.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Administrative Rules

ARM 42.25.1815 Distribution by population.

CHAPTER 37
MINING LICENSE TAXES

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Law Review Articles

Limitations on State Power to Tax Natural Resource Development on Indian Reservation, Dockins, 43 Mont. L. Rev. 217 (1982).

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Chapter Collateral References

53 C.J.S. Licenses §§50 through 57; 58 C.J.S. Mines and Minerals §238.

51 Am. Jur. 2d Licenses §§10, 42 through 46.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 1
Metalliferous Mines

Part Compiler's Comments

Section Not Codified: Section 84-723, R.C.M. 1947, which transferred the duty of collecting the metalliferous mines license tax from the State Treasurer to the Department of Revenue, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1927, as amended by sec. 13, Ch. 516, L. 1973, and sec. 7, Ch. 286, L. 1977.

Section 84-2015, R.C.M. 1947, which is a severability clause that applies to most of the sections in this part, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 16, Initiative No. 28, 1925.

Part Case Notes

Constitutionality — Sufficiency of Title:

Initiative measure No. 28 did not violate Art. V, sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.) because arsenic or arsenious oxide, taxable under initiative measure No. 28 was not mentioned in its title. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

If an act deals with matters germane to the subject expressed in its title and the title is not of such character as to mislead the public or the members of the Legislature, the constitutional requirement with relation to the contents of the title, Art. V, sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.) is sufficiently complied with; where the general object is plainly expressed in the title it is not necessary that it should embody the exact methods of application or procedure, and courts should not embarrass legislation by technical interpretation based upon mere form or phraseology. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

Effect of Repealed Sections: Initiative measure No. 28, providing for a gross proceeds of mines tax, specifically repealed sections 2344-2355, R.C.M. 1921, providing for a net proceeds of metalliferous mines tax, and it was error to contend that measure No. 28 was simply amendatory

of the net proceeds act, that act by its repeal having been blotted out as completely as though it had never existed, a new and different act taking its place. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

15-37-101. License tax on metal mines.

Compiler's Comments

1983 Amendment: Near end of (1), inserted "and impacted local government units". Amendment effective July 1, 1985, applicable to tax years beginning after December 31, 1984.

Case Notes

Nature of Tax: The tax provided by initiative measure No. 28 is not a property tax—on metals, minerals, or mine products—but an occupational license tax, i.e., upon the business of producing metals or precious stones, based upon annual production. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

Collateral References

Licenses *key* 11.

53 C.J.S. Licenses §§50 through 57; 58 C.J.S. Mines and Minerals §238.

51 Am. Jur. 2d Licenses §§10, 42 through 46; 71 Am. Jur. 2d State and Local Taxation §614.

15-37-102. Gross value of metal mine yield — definitions.

Compiler's Comments

2005 Amendment: Chapter 594 in definition of reporting period after "means" deleted "(a) for periods beginning prior to January 1, 2003, the calendar year; and

(b) for periods beginning on or after January 1, 2003"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2002 Amendment: Chapter 19 substituted gross value of product for annual gross value of product as defined term and near middle of definition substituted "each reporting period" for "each calendar year"; substituted definition of reporting period for definition of annual reporting date that read: "The "annual reporting date", as used in this part, means the last day of the calendar year"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1989 Amendments: Chapter 128 throughout section substituted "annual" for "quarterly" and "year" for "quarter".

Chapter 672 in first sentence substituted "annual reporting date" for "quarterly reporting date" and substituted "calendar year" for "calendar quarter"; in second sentence substituted "annual gross value of product" for "quarterly gross value of product", substituted "means the receipts received, as defined in 15-23-801, from all merchantable metals or concentrate containing metals" for "means the market value of all merchantable metals", and substituted "calendar year" for "calendar quarter"; after second sentence deleted remainder of section that read: "Whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the quarterly gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered

thereby as shown by the gross smelter returns of such metals or mineral product in dollars and cents without any deductions for costs of smelting, reduction, or treatment or otherwise, based upon the average quotations of the price of such metals or mineral products in the city of New York, as evidenced by some established authority or market report, giving the market reports during the calendar quarter for which a report is being made. Should there be no quotation covering any particular product, the department of revenue shall fix the value of such gross product or such portion thereof in such a manner as may seem equitable"; and made minor changes in phraseology. Amendment effective May 16, 1989.

Retroactive Applicability: Section 10, Ch. 128, L. 1989, provided: "[Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to all taxable periods beginning after December 31, 1988."

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: Inserted first sentence that reads: "The "quarterly reporting date", as used in this part, means the last day of the calendar quarter"; in second sentence, substituted "quarterly" for "total"; in middle of second sentence, substituted "calendar quarter" for "year"; near beginning of third sentence, substituted "quarterly gross value" for "gross value"; at end of third sentence, substituted "quarter for which a report is being made" for "year immediately preceding"; and made minor phraseology changes.

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

Administrative Rules

Title 42, chapter 25, subchapter 1, ARM Metalliferous mines tax.

ARM 42.25.102 Average price quotations.

Case Notes

Deductions in Fixing Tax for Smelting Reduction "or Otherwise": In the former version of this section that prohibited "any deductions for costs of smelting, reduction or treatment, or otherwise", the words "or otherwise" relate to whatever expense is incurred in making the gross product. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

Market Value in Montana, Not in New York, Taxable: Under the former version of this section, which declared that the amount of the license tax exacted by the state on operators of metalliferous mines shall be determined by ascertaining the market value of the gross product resulting from the smelting, reduction, or treatment of the ore, based upon the average quotations of the price of the metals or mineral products in New York City, their market value in Montana, not that prevailing in New York, is taxable. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

New York Price as Basis: Under the former version of this section, it was contemplated that in fixing the market value of zinc, the New York price was to be considered as a basis, thus the State Board of Equalization (now Department of Revenue) in fixing market value upon the basis of the price of the metal in St. Louis did so in violation of the act. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

Collateral References

Licenses *key* 30.

53 C.J.S. Licenses §§50 through 57; 84 C.J.S. Taxation §558.

15-37-103. Rate of tax.

Compiler's Comments

2003 Amendment: Chapter 342 in (3) after "matte" inserted reference to other forms of processed concentrate processed in treatment facility owned or operated by taxpayer, before "shipped" inserted "sold or", and after "refinery" inserted "for final processing"; and made minor changes in style. Amendment effective April 15, 2003.

Applicability: Section 4, Ch. 342, L. 2003, provided: "[This act] applies to metal mine production occurring after December 31, 2003."

2002 Amendment: Chapter 19 in (1) at beginning after "The" deleted "annual" and at end substituted "preceding reporting period" for "calendar year immediately preceding"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1989 Amendment: In (2) inserted "concentrate shipped to a smelter, mill, or reduction work is taxed" and substituted rate table for former rate table that read:

"Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000 and not more than $500,000	.5% of the increment
more than $500,000 and not more than $1,000,000	1% of the increment
more than $1,000,000	1.5% of the increment";

inserted (3) relating to taxation of gold, silver, and platinum-group metal that is dore, bullion, or matte; and made minor changes in phraseology. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: Effective July 1, 1985, and applicable to tax years beginning after December 31, 1984, substituted

"Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000 and not more than $500,000	.5% of the increment
more than $500,000 and not more than $1,000,000	1% of the increment
more than $1,000,000	1.5% of the increment"

for

"Gross Value of Product	Rate of Tax (percentage of gross value)
first $100,000	0.15%
more than $100,000 and not more than $250,000	0.575% of the increment
more than $250,000 and not more than $400,000	0.86% of the increment
more than $400,000 and not more than $500,000	1.15% of the increment
more than $500,000	1.438% of the increment".

Collateral References

Licenses *key* 29.

53 C.J.S. Licenses §§34 through 40.

51 Am. Jur. 2d Licenses §§64, 65.

15-37-104. Mine operator's statement of gross value — reports and sampling.

Compiler's Comments

2002 Amendment: Chapter 19 in (1) near middle of first sentence after "not later than" substituted "the date for payment of the tax under 15-37-105" for "March 31 following the end of each calendar year" and at end substituted "reporting period" for "calendar year immediately preceding"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1989 Amendments: Chapter 128 in (1) substituted "March 31 following the end or each calendar year" for "60 days following the quarterly reporting date of each quarter" and substituted "calendar year" for "calendar quarter"; in (1)(f) substituted "annual" for "quarterly"; and in (4) (deleted by Ch. 672, L. 1989) substituted "annual" for "quarterly", substituted "by March 31 following the calendar yearend" for "within 60 days following the calendar quarter ending", and changed penalty percentage to "10% of the tax under this part" from "2% of the tax that would be due under this part if collected quarterly".

Chapter 672 in (1) substituted "not later than March 31 of each year" for "not later than 60 days following the quarterly reporting date of each quarter" and substituted "calendar year" for "calendar quarter"; in (1)(f) substituted "annual gross value" for "quarterly gross value"; deleted former (4) that read: "(4) If the quarterly statement of gross value described herein is not filed with the department within 60 days following the calendar quarter ending, a penalty shall be assessed. The penalty shall be the greater of $25 or 2% of the tax that would be due under this part if collected quarterly. If good cause is shown, the department may waive the penalty"; and made minor changes in phraseology. Amendment effective May 16, 1989.

Retroactive Applicability: Section 10, Ch. 128, L. 1989, provided: "[Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to all taxable periods beginning after December 31, 1988."

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: In (1), in middle of first sentence, substituted "60 days following the quarterly reporting date of each quarter" for "April 15 in such year"; near end of first sentence, substituted "quarter" for "year"; inserted second sentence relating to extension of time for filing statement; substituted last sentence of (1) "The statement shall be in the form prescribed by the department of revenue and shall show the following:" for "Such statement shall be in the form prescribed by the department of revenue and must be delivered to the department not later than April 15. The department may grant a reasonable extension of time for filing statements upon good cause shown therefor. Such statement shall show the following:"; in (1)(f), substituted "quarterly gross value" for "gross value"; inserted (4) relating to penalties; and made minor changes in phraseology.

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

1981 Amendment: Inserted "and telephone number" after "address" and "or operator" after "lessee" in (1)(a); substituted "the mine's location by county and legal description" for "the description and location of the mine or mining property" in (1)(b); inserted "concentrate" after "ore" in (1)(c); inserted "or concentrate" after "ore" in (1)(d); inserted "concentrates" after "ores" in two places in (1)(e); inserted subsection (2) relating to smelter location; and inserted (3) requiring in-state ore testing.

Administrative Rules

Title 42, chapter 25, subchapter 1, ARM Metalliferous mines tax.

Collateral References

53 C.J.S. Licenses §§34 through 40.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-37-105. Computation and payment of tax.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) deleted former second sentence that read: "For the reporting period defined in 15-37-102(2)(a), the tax is due and payable on or before March 31 of each year" and in second sentence substituted "15-37-102(2)" for "15-37-102(2)(b)"; deleted former (2) that read: "(2) The tax due under this part becomes delinquent as of:

(a) midnight on March 31 for the reporting period defined in 15-37-102(2)(a) or for each reporting period ending December 31 under 15-37-102(2)(b); and

(b) midnight on August 15 for each reporting period ending June 30 under 15-37-102(2)(b)"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2002 Amendment: Chapter 19 in (1) at beginning of second sentence inserted "For the reporting period defined in 15-37-102(2)(a), the tax", inserted third sentence concerning due date of tax for reporting periods defined in 15-37-102(2)(b), and at end of fourth sentence substituted "reporting period" for "preceding calendar year"; at end of (2)(a) substituted "for the reporting period defined in 15-37-102(2)(a) or for each reporting period ending December 31 under 15-37-102(2)(b)" for "of the year immediately following the production year"; inserted (2)(b) concerning delinquency date of August 15; in (4) near end of second sentence substituted "reporting period" for "year"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1999 Amendment: Chapter 427 in (1) at end substituted reference to 15-1-216 for reference to a 1% per month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1989 Amendments: Chapter 128 in (1), in two places, substituted "March 31" for "March 1".

Chapter 672 in (1), in two places, substituted "March 31" for "March 1"; and made minor changes in phraseology and punctuation. Amendment effective May 16, 1989.

Retroactive Applicability: Section 10, Ch. 128, L. 1989, provided: "[Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to all taxable periods beginning after December 31, 1988."

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment — Code Commissioner Correction: In (1), substituted "The tax due under this part is computed according to 15-37-103 and is due and payable on or before March 1 of each year for the products produced in the preceding calendar year. The tax due under this part becomes delinquent as of midnight on March 1 of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest at a rate of 1% a month or any part thereof" for "The department of revenue shall examine each such statement and return filed and determine and ascertain therefrom and compute and assess the amount of the license tax to be paid by the person making and filing the same and shall, not later than June 1, mail to each person making and filing such statement and return a written notice of the amount of the license tax to be paid by each, respectively; that the same is due and payable; that it will become delinquent at 5 p.m. on June 30 immediately following; that if the same becomes delinquent, a penalty of 10% will be added thereto; and that the whole amount of such license tax, with penalty added, will bear interest at the rate of 1% per month or fraction thereof from the date the same becomes delinquent until paid"; the two references to "this part" were changed from "this chapter" by the Code Commissioner to correct inaccurate references.

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

Collateral References

53 C.J.S. Licenses §§34 through 40.

15-37-106. Procedure in case of failure to file statements.

Compiler's Comments

2005 Amendment: Chapter 594 in first sentence near beginning after "fails" substituted "to file" for "refuses, or neglects to make and file", substituted "15-37-108" for "15-37-105", and after "expired" deleted "ascertain and"; in second sentence after first "shall" deleted "make and", after second "shall" deleted "ascertain", after "determine" deleted "compute", and after "from" deleted "and to be paid by"; in fourth sentence at end after "provided" substituted "in 15-1-216" for "for other delinquencies"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2002 Amendment: Chapter 19 near beginning of first sentence substituted "statement of gross yield for a reporting period on or before the date the tax becomes delinquent under 15-37-105" for "annual statement of gross yield for a production year on or before March 31 of the year immediately following the production year" and near end substituted "during the reporting period" for "during the calendar year immediately preceding the year" and near beginning of third sentence substituted "as soon as possible" for "immediately"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1989 Amendments: Chapter 128 near beginning substituted "file the required annual statement" for "file all required quarterly statements" and substituted "March 31" for "March 1".

Chapter 672 near beginning substituted "file the required annual statement" for "file all required quarterly statements"; substituted "March 31" for "March 1"; and made minor changes in phraseology and punctuation. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: Near beginning of section, substituted "all required quarterly statements of gross yield for a production year on or before March 1 of the year immediately following the production year" for "such statement and return within the time prescribed".

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

Collateral References

53 C.J.S. Licenses §§88 through 95.

15-37-107. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted the first sentence, authorizing issuance of a warrant for distraint, for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

Collateral References

Licenses *key* 31.

53 C.J.S. Licenses §§121 through 124.

51 Am. Jur. 2d Licenses §110.

15-37-108. Delinquent taxes — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in first sentence at end after "date" substituted "that the tax is payable as established for the applicable reporting period in 15-37-105(1)" for "established in 15-37-105(2)". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2002 Amendment: Chapter 19 at end of first sentence substituted "the date established in 15-37-105(2)" for "March 31 of the year immediately following the production year". Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1999 Amendment: Chapter 427 substituted "penalty and interest as provided in 15-1-216. The department may waive a late payment penalty as provided in 15-1-206" for "a penalty of 10%. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the 10% penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March 31 of the year immediately following the production year"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1989 Amendments: Chapters 128 and 672 in two places substituted "March 31" for "March 1"; and in two places increased penalty percentage amount from 8% to 10%. Amendment to Ch. 672 effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: After first "paid" substituted "on or before midnight of March 1 of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax a penalty of 8%. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the 8% penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March 1 of the year immediately following the production year" for "by 5 p.m. on June 30 following the date when the same are assessed, and as the same become delinquent, a penalty of 10% shall be added thereto and the whole amount of said license tax, with penalty added, shall bear interest at the rate of 1% per month or fraction thereof from the date of becoming delinquent until paid".

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Collateral References

53 C.J.S. Licenses §§121 through 124.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceedings. 13 ALR Fed. 877.

15-37-109. False or erroneous statements — investigation penalty and interest.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) near beginning substituted reference to 15-1-216 for reference to a 1% per month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Collateral References

Licenses *key* 30, 40, 41.
53 C.J.S. Licenses §§49, 63, 66.
51 Am. Jur. 2d Licenses §108.

15-37-110. Review of determination of gross value of product or amount of tax.

Compiler's Comments

1991 Amendment: At end, after "may", inserted "seek review pursuant to 15-1-211" and deleted remainder of section that read: "at any time within 10 days after the receipt of the required notice of such determination and assessment, file with the state tax appeal board a petition for a hearing, in which petition must be stated the grounds and reasons therefor and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department has erred in any manner in ascertaining and determining the amount of the gross value of product or the amount of the license tax, or both, the board shall immediately correct such error or errors; and if such correction is in conformity with the request contained in the petition for a hearing, the board shall take no further steps in connection with such petition other than to notify the department of the correct amount of the license tax due from such person after the making of such correction and notifying such person thereof. If from such examination it does not appear to the satisfaction of the state tax appeal board that the department has erred in any manner, the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board considers reasonable. At the hearing of such petition, any taxpayer interested and the department may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product and reassess the amount of the license tax to be paid by such person and give notice thereof to such person and the department".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Collateral References

53 C.J.S. Licenses §§96 through 100.

15-37-111. License tax supplemental.

Collateral References

58 C.J.S. Mines and Minerals §238.
51 Am. Jur. 2d Licenses §32.

15-37-114. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must bear interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) substituted reference to 15-1-216 for reference to a 1% a month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-37-115. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "charged on the amount of unpaid tax as provided in 15-1-216" for "charged on deficiency assessments provided in 15-37-114"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-37-117. Disposition of metalliferous mines license taxes.

Compiler's Comments

2005 Amendment: Chapter 598 in (1)(a) after "state" substituted "57%" for "for the fiscal year ending June 30, 2003, 65% and for the fiscal years beginning on or after July 1, 2003, 58%"; in (1)(d) after "account" deleted "for the fiscal years beginning on or after July 1, 2003"; in (1)(e) near end before "of total collected" increased percentage from 24% to 25%; in (1)(e)(i) after "mine" substituted "trust account" for "trust reserve account"; in (1)(e)(ii)(A) after "county for" substituted "general planning functions" for "planning" and at end inserted "as described in 7-6-2225(3)(c) through (3)(e)"; and made minor changes in style. Amendment effective July 1, 2005.

2002 Amendments — Composite Section: Chapter 12 in (1)(a) near middle inserted "for the fiscal year ending June 30, 2003, 65% and for the fiscal years beginning on or after July 1, 2003"; and in (1)(d) near middle after "account" inserted "for the fiscal years beginning on or after July 1, 2003". Amendment effective August 16, 2002.

Chapter 19 at beginning of (1)(e) substituted "within 60 days of the date the tax is payable pursuant to 15-37-105" for "on or before June 1". Amendment effective August 20, 2002.

Retroactive Applicability: Section 7, Ch. 12, Sp. L. August 2002, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2002."

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

2001 Amendment: Chapter 460 in (1)(c) substituted "hard-rock mining reclamation debt service fund created in 82-4-312" for "orphan share state special revenue account established in 75-10-743". Amendment effective July 1, 2002.

1999 Amendments — Composite Section: Chapter 144 deleted former (1)(d) that read: "(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year"; in (1)(d) increased amount allocated to reclamation and development grants from 4.8% to 7%; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 464 in (1)(b) increased tax allocation to hard-rock mining impact trust account from 1.5% to 2.5%; at beginning of (1)(e) inserted "on or before June 1" and near end decreased county tax allocation from 25% to 24%; and in (1)(e)(i) decreased allocation to county hard-rock mine trust reserve account from 40% to 37.5%. Amendment effective April 22, 1999.

The amendment to this section made by sec. 3, Ch. 552, L. 1999, was rendered void by sec. 12(2), Ch. 552, L. 1999, a contingent voidness provision.

1997 Amendment: Chapter 415 in (1)(c) substituted current text concerning orphan share for "to the state resource indemnity trust fund, 15.5%"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 415, L. 1997, provided: "WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill."

Coordination Instruction: Section 7, Ch. 542, L. 1997, a coordination section, voided amendments to this section made by sec. 3, Ch. 120, L. 1997, and sec. 2, Ch. 542, L. 1997.

1995 Amendments: Chapter 18 near beginning of (1), after "15-1-501", deleted reference to subsection (6).

Chapter 31 in (1)(c) reduced from 15.5% to 13.3% the amount of total annual collections credited to the resource indemnity trust fund; inserted (1)(d) allocating 2.2% of total annual collections to the ground water assessment account; adjusted subsection references; and made minor changes in style. The amendment in (1)(c) was rendered void pursuant to sec. 8, Ch. 577, L. 1995, a coordination section. Amendment effective February 6, 1995.

Chapter 577 in (1)(c) reduced allocation from 15.5% to 8.5%; inserted (1)(d) allocating 2.2% to ground water assessment account; inserted (1)(e) allocating 4.8% to reclamation and development grants program account; and adjusted subsection references. The amendment in (1)(c) was rendered void pursuant to sec. 22, Ch. 584, L. 1995, a coordination section. Amendment effective July 1, 1995.

Chapter 584 at beginning of (1)(c) substituted "to the abandoned mines state special revenue account provided for in section 19, Chapter 584, Laws of 1995, 8.5%" for "to the state resource indemnity trust fund, 15.5%". Amendment effective May 1, 1995, and terminates June 30, 1997.

Retroactive Applicability: Section 3, Ch. 31, L. 1995, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all metalliferous mines taxes collected after December 31, 1994."

Severability: Section 23, Ch. 584, L. 1995, was a severability clause.

Applicability: Section 25(1), Ch. 584, L. 1995, provided: "(1) [This act] does not apply to civil actions commenced or begun prior to [the effective date of this act] [May 1, 1995] or to claims based on those actions."

1993 Amendment: Chapter 455 near middle of (1), after "part", substituted "must, in accordance with the provisions of 15-1-501(6), be" for "are"; in (4), in temporary version after "must", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, at beginning inserted exception clause; and inserted (4) concerning disposition of the surtax.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Retroactive Applicability — Termination: Section 39(3), Ch. 15, Sp. L. July 1992, provided that this section applies to production occurring after December 31, 1991, and before January 1, 1993. This section terminates upon receipt of taxes on production occurring prior to January 1, 1993.

1991 Amendment: At beginning of (1)(d) inserted "to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if no impact plan has been prepared"; and in (1)(d)(ii), at end after "follows", deleted "except that more than one entity may share an allocation if a jurisdictional revenue disparity is identified pursuant to subsection (2)".

Retroactive Applicability: Section 3, Ch. 760, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all large-scale mineral developments required to comply with 90-6-307 that did not have an impact plan approved pursuant to 90-6-307, as of December 31, 1990."

1989 Amendment: In (1)(a) reduced percentage credited to state general fund from 67% to 58%; in (1)(b) reduced percentage credited to hard-rock mining impact trust account from 33% to 1.5%; inserted (1)(c) relating to percentage credited to state resource indemnity trust fund; inserted (1)(d) relating to percentage of tax to be credited to the county and specifying its allocation by County Commissioners; inserted (2) relating to distribution by county when a jurisdictional revenue disparity is involved; inserted (3) relating to return of tax collections from the Department to the counties; and made minor changes in form. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: In (2), substituted "state special revenue fund" for "earmarked revenue fund".

Part 2
Micaceous Mineral Mines

15-37-201. License tax on micaceous mines.

Collateral References

53 C.J.S. Licenses §§50 through 57; 58 C.J.S. Mines and Minerals §238.

51 Am. Jur. 2d Licenses §§10, 42 through 46; 71 Am. Jur. 2d State and Local Taxation §614.

15-37-202. Quarterly payment.

Collateral References

53 C.J.S. Licenses §§50 through 57.

15-37-203. Records.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in first sentence, near beginning, inserted "subject to 15-37-201"; at end of second sentence deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-37-204. Quarterly return.

Collateral References

53 C.J.S. Licenses §§50 through 57.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-37-205. Procedure on failure to file statement.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "penalty and interest as provided in 15-1-216. The department may waive a penalty pursuant to 15-1-206" for "a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof

computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-37-204 is provided"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Collateral References

53 C.J.S. Licenses §§121 through 124.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceeding. 13 ALR Fed. 877.

15-37-206. Collection — warrant for distraint.

Compiler's Comments

1981 Amendment: In (1) substituted "The letter shall advise that if payment is not made, a warrant for distraint may be filed" for "The letter shall advise that if payment is not made within 15 days, a lien may be filed"; deleted provision at the end of (1) that the amount due must be paid within 15 days of receiving the letter and that if not paid there is a lien on the taxpayers' property; in (2) inserted "If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7"; and deleted a provision at the end of the section that the lien provided for in this section may be enforced in the same manner as judgment liens.

Collateral References

51 Am. Jur. 2d Licenses §110.

15-37-207. Disposition of proceeds of tax.

Collateral References

Taxation *key* 906.75.

15-37-210. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must bear interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) substituted reference to 15-1-216 for reference to a 1% a month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral

hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-37-211. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "rate as provided in 15-1-216" for "rate is charged on deficiency assessments provided in 15-37-210"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-37-221. Penalty for violations.

Collateral References

53 C.J.S. Licenses §§121 through 124.

51 Am. Jur. 2d Licenses §108.

CHAPTER 38
RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT

Chapter Compiler's Comments

Section Not Codified: Section 84-7011, R.C.M. 1947, which is an effective date, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 11, Ch. 497, L. 1973.

Chapter Administrative Rules

Title 42, chapter 32, subchapter 1, ARM Resource indemnity trust tax.

Chapter Case Notes

No Constitutional Limitation on Appropriation of Resource Indemnity Trust Funds Beyond Principal: Nothing in the Montana Constitution as a whole or in the plain language of Art. IX, sec. 2, Mont. Const., places a limitation on the appropriation of resource indemnity trust funds beyond the $100 million principal, which must remain inviolate. Butte-Silver Bow Local Gov't v. St., 235 M 398, 768 P2d 327, 46 St. Rep. 87 (1989).

Trust Funds Not Limited to Reclamation of Land Disturbed by Taking of Natural Resources: The appropriation or allocation of resource indemnity trust funds is not limited to the reclamation of lands disturbed by the taking of natural resources. Therefore, the use of funds for programs related to improving the total environment does not violate the fiduciary duty of the state toward the trust in allocating trust funds. Butte-Silver Bow Local Gov't v. St., 235 M 398, 768 P2d 327, 46 St. Rep. 87 (1989).

State Taxation of Indian Trust Properties Valid — No Repeal by Implication Found: Where the plaintiff Indian tribe sought declaratory and injunctive relief against the levy and collection of certain taxes by the state and several counties on the production of oil and gas owned by the United States in trust for the plaintiff by non-Indian lessees within the boundaries of the plaintiff's reservation, the court held that the provisions of 25 U.S.C. §398 specifically authorized state taxation of oil and gas on tribal lands and that the provisions of the statute had not been impliedly repealed by 25 U.S.C. §396. The sovereign right asserted by the plaintiff to be free from state taxation has been controlled by Congress, and the plaintiff has not shown that there is such a repugnancy between the two federal statutes as to satisfy their burden of proving a congressional intent to repeal the former by enactment of the latter, or that there is an ambiguity in the law which should be construed in favor of the plaintiff. Blackfeet Tribe v. St., 507 F. Supp.

446, 38 St. Rep. 238 (D.C. Mont. 1981); reversed in part and remanded for further proceedings by en banc court of appeals, Blackfeet Tribe v. Mont., 729 F2d 1192 (9th Cir. 1984); certiorari granted state to resolve whether Montana may tax Indian royalty interests arising out of leases executed after the adoption of 1938 Act, and U.S. Supreme Court upheld 9th Circuit decision that state could not tax such royalty interests. Mont. v. Blackfeet Tribe, 105 S Ct 2399 (1985).

Chapter Law Review Articles

Limitations on State Power to Tax Natural Resource Development on Indian Reservation, Dockins, 43 Mont. L. Rev. 217 (1982).

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Chapter Collateral References

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 1
General Provisions

Part Collateral References

Taxation *key* 63, 158.

84 C.J.S. Taxation §§95 through 98.

71 Am. Jur. 2d State and Local Taxation §614.

15-38-101. Short title.

Compiler's Comments

1991 Amendment: Inserted "and Ground Water Assessment". Amendment effective July 1, 1993.

15-38-102. Legislative policy.

Compiler's Comments

1991 Amendment: In introductory clause, in second sentence after "trust", inserted "as required by Article IX, section 2, of the Montana constitution, by supporting ground water assessment programs" and after "spendable" deleted "trust"; inserted (3) allocating revenue to assess the state's ground water resources; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: Substituted "It is the policy of the state of Montana to indemnify its citizens for the loss of long-term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. This policy of indemnification is achieved by establishing a permanent resource indemnity trust from the proceeds of a tax levied on mineral extraction and by allocating spendable trust revenues:

(1) to protect and restore the environment from damages resulting from mineral development; and

(2) to support a variety of development programs that benefit the economy of the state and the lives of Montana citizens" for "It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of our air, water, soil, flora, fauna, and also of those social, economic, and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure."

Collateral References

Taxation *key* 25.

71 Am. Jur. 2d State and Local Taxation §190.

15-38-103. Definitions.

Compiler's Comments

1995 Amendments: Chapter 10 in definition of mineral, after "uranium", inserted "talc, vermiculite, limestone". Amendment effective January 27, 1995.

Chapter 397 in definition of gross value of product inserted reference to 15-38-129; and made minor changes in style. Amendment effective April 12, 1995.

Effective Date — Retroactive Applicability: Section 3, Ch. 10, L. 1995, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994." Approved January 27, 1995.

Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 in definition of gross value of product expanded reference to include 15-38-128. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 520 in (2) inserted reference to 15-38-125. Amendment effective April 22, 1991.

Chapter 695 in definition of gross value of product inserted reference to 15-38-127. Amendment effective April 27, 1991.

Retroactive Applicability: Section 5, Ch. 520, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: In definition of gross value of product inserted exception clause referring to 15-38-126. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

Administrative Rules

ARM 42.32.101 Definitions.

15-38-104. Tax on mineral production.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in exception clause, expanded reference to include subsection (5). Amendment effective March 12, 1997.

1995 Amendments: Chapter 10 at end of (2)(a), after "4%", inserted "of the gross value of product in excess of $625"; at end of (2)(b), after "0.4%", inserted "of the gross value of product in excess of $6,250"; at end of (3), after "2%", inserted "of the gross value of product in excess of $1,250"; and at end of (4), after "10%", inserted "of the gross value of product in excess of $250". Amendment effective January 27, 1995.

Chapter 397 inserted (5) imposing an annual tax of $25 on a person mining, extracting, or producing industrial garnets and associated byproducts, plus an additional 1% of the gross value of product in excess of $2,500 derived from the work during the preceding calendar year. Amendment effective April 12, 1995.

Effective Date — Retroactive Applicability: Section 3, Ch. 10, L. 1995, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994." Approved January 27, 1995.

Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 near beginning of (1), after "(2)", expanded reference to include subsection (4); and inserted (4) setting annual tax of $25 on mining, extracting, or producing limestone for quicklime. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 520 inserted (2)(b) establishing an annual tax on coal of $25 plus an additional amount computed on the gross value of product for coal produced in Montana during calendar year immediately preceding at 0.4% rate; and made minor change in style. Amendment effective April 22, 1991.

Chapter 695 in (1) inserted reference to subsection (3); and inserted (3) establishing annual tax on vermiculite production. Amendment effective April 27, 1991.

Retroactive Applicability: Section 5, Ch. 520, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: At beginning of (1) inserted exception clause; inserted (2) providing amount of annual tax on talc production; and made minor changes in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

Administrative Rules

ARM 42.32.104 Responsibility for filing forms and paying tax.
ARM 42.32.106 Minimum tax and annual exemption.
ARM 42.32.107 Computation of gross value.

Case Notes

Applicability of Tax to Adjustment Portion of Coal Sales Price — Commerce Clause: The contract sales price for coal was adjusted when the actual BTU content of the coal was different from the BTU content warranted by seller. The warranted BTU content determined the base price of the coal. The adjustment formula took railroad shipping charges into account and was part of the contract sales price. The coal severance and gross proceeds taxes were based on the contract sales price, and the resource indemnity tax was based on the value of the coal at the time of extraction. It was proper for the state to apply the coal severance, gross proceeds, and resource indemnity trust taxes to amounts seller received on upward price adjustments caused by higher BTU content, after deducting from the contract sales price, for purposes of the resource indemnity trust tax, the costs of hauling the coal from the mine to the railroad and preparing the coal for shipment. Seller's claim that it was taxed on the revenue received pursuant to the transportation costs component of the adjustment formula was properly denied in the lower court. Transportation costs were paid by the buyer, not the seller, the transportation cost component of the formula was based on the average transportation rate per ton and did not vary. The adjustment formula did nothing to alter the actual transportation costs. The claim that the commerce clause of the United States Constitution was violated was properly denied in the lower court because seller did not receive, and thus was not taxed on, any transportation revenue. Westmoreland Resources v. Dept. of Revenue, 263 M 303, 868 P2d 592, 51 St. Rep. 67 (1994).

Collateral References

Taxation *key* 63, 158.
84 C.J.S. Taxation §§95 through 98.
71 Am. Jur. 2d State and Local Taxation §614.

15-38-105. Report of gross yield from mines.

Compiler's Comments

1995 Amendment: Chapter 451 in fourth sentence, after "Mineral producers", deleted "including oil and gas producers"; in (4), after "tons of coal", deleted "barrels of petroleum or other crude or mineral oil, cubic feet of natural gas"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before

January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1989 Amendment: In first sentence substituted "file an annual statement" for "make out a quarterly statement" and substituted "calendar year" for "quarter"; at beginning of second sentence substituted "statement must" for "form shall"; created third sentence, relating to delivery of statement by metal producers, from end of second sentence and in third sentence substituted "March 31" for "the 60th day", substituted "year" for "quarter", and made minor changes in grammar; and inserted fourth sentence regarding delivery of statement by mineral producers.

1983 Amendment: In first sentence, substituted "quarterly" for "on or before March 31 of each year", and substituted "quarter" for "year preceding January 1 of the year in which the statement is made and the value thereof"; and at end of second sentence, substituted "the 60th day following the end of the calendar quarter" for "March 31".

Applicability: Section 4, Ch. 226, L. 1983, provided: "This act is applicable to taxable years beginning after December 31, 1983."

1981 Amendment: Substituted "signed by the person" for "verified by the oath of the person" in the second sentence.

Administrative Rules

ARM 42.32.101 Definitions.
ARM 42.32.102 Applicability.
ARM 42.32.103 Computation of tax.
ARM 42.32.105 Supplemental information.
ARM 42.32.107 Computation of gross value.

Collateral References

Taxation *key* 368.
85 C.J.S. Taxation §851, et seq.
72 Am. Jur. 2d State and Local Taxation §§737 through 755.

15-38-106. Payment of tax — records — collection of taxes — refunds.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) in first sentence after "on or before" substituted "the due date of the annual statement established in 15-38-105" for "March 31". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendment: Chapter 496 inserted (2)(a) requiring annual deposit of tax proceeds to the CERCLA match debt service fund in the amount necessary to pay the principal, any premium, and interest during the next fiscal year on bonds or notes issued under 75-10-623; and made minor changes in style. Amendment effective July 1, 2003.

Effective Dates — Contingency: Section 9, Ch. 586, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] is effective on July 1, 2001.

(2) [Section 7] [15-38-106] is effective on July 1 immediately following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million and applies to the then-current academic year. The secretary of state shall forward a copy of the executive order to the code commissioner.

(3) [Section 4(1) [39-10-104(1)] and this section] are effective on passage and approval." Approved May 5, 2001. On February 27, 2002, the Governor certified that the balance in the resource indemnity trust fund had reached $100 million.

Termination: Section 10, Ch. 586, L. 2001, provided: "[This act] terminates on June 30, 5 years after [the effective date provided in section 9(2)]." Effective on occurrence of contingency.

Contingent Effective Date: Section 13(2), Ch. 552, L. 1999, provided: "[Section 5 of this act] [15-38-106] is effective July 1 of the first year following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification." On February 27, 2002, the Governor certified that the balance in the resource indemnity trust fund had reached $100 million.

2001 Amendments — Composite Section: Chapter 34 in temporary version in (2)(a) substituted "permanent fund type" for "nonexpendable trust fund type". Amendment effective July 1, 2001.

Chapter 586 in (2)(a) inserted "of the resource indemnity and ground water assessment taxes"; inserted (2)(b) depositing 50% of remaining proceeds in reclamation and development grants account; inserted (2)(c) depositing $150,000 of remaining proceeds of resource indemnity and ground water assessment taxes in natural resource workers' tuition scholarship account; in (2)(d) at beginning substituted "all" for "50% of the"; deleted former (2)(c) that read: "(c) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects"; and made minor changes in style. Amendment effective on occurrence of contingency.

Preamble: The preamble attached to Ch. 586, L. 2001, provided: "WHEREAS, the economy of Montana is in transition to a new economy that will necessitate a workforce trained for the new economy; and

WHEREAS, since 1995, the closure of timber mills, such as American Timber, JD Timber, Darby Lumber, Crown Pacific, Louisiana Pacific, Missoula White Pine, and others, has resulted in the loss of approximately 1,500 jobs in the timber industry; and

WHEREAS, since 1995, an estimated 200 jobs have been lost in the oil and gas industry with the closure of Equitable Resources and JN Oil and Gas; and

WHEREAS, another estimated 1,175 jobs have been lost since 1995 in the mining industry as a result of reductions at Montana Resources International, Mineral Hill Mine, Zortman-Landusky Mine, Basin Creek Mine, Beal Mountain Mine, and Diamond Hill Mine; and

WHEREAS, the shift has left many hard-working Montanans, who are the state's greatest asset, without employment and unqualified to fill positions created in the new economy."

1999 Amendments — Composite Section: (Temporary version) Chapter 144 substituted (2) concerning allocation of funds for former (2) that read: "(2) The department shall, in accordance with the provisions of 15-1-501, deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104; and

(d) at the beginning of each fiscal year, there is allocated from the proceeds of the tax up to $200,000 to be deposited in the orphan share account established in 75-10-743"; and made minor changes in style. Amendment effective July 1, 1999.

(Version effective on occurrence of contingency) Chapter 552 in (2) substituted "in the following order" for "the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that"; in (2)(a) at beginning substituted "$366,000" for "14.1%"; substituted (2)(b) regarding orphan share account for former (2)(b) that read: "(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604"; substituted (2)(c) regarding use of remaining proceeds in the reclamation and development grants account for former (2)(c) that read: "(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104"; deleted former (2)(d) that read: "(d) at the beginning of each fiscal year, there is allocated from the proceeds of the tax up to $200,000 to be deposited in the orphan share account established in 75-10-743"; and made minor changes in style. Amendment effective on occurrence of contingency.

The amendment to this section made by sec. 4, Ch. 552, L. 1999, was rendered void by sec. 12(1), Ch. 552, L. 1999, a contingent voidness provision.

1997 Amendments: Chapter 42 in (2), in introductory clause after "15-1-501", deleted "(6)". Amendment effective March 12, 1997.

Chapter 415 inserted (2)(d) concerning allocation of tax proceeds to orphan share account; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 422 in (2), after "15-1-501", deleted "(6)"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 415, L. 1997, provided: "WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill."

Coordination Instruction: Section 7, Ch. 542, L. 1997, a coordination section, voided amendments to this section made by sec. 3, Ch. 542, L. 1997.

1993 Amendments: Chapter 455 near beginning of (2), after "shall", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

(Temporary version) Chapter 478 inserted (2)(b) and (2)(c) requiring 15% of proceeds to be deposited in renewable resource grant and loan program state special revenue account established by 85-1-604 and requiring 15% of proceeds to be deposited in reclamation and development grants account established by 90-2-1104; and made minor changes in style. Amendment effective July 1, 1993, and terminates June 30, 1995.

(Version effective July 1, 1995) Chapter 478 inserted (2)(b) and (2)(c) requiring 10% of proceeds to be deposited in renewable resource grant and loan program state special revenue account established by 85-1-604 and requiring 30% of proceeds to be deposited in reclamation and development grants account established by 90-2-1104; and made minor changes in style. Amendment effective July 1, 1995.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1991 Amendment: In (2), in first sentence after "type", inserted "except that 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905". Amendment effective July 1, 1993.

1989 Amendment: In (1) substituted March 31 for March 1 and substituted "preceding calendar year" for "last calendar quarter"; and in (3) substituted "examine the statement" for "examine each of the four quarterly statements".

1983 Amendments: Chapter 226 made the following changes: in (1), changed payment deadline from March 31 to March 1; near end of last sentence in (1), after "yield" inserted "for the last calendar quarter"; near beginning of first sentence in (3), inserted "four quarterly" before "statements"; at end of first sentence in (3), deleted "making the statement for the year for which the statement is filed"; and made minor phraseology changes.

Chapter 281, in first sentence of (2), substituted "trust fund of the nonexpendable trust fund type" for "trust account of the trust and legacy fund".

Applicability: Section 4, Ch. 226, L. 1983, provided: "This act is applicable to taxable years beginning after December 31, 1983."

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

Collateral References

Taxation *key* 515 through 543.

85 C.J.S. Taxation §851, et seq.

72 Am. Jur. 2d State and Local Taxation §§737 through 755.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceedings. 13 ALR Fed. 877.

15-38-107. Procedure in case of failure to file statement.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) after "fails" deleted "refuses, or neglects", after "determine" deleted "as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain", and at end substituted "interest as provided in 15-1-216" for "$25 or 10%, whichever is greater"; in (2) at end substituted reference to 15-1-216 for reference to a 1% a month rate of interest; in (4) substituted "Penalties imposed by 15-1-216 may be waived by the department pursuant to 15-1-206" for "Penalties may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-38-105 or the failure to pay the tax required by 15-38-106 is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1989 Amendment: In (1), in three places, substituted "year" for "quarter", substituted "tax due to the state from such person" for "tax that would be due to the state if the tax were paid on a quarterly basis from such person", and increased the penalty to 10% from 2%; in (2) increased the penalty to 10% from 8%; and in (3) substituted "an annual statement" for "a quarterly statement".

1983 Amendment: Near middle of (1), substituted "gross yield of the mineral" for "total gross value of product"; substituted "quarter" for "year" three times; after "quarter in which the" substituted "statement is to be filed" for "tax is to be paid"; after "due to the state" inserted "if the tax were paid on a quarterly basis"; at end of (1), substituted "$25 or 2%, whichever is greater" for "10% thereof"; at beginning of (2), inserted "If any person fails, refuses, or neglects to pay the tax when due, the department shall immediately determine, as nearly as may be possible from any information which the department may be able to obtain, the total gross value of product of the person from the business during the year for which the tax is due and shall fix the amount of tax

due to the state and shall add to the amount a penalty of 8%"; in (3), substituted "person failing to file a quarterly statement or" for "person required to file an annual statement and"; in (4), substituted "Penalties" for "The 10% penalty"; after "15-38-105" inserted "or the failure to pay the tax required by 15-38-106"; and made minor phraseology changes.

Applicability: Section 4, Ch. 226, L. 1983, provided: "This act is applicable to taxable years beginning after December 31, 1983."

1981 Amendment: In (2) substituted "The letter shall advise that if payment is not received, a warrant for distraint may be filed" for a provision that the taxpayer shall pay the amount of tax due within 15 days of receiving the letter.

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Collateral References

85 C.J.S. Taxation §1579, et seq.

72 Am. Jur. 2d State and Local Taxation §§759 through 770.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-38-108. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted authorization to issue warrant for distraint for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

Collateral References

Taxation *key* 501 through 514.

85 C.J.S. Taxation §824, et seq.

72 Am. Jur. 2d State and Local Taxation §§798 through 804.

15-38-109. Restricted access to records.

Compiler's Comments

1993 Amendment: Chapter 135 at end substituted "15-31-511" for "15-31-507"; and made minor changes in style.

15-38-110. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" substituted reference to 15-1-216 for "shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax,

setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-38-111. Credit for overpayment — interest on overpayment.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) near middle substituted "15-1-216" for "15-38-110"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

15-38-113. Exemption from resource indemnity and ground water assessment tax.

Compiler's Comments

2003 Amendment: Chapter 522 inserted (2) providing exemption for person who pays tax on oil and natural gas production; and made minor changes in style. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

1993 Name Change: Section 17, Ch. 769, L. 1991, provided: "In the provisions of the Montana Code Annotated, the code commissioner is instructed to change the term "resource indemnity trust tax", meaning the tax created by Title 15, chapter 38, to "resource indemnity and ground water assessment tax." Section 21(2), Ch. 769, L. 1991, provided that the name change is effective July 1, 1993. Therefore, the Code Commissioner has changed the term where it appears in this section, effective July 1, 1993.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

15-38-121. Certain royalties exempt.

Compiler's Comments

1995 Amendment: Chapter 451 in (1) substituted "mineral" for "on-reservation oil and gas"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1991 Amendment: Inserted (2) concerning royalties received by the United States as trustee for individual Indians; inserted (3) concerning royalties received by the United States, Montana, or a county or municipal government; and made minor change in style. Amendment effective March 20, 1991.

Retroactive Applicability: Section 2, Ch. 92, L. 1991, provided: "[This act] is effective on passage and approval [approved March 20, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

15-38-125. Gross value of product for coal.

Compiler's Comments

Retroactive Applicability: Section 5, Ch. 520, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Date: Section 6, Ch. 520, L. 1991, provided that this section is effective on passage and approval. Approved April 22, 1991.

15-38-126. Gross value of product for talc.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

15-38-127. Gross value of product for vermiculite.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

15-38-128. Gross value of product for limestone.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-38-129. Gross value of product for industrial garnets and byproducts.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section is effective on passage and approval (approved April 12, 1995) and applies retroactively to production years beginning after December 31, 1994.

Part 2
Resource Indemnity Trust Fund

15-38-201. Creation of resource indemnity trust fund.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 42 at end of first sentence, after "nonexpendable trust fund type", inserted "in the amount of $100 million"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 444 at end of first sentence, after "fund", deleted "in the nonexpendable trust fund type"; and made minor changes in style. Amendment effective July 1, 1997.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

1983 Amendment: In first sentence, substituted "trust fund in the nonexpendable trust fund type" for "trust account in the trust and legacy fund"; and in second sentence, changed "account" to "fund".

15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.

Compiler's Comments

2003 Amendment: Chapter 522 in (1) in first sentence after "fund" deleted "including money payable into the fund under the provisions of 15-36-324 and 15-37-117"; and made minor changes in style. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Transfer to Reclamation and Development Grants Account: Section 1, Ch. 20, Sp. L. August 2002, provided: "There is transferred to the reclamation and development grants account, as provided in 90-2-1104, in the fiscal year ending June 30, 2003, $1 million from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds $100 million."

2002 Amendment: (Temporary version) Chapter 20 at beginning of (2)(a)(iii) inserted "for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $1.2 million and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(a)(v) inserted "for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $350,000 and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(c)(i) inserted "For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 25.5% and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(c)(ii) inserted "For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 22% and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(c)(iii) inserted "For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 45% and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(c)(iv) inserted "For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 7.5% and for fiscal years beginning on or after July 1, 2005"; and made minor changes in style. Amendment effective August 21, 2002.

2001 Amendments — Composite Section: (Temporary version and version effective July 1, 2009) Chapter 34 in second sentence of (2)(a)(i) after "deposited in a" substituted "permanent fund account" for "nonexpendable trust account". Amendment effective July 1, 2001.

Chapter 61 in (1) in second sentence inserted "excluding unrealized gains and losses" and inserted "balance, excluding unrealized gains and losses" and in third sentence in two places inserted "excluding unrealized gains and losses"; and made minor changes in style. Amendment effective March 16, 2001.

1999 Amendments — Composite Section: (All versions) Chapter 144 in (2)(a)(ii) increased allocation to renewable resource grant and loan program state special revenue account from $1 million to $2 million; inserted (2)(a)(iv) concerning allocation to ground water assessment

account; deleted former (2)(c) that read: "(c) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund up to $200,000 to be deposited in the orphan share account established in 75-10-743"; in (2)(c)(i) reduced allocation to renewable resource grant and loan program from 36% to 30%; in (2)(c)(ii) increased allocation to hazardous waste/CERCLA account from 18% to 26%; in (2)(c)(iii) reduced allocation to reclamation and development grants account from 40% to 35%; in (2)(c)(iv) increased allocation to environmental quality protection fund from 6% to 9%; and made minor changes in style. Amendment effective July 1, 1999.

(All versions except version effective July 1, 2014) Section 1, Ch. 497, in (2)(a)(i) near beginning substituted "to be deposited into the renewable resource grant and loan program state special revenue account" for "from the renewable resource grant and loan program state special revenue account" and inserted last sentence allowing deposit of excess appropriation into nonexpendable trust account; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2014.

(Version effective July 1, 2014) Section 2, Ch. 497, deleted former (2)(a)(i) that read: "(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs"; and made minor changes in style.

(Version effective July 1, 2001) Chapter 529 inserted (2)(a)(v) allocating $500,000 to department of fish, wildlife, and parks; and made minor changes in style. Amendment effective July 1, 2001, and terminates July 1, 2009.

1997 Amendments: Chapter 42 in (1) deleted former second sentence that read: "All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million" and in third sentence substituted "all receipts may be appropriated" for "all receipts must be appropriated"; in (2)(b)(iii), (2)(b)(iv), and (2)(b)(v) deleted "beginning in fiscal year 1996" (amendments in (2)(b)(iii) and (2)(b)(iv) voided by Ch. 444 amendment); in first sentence of (3) substituted "appropriate the resource indemnity trust interest" for "appropriate funds from the resource indemnity trust interest account"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 415 inserted (2)(c) concerning allocation of tax proceeds to orphan share account; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 444 inserted (2)(a)(ii) allocating $1 million to renewable resource grant and loan program state special revenue account; inserted (2)(a)(iii) allocating $1.5 million to reclamation and development grants special revenue account; deleted former (2)(b)(iii) and (2)(b)(iv) that read: "(iii) beginning in fiscal year 1996, $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iv) beginning in fiscal year 1996, $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants"; in (3), near beginning of first sentence after "to appropriate funds", deleted "from the resource indemnity trust interest account"; and made minor changes in style. Amendment effective July 1, 1997.

Code Commissioner Correction: In (3), after "proposes to appropriate", the Code Commissioner retained the word "funds" deleted by Ch. 42 because that change was intended to be a nonsubstantive change.

Preamble: The preamble attached to Ch. 415, L. 1997, provided: "WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through

which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill."

Coordination Instruction: Section 7, Ch. 542, L. 1997, a coordination section, voided amendments to this section made by sec. 4, Ch. 542, L. 1997.

1995 Amendments: Chapter 451 in (1), in first sentence, inserted "15-36-324 and"; and in (2)(a)(iii), at beginning, deleted "beginning in fiscal year 1995". Amendment effective January 1, 1996.

Chapter 577 inserted (2)(a) allocating and statutorily appropriating $240,000 of resource indemnity trust fund interest to renewable resource grant and loan program account at beginning of each fiscal year; and deleted former (2)(a)(iii) that appropriated $240,000 of resource indemnity trust fund interest to renewable resource grant and loan program account at beginning of each biennium beginning in fiscal year 1995 to support environmental science and water quality programs at Northern Montana College. Amendment effective July 1, 1995.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendments: (Temporary version) Chapter 478 at beginning of (2)(a)(ii) deleted "beginning in fiscal year 1992"; inserted (2)(a)(iv), (2)(a)(v), and (2)(a)(vi) requiring $1,025,000 to be deposited into renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants, $2,200,000 to be deposited into reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants, and beginning fiscal year 1994, $250,000 to be deposited into water storage state special revenue account, created by 85-1-631; at beginning of (2)(b)(i) substituted "Thirty-eight percent of the interest income" for "Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income" and near middle, before "state", substituted "renewable resource grant and loan program" for "water development"; at beginning of (2)(b)(ii) substituted "Fifteen percent" for "Beginning in fiscal year 1988, 12%"; deleted former (2)(b)(iii) that read: "Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2"; in (2)(b)(iii) substituted "Forty-one and one-half percent" for "Beginning in fiscal year 1990, 46%"; at beginning of (2)(b)(iv) substituted "Five and one-half percent" for "Beginning in fiscal year 1990, 4%"; and made minor changes in style. Amendment effective July 1, 1993.

(Version effective July 1, 1995) Chapter 478 at beginning of (2)(a)(ii) deleted "beginning in fiscal year 1992"; inserted (2)(a)(iv), (2)(a)(v), and (2)(a)(vi) requiring, beginning in fiscal year 1996, $2 million to be deposited into renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants, beginning in fiscal year 1996, $3 million to be deposited into reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants, and beginning fiscal year 1996, $500,000 to be deposited into water storage state special revenue account, created by 85-1-631;

at beginning of (2)(b)(i) substituted "Thirty-six percent" for "Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30%" and near middle, before "state", substituted "renewable resource grant and loan program" for "water development"; at beginning of (2)(b)(ii) substituted "Eighteen percent" for "Beginning in fiscal year 1988, 12%"; deleted former (2)(b)(iii) that read: "Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2"; in (2)(b)(iii) substituted "Forty percent" for "Beginning in fiscal year 1990, 46%"; at beginning of (2)(b)(iv) substituted "Six percent" for "Beginning in fiscal year 1990, 4%"; and made minor changes in style. Amendment effective July 1, 1995.

(Both versions) Chapter 613 inserted (2)(a)(iii) statutorily appropriating money to support environmental science-water quality instructional programs; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendments: Chapter 530 inserted (2)(a)(ii) providing for allocation of not more than $50,000 to oil and gas production damage mitigation account beginning in fiscal year 1992 and pursuant to conditions in 82-11-161; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Chapter 672 in (1) inserted "including money payable into the fund under the provisions of 15-37-117"; and made minor changes in phraseology. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1987 Amendments: Chapter 408 in (2)(b) deleted a provision providing for a 6% allocation for CERCLA implementation after 1986 to the Department of Health and Environmental Sciences to obtain matching federal funds and added language relating to the special revenue account.

Chapter 418 in (2) inserted introductory language relating to environmental contingency account; inserted (2)(c) relating to renewable resource development account; inserted (2)(d) relating to reclamation and development grants account; inserted (3) relating to budgets proposing appropriations from resource indemnity trust interest account; and made minor changes in phraseology.

Chapter 555 inserted (2)(e) relating to environmental quality protection fund.

Coordination Instructions — 1987 Amendment: Section 18, Senate Bill 373 (Ch. 418, L. 1987), provided: "Coordination instruction. If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved:

(1) the bracketed material in section 12(2)(d) of this act allocating funds to the reclamation and development grants account must read "50%"; and

(2) the bracketed material in section 6 is void."

Section 5, House Bill 718 (Ch. 555, L. 1987), provided: "Coordination instruction. If Senate Bill No. 373, including the section of that bill amending 15-38-202, is passed and approved, section 18 of Senate Bill No. 373 must read:

"NEW SECTION. Section 18. Coordination instruction. (1) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section of that bill amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "46%".

(2) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is not passed and approved, the bracketed material in section 12 must read "50%".

(3) If House Bill No. 777, including the section amending 15-38-202 is not passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "52%"."

Senate Bill 373 was enacted as Ch. 418, L. 1987, and as enacted amended 15-38-202; House Bill 777 was enacted as Ch. 408, L. 1987, and as enacted amended 15-38-202; and House Bill 718 was enacted as Ch. 555, L. 1987, and as enacted amended 15-38-202. Thus, sec. 18(1), Ch. 555, L. 1987, controls, and the bracketed material was removed and replaced with "46%" in 15-38-202.

Saving Clause: Section 20, Ch. 418, L. 1987, was a saving clause.

Severability: Section 19, Ch. 418, L. 1987, was a severability section.

1985 Amendment: In (3) at end substituted "The allocation in this subsection must be appropriated for each full biennium as necessary to obtain matching federal funds for the biennium" for "Any funds remaining unexpended at the end of each fiscal year will revert to the resource indemnity trust interest account."

1983 Amendments: Chapter 241 inserted (3) allocating 6% of resource indemnity trust fund to Department of Health and Environmental Sciences.

Chapter 281, throughout section, changed references to resource indemnity trust "account" to references to resource indemnity trust "fund"; and in (2), substituted "state special revenue account" for "earmarked account".

Commissioner Correction: In third and fourth sentences of (1), references to "account" were apparently overlooked by Chapter 281. The apparent intent was that "account" become "fund" and the Code Commissioner has changed the references accordingly. The Code Commissioner also changed "resource indemnity trust account" to "resource indemnity trust fund" in (3) pursuant to sec. 48, Ch. 281, L. 1983.

1981 Amendment: Added subsection (2) allocating 30% of interest income to water development account.

15-38-203. Purpose of fund usage — limitation on future use.

Compiler's Comments

1997 Amendment: Chapter 444 in (2), near middle after "the resource indemnity trust interest", deleted "account"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Subsection Enactment: Subsection (2) was enacted as a separate section in sec. 7, HB 922, L. 1985, and was codified as part of this section for convenience.

Case Notes

Trust Funds Not Limited to Reclamation of Land Disturbed by Taking of Natural Resources: The appropriation or allocation of resource indemnity trust funds is not limited to the reclamation of lands disturbed by the taking of natural resources. Therefore, the use of funds for programs related to improving the total environment does not violate the fiduciary duty of the state toward the trust in allocating trust funds. Butte-Silver Bow Local Gov't v. St., 235 M 398, 768 P2d 327, 46 St. Rep. 87 (1989).

CHAPTER 39
TAXATION OF BENTONITE

Part 1
General Provisions

Part Compiler's Comments

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Effective Date: Section 20, Ch. 559, L. 2005, provided that this part is effective on passage and approval. Approved April 28, 2005.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

CHAPTER 44
FOREST LANDS TAX

Part 1
General Provisions

Part Compiler's Comments

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee] recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee [now Revenue and Transportation Interim Committee].

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Assessment on Privately Owned Timberland — Collection — Disposition: Section 13, Ch. 783, L. 1991, provided: "(1) An assessment of 10 cents per acre or portion of an acre is imposed on all privately owned timberland for tax years 1991 through 1993. The assessment is imposed on the owner of the land as of January 1 of each year.

(2) This assessment is done on November 30 of each year and must be paid with the property tax due as provided in 15-16-101.

(3) (a) By September 1 of each year, the department of revenue shall provide county treasurers with a list showing:

(i) all owners of private timberland in the county as of January 1 of that year; and

(ii) the number of acres of timberland owned by each as of January 1 of that year.

(b) The county treasurer shall send each listed owner a bill for the assessment imposed in subsection (1) with the property tax notice required in 15-16-101.

(4) The county treasurer shall collect the assessment imposed in subsection (1) and remit collections to the state treasurer by December 20 of each year.

(5) The state treasurer shall deposit all collections from the assessment imposed in subsection (1) in the general fund." Section 17(2), Ch. 783, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990. Section 19, Ch. 783, L. 1991, provided that this section terminates January 1, 1994.

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

Effective Date: Section 18(1), Ch. 783, L. 1991, provided that this part is effective July 1, 1991.

Part Administrative Rules

Title 42, chapter 20, subchapter 7, ARM Forest land.

15-44-102. Definitions.

Compiler's Comments

1997 Amendment: Chapter 297 in definition of forest land substituted language in (b) regarding annual net wood production that equals or exceeds 25 cubic feet an acre for "that has a dedicated use that is evidenced by a statement of intent by the owner for the eventual harvest of timber"; and made minor changes in style. Amendment effective April 17, 1997.

Effective Date — Retroactive Applicability: Section 4, Ch. 297, L. 1997, provided: "[This act] [15-6-143, 15-44-102, and 15-44-103] is effective on passage and approval [approved April 17, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Administrative Rules

ARM 42.20.156 Agricultural and forest land use change criteria.

ARM 42.20.701 Definitions.

15-44-103. Legislative intent — value of forest lands — valuation zones.

Compiler's Comments

1997 Amendment: Chapter 297 in (6), after "loans", substituted "as reported by the Northwest farm credit services, agricultural credit association" for "reported by the federal land bank association". Amendment effective April 17, 1997.

Effective Date — Retroactive Applicability: Section 4, Ch. 297, L. 1997, provided: "[This act] [15-6-143, 15-44-102, and 15-44-103] is effective on passage and approval [approved April 17, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Administrative Rules

ARM 42.18.115 2003 Agricultural/forest land and improvements reappraisal plan.

ARM 42.20.156 Agricultural and forest land use change criteria.

ARM 42.20.745 Forest land.

15-44-105. Administration — rules.

Administrative Rules

Title 42, chapter 20, subchapter 7, ARM Forest land.

CHAPTER 50
PUBLIC CONTRACTOR'S FEES AND TAX

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083

(1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Administrative Rules

Title 42, chapter 31, subchapter 21, ARM Public contractors.

Chapter Collateral References

53 C.J.S. Licenses §§119, 120.

51 Am. Jur. 2d Licenses and Permits §10; 71 Am. Jur. 2d State and Local Taxation §§28 through 30.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 1
General Provisions

15-50-101. Definitions.

Compiler's Comments

1999 Amendment: Chapter 51 in (3)(b) near middle after "work" deleted "within their field of contracting and within the limits of their class of license"; and made minor changes in style. Amendment effective March 15, 1999.

1995 Amendment: Chapter 558 inserted introductory clause; inserted definitions of Department and public contractor; and made minor changes in style. Amendment effective April 26, 1995.

Administrative Rules

ARM 42.31.2101 Definitions.
ARM 42.31.2121 Contract award report by agency.
ARM 42.31.2122 Gross receipts withholding by agency.
ARM 42.31.2131 Contract award report by contractor awarded contract.
ARM 42.31.2132 Gross receipts payment by contractor.
ARM 42.31.2133 Additional report and withholding requirements in case of sublet contract.

Part 2
Tax on Contractors

Part Case Notes

Contract Made Without License: The District Court erred in concluding that the contract entered into between the parties was illegal and therefore void. Appellant admits that it did not have a public contractor's license as required by former statute when it accepted the bid proposal. It admits that it may have violated the law and may be assessed a misdemeanor fine. Nowhere in the statutes is it declared that a contract made without a license is unenforceable or void. Taurman v. Cascade, 192 M 529, 629 P2d 226, 38 St. Rep. 906 (1981).

Prior Act Unconstitutional: Chapter 277, L. 1965, which provided for a license tax payable only by nonresident public contractors, was unconstitutional. State ex rel. Schultz-Lindsay Constr. Co. v. St. Bd. of Equalization, 145 M 380, 403 P2d 635 (1965).

Part Attorney General's Opinions

Public Utility Contractor Not to Install Certain Service Lines in Billings Unless Licensed by State as Plumber — City Required to Check License Qualifications:

In clarifying 44 A.G. Op. 12, the Attorney General noted that work done on a public water supply or public sewer system that does not include work falling within the statutory distances for plumbing or drainage systems does not require a state-issued plumber's license. Therefore, the city of Billings may not allow public utility contractors to install water service lines that extend from the public water main to a point within the walls of the private property or within 20 feet from any foundation wall of the premises, whichever distance is shorter as measured from the foundation wall, or wastewater service lines that extend from the public sewer main to a point within 2 feet from any foundation wall of the premises, unless the contractor also has a plumber's license issued by the state. 44 A.G. Op. 39 (1992).

The city of Billings may not allow public utility contractors to install water and wastewater service lines that extend from the public water or sewer main to a point within the walls of the private property or within 20 feet from any foundation wall of the private residence unless the contractor also has a plumber's license issued by the state. The city is required to determine whether a person applying for a plumbing permit pursuant to the Uniform Plumbing Code is

licensed by the state as a plumber if the type of work described in the permit requires licensure as a requisite to performance. 44 A.G. Op. 12 (1991).

Turnkey Contract for Public Housing Subject to Public Contractor's Licensing Tax: A turnkey method of providing public housing, whereby a public housing authority contracts for a completed development to be produced by the developer on his own land and with payments to be upon the "turning over the keys" of the development to the public housing authority, is a public contract for construction work. All of the essential elements required by 15-50-101 are present. The contract is between a person and a public agency, the value of the contract (prior to the 1983 amendment increasing the contract amount to $5,000) exceeds $1,000, and the contract contemplates construction. The turnkey method of production of new public housing units is therefore a public contract subject to the public contractor's licensing tax. To hold otherwise would frustrate the expressed legislative goal of the tax and allow any contractor to avoid the tax on projects intended to be included by merely changing contract language. 38 A.G. Op. 118 (1980).

15-50-205. Tax imposed on gross receipts from public contracts.

Compiler's Comments

2003 Amendment: Chapter 114 in (2) at end substituted "provided for in 15-50-206" for "specified in this section"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 558 in (1), at beginning, deleted "In addition to the fees enumerated in 37-71-204, each" and at end substituted "public contractor receives payment" for "license is issued"; at end of (2) substituted "this section" for "37-71-101(3)"; and made minor changes in style. Amendment effective April 26, 1995.

1985 Amendment: In (1) inserted "unless he constructs or works on a federal research facility".

Applicability of 1985 Amendment: Section 3, Ch. 741, L. 1985, provided: "This act applies to any public contract entered into after the effective date of this act [effective May 18, 1985], except that any tax already paid to the department of revenue may not be returned to the contractor."

1983 Amendment: In (1), after "pay to the" substituted "department of revenue" for "state"; after "license is issued" deleted "provided, however, that the additional license fee hereby imposed shall not be paid upon or collectable from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on February 28, 1967"; and at end of (2), corrected internal reference.

Administrative Rules

ARM 42.4.3102 Credit for public contractor's gross receipts tax.
ARM 42.31.2121 Contract award report by agency.
ARM 42.31.2131 Contract award report by contractor awarded contract.
ARM 42.31.2132 Gross receipts payment by contractor.
ARM 42.31.2133 Additional report and withholding requirements in case of sublet contract.
ARM 42.31.2142 Corporation license tax credit.
ARM 42.31.2143 State income tax credit.

Case Notes

United States Government Estopped From Bringing Constitutional Challenge: When the United States government had required a public contractor to challenge the constitutionality of the 1% public contractor's license fee and directed the litigation to an unsuccessful conclusion in the Montana Supreme Court in Peter Kiewit Sons' Co. v. St. Bd. of Equalization, 161 M 140, 505 P2d 102 (1973), the United States was collaterally estopped from thereafter challenging the constitutionality of the tax in federal courts. Mont. v. U.S., 440 US 147, 59 L Ed 2d 210, 99 S Ct 970 (1979).

Constitutionality: Imposing a 1% gross receipts tax was constitutional and did not violate Art. XII, sec. 11, 1889 Mont. Const., since the classification of public contractors separately from private contractors is reasonable and does not discriminate against the federal government or interfere with its functions or violate its immunity from taxation. Peter Kiewit Sons' Co. v. St. Bd. of Equalization, 161 M 140, 505 P2d 102 (1973).

Collateral References

Licenses *key* 23, 29.
53 C.J.S. Licenses §§119, 120; 84 C.J.S. Taxation §§177 through 180.
71 Am. Jur. 2d State and Local Taxation §§28 through 30.

15-50-206. Withholding license fee from payments — refunds.

Compiler's Comments

2003 Amendment: Chapter 114 in (2) near beginning of first sentence substituted "of the state, county, or city" for "thereof, as described in 15-50-205"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 558 in (2) substituted "15-50-205" for "37-71-101(3)"; and made minor changes in style. Amendment effective April 26, 1995.

1983 Amendment: Near beginning of (2), corrected internal reference; and in (3), after "department" inserted "of revenue".

Administrative Rules

ARM 42.4.3102 Credit for public contractor's gross receipts tax.
ARM 42.31.2121 Contract award report by agency.
ARM 42.31.2122 Gross receipts withholding by agency.
ARM 42.31.2131 Contract award report by contractor awarded contract.
ARM 42.31.2132 Gross receipts payment by contractor.
ARM 42.31.2133 Additional report and withholding requirements in case of sublet contracts.
ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.
ARM 42.31.2142 Corporation license tax credit.

Collateral References

Licenses *key* 23, 29.

15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 454 inserted (1)(b) allowing the credit allowed under subsection (1) to be used as a carryforward against certain taxes for 5 succeeding years; and made minor changes in style. Amendment effective April 28, 2005.

Chapter 542 in (2) near middle of first sentence substituted "61-3-321(2) and" for "61-3-560 through". Amendment effective January 1, 2006.

Retroactive Applicability: Section 3, Ch. 454, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

2000 Amendment by Referendum: Chapter 515, L. 1999, near middle of first sentence of (2) inserted "and the registration fee on light vehicles, as provided in 61-3-560 through 61-3-562"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendment: Chapter 496 in (2), in first sentence near beginning, inserted "and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors as provided in 61-3-529" and after "personal property" inserted "or vehicle" and in second sentence, near middle after "income tax, the", deleted "personal property"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1987 Amendment: Near beginning of (2), after "taxes", deleted "fees in lieu of taxes on motorcycles or quadricycles, or light vehicle license fees as provided by 61-3-532" and in second sentence, after "property tax", deleted "or light vehicle license fee".

1985 Amendment: In (2) near beginning, after "property taxes", inserted "fees in lieu of taxes on motorcycles or quadricycles" (effective January 1, 1986).

1981 Amendment: Inserted "or light vehicle license fees, as provided by 61-3-532" after "Personal property taxes" at the beginning of (2); and inserted "or light vehicle license fee" after "the personal property tax" in the middle of the second sentence of (2).

Administrative Rules

ARM 42.4.3102 Credit for public contractor's gross receipts tax.
ARM 42.4.3103 Credit for contractor's gross receipts tax.
ARM 42.31.2141 Personal property tax refund.

ARM 42.31.2142 Corporate license tax credit.
ARM 42.31.2143 State income tax credit.

Part 3
Contractor's Tax Return

15-50-301. Rules for contractor's return.

Compiler's Comments

2001 Amendment: Chapter 108 deleted former (2) that read: "(2) A person failing to file a contractor's license return as provided and required by the department of revenue, upon conviction, shall be fined not less than $1,000 or more than $10,000"; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules

Title 42, chapter 31, subchapter 21, ARM Public contractors.
ARM 42.31.2101 Definitions.
ARM 42.31.2104 Contractor's return required for public works projects.
ARM 42.31.2121 Contract award report by agency.
ARM 42.31.2122 Gross receipts withholding by agency.
ARM 42.31.2131 Contract award report by contractor awarded contract.
ARM 42.31.2133 Additional report and withholding requirements in case of sublet contract.
ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.
ARM 42.31.2141 Personal property tax refund.

15-50-304. Statute of limitations.

Compiler's Comments

Effective Date — Retroactivity: Section 4, Ch. 437, L. 1985, provided: "(1) This act is effective on passage and approval and, except as provided in subsection (2), applies retroactively within the meaning of 1-2-109 to taxable periods covered by returns due after December 31, 1982.

(2) Subsection (3) of section 1 is retroactively applicable within the meaning of 1-2-109 for all taxable years prior to the effective date of this act." Approved April 11, 1985.

Administrative Rules

ARM 42.31.2141 Personal property tax refund.

15-50-307. Inspection of books of contractor.

Compiler's Comments

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

15-50-308. Estimation of tax upon failure to file statement or pay tax — penalty and interest — notice.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) after first "fails" deleted "neglects, or refuses"; in (2) after "due" inserted reference to penalty and interest; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

Administrative Rules

ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.

15-50-309. Penalty and interest for delinquency — waiver.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) substituted "penalty and interest as provided in 15-1-216" for "a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of license taxes. Interest is computed from the date the license taxes were due to the date of payment"; in (2) substituted "Penalties imposed by 15-1-216 may be waived by the department pursuant to 15-1-206" for "The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-50-206 or pay the tax due is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

Administrative Rules

ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.

15-50-310. Warrant for distraint.

Compiler's Comments

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

Administrative Rules

ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.

15-50-311. Disposal of license taxes.

Compiler's Comments

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

CHAPTER 51
ELECTRICAL ENERGY PRODUCER'S LICENSE TAX

Part 1
General Provisions

Part Compiler's Comments

Section Not Codified: Section 84-1604, R.C.M. 1947, which required electrical energy producers to file a report on April 15, 1934, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 4, Ch. 51, Ex. L. 1933, as amended by sec. 71, Ch. 516, L. 1973.

Part Collateral References

Licenses *key* 27 through 35; Taxation *key* 156.

29 C.J.S. Electricity §10; 53 C.J.S. Licenses §§50 through 52; 84 C.J.S. Taxation §207.

51 Am. Jur. 2d Licenses and Permits §10; 71 Am. Jur. 2d State and Local Taxation §§28 through 30.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

15-51-101. Rate of tax — electrical energy producers.

Administrative Rules

ARM 42.25.1601 Electrical energy producer's license tax — line loss.

Collateral References

Electricity *key* 10; Licenses *key* 29; Taxation *key* 156.
29 C.J.S. Electricity §10; 53 C.J.S. Licenses §35; 84 C.J.S. Taxation §207.
51 Am. Jur. 2d Licenses and Permits §§36, 38, 76.

15-51-102. Payment of tax — may be itemized on customers' bills.

Compiler's Comments

1999 Amendments — Composite Section: Chapters 199 and 556 substituted second sentence concerning itemized tax for "No bill, statement, or account rendered or given any customer by any organization affected by the provisions of this chapter shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter"; and made minor changes in style. Chapter 199 amendment effective October 1, 1999. Chapter 556 amendment effective January 1, 2000.

Applicability: Section 2, Ch. 199, L. 1999, provided: "[This act] applies to customer bills or statements rendered to customers after September 30, 1999."

Section 39(1), Ch. 556, L. 1999, provided that this section applies to tax years beginning after December 31, 1999.

Saving Clause: Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

Collateral References

Licenses *key* 32; Taxation *key* 515 through 534.
85 C.J.S. Taxation §851, et seq.
72 Am. Jur. 2d State and Local Taxation §§737 through 755.

15-51-103. Disposition of revenue — penalty and interest on delinquency.

Compiler's Comments

1999 Amendment: Chapter 427 in second sentence substituted "penalty and interest must be added to the delinquent taxes as provided in 15-1-216" for "a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty must be charged"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1995 Amendment: Chapter 18 near beginning, after "15-1-501", deleted reference to subsection (6).

1993 Amendment: Chapter 455 near beginning, after "shall", substituted "in accordance with the provisions of 15-1-501(6)" for "receipt therefor and" and after "promptly" substituted "remit the collected taxes" for "turn the same over"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Collateral References

Licenses *key* 33; Taxation *key* 906.75.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or similar proceedings. 13 ALR Fed. 877.

15-51-104. Inspection of books of producer.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 after "department" deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Collateral References

72 Am. Jur. 2d State and Local Taxation §652.

15-51-109. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must be computed"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) substituted reference to computing interest under 15-1-216 for reference to a 1% a month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-51-110. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "rate as provided in 15-1-216" for "rate as is charged on deficiency assessments provided in 15-51-109"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-51-111. Procedure to compute tax in absence of statement — waiver of penalty.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) at end of first sentence substituted "15-1-216" for "15-51-103"; in (2) substituted "A penalty imposed by 15-1-216 may be waived by the department pursuant to 15-1-206" for "The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by 15-51-101 is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within such time, a lien may be filed" at the end of the second sentence; deleted sentence before the last sentence that required payment within 15 days of receiving the letter.

Collateral References

Licenses *key* 32.

84 C.J.S. Taxation §545.

72 Am. Jur. 2d State and Local Taxation §650.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-51-112. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted authorization to issue warrant for distraint for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

Collateral References

Licenses *key* 32; Taxation *key* 501 through 514.5.

53 C.J.S. Licenses §§121 through 124; 85 C.J.S. Taxation §824, et seq.

51 Am. Jur. 2d Licenses and Permits §110; 72 Am. Jur. 2d State and Local Taxation §§798 through 805.

15-51-113. Penalty for violation — enforcement.

Collateral References

53 C.J.S. Licenses §§121 through 124; 85 C.J.S. Taxation §1579, et seq.

51 Am. Jur. 2d Licenses and Permits §108; 72 Am. Jur. 2d State and Local Taxation §§759 through 761, 763 through 770.

CHAPTER 53
RETAIL TELECOMMUNICATIONS EXCISE TAX

Chapter Collateral References

Licenses *key* 27 through 35; Taxation *key* 155.

53 C.J.S. Licenses §§50 through 55; 84 C.J.S. Taxation §§209, 210; 86 C.J.S. Telegraphs, Telephones, Radio, and Television §82.

51 Am. Jur. 2d Licenses and Permits §§1 through 87; 71 Am. Jur. 2d State and Local Taxation §§28 through 30, 416 through 420.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Compiler's Comments

Effective Date: Section 42(1), Ch. 426, L. 1999, provided that this part is effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Part Administrative Rules

Title 42, chapter 31, subchapter 5, ARM Telephone license and telecommunication excise tax.

15-53-127. Short title.

Administrative Rules

Title 42, chapter 31, subchapter 5, ARM Telephone license and telecommunication excise tax.

15-53-129. Definitions.

Compiler's Comments

2003 Amendment: Chapter 515 inserted definitions of call-by-call basis and charges for mobile communications services; in definition of customer or purchaser in (a) after "means" inserted exception clause and inserted (b) and (c) defining term for purposes of mobile telecommunications services and specifying exclusions; inserted definitions of home service provider, mobile telecommunications services, place of primary use, postpaid calling basis, private communications service, and reseller; in definition of retail telecommunications in (a) after "means" inserted exception clause and after "and" substituted "is charged" for "is billed", inserted (b) defining term for mobile telecommunications services, and in (c) after "long-distance" inserted "private communications", after "wireless" substituted "telecommunications" for "telephony", and after "services" inserted "regardless of whether the services are paid for on a call-by-call basis or postpaid calling basis"; substituted definition of service address for former definition that read: ""Service address" means:

(a) the location from where the retail telecommunications services originated or where the retail telecommunications services are received; or

(b) where there is not a defined location, the location in Montana where the statement of charges for retail telecommunications services is mailed"; inserted definition of serving carrier; and made minor changes in style. Amendment effective July 1, 2003.

Applicability: Section 7, Ch. 515, L. 2003, provided: "[This act applies to bills issued on or after the first day of the first month after [the effective date of this act]." Effective July 1, 2003.

2001 Amendment: Chapter 484 in definition of sales price in (b)(iii) at end after "charges or fees" inserted "collected for and remitted to a federal government entity", in (b)(vi) substituted "construction" for "reconnection of service or for replacement of service", and in (b)(vii) near beginning inserted "installation" and after "servicing of equipment" inserted "and wiring"; and made minor changes in style. Amendment effective April 30, 2001.

Preamble: The preamble attached to Ch. 484, L. 2001, provided: "WHEREAS, the Retail Telecommunications Excise Tax Act, House Bill No. 128, 56th Legislature (Chapter 426, Laws of 1999), was enacted as a part of the 1999 Legislative Session's economic development package, replacing an archaic telephone license tax and an illogical and confusing array of property tax provisions with an excise tax that would foster Montana's long-term economic growth and ensure that Montana will have the necessary telecommunications infrastructure needed to be competitive for jobs and income for the future; and

WHEREAS, as enacted, the purpose section of the Retail Telecommunications Excise Tax Act, in 15-53-128(4)(c), stated that one of the reasons for imposing a replacement tax was to "preserve the revenue base of the existing property tax system for taxing jurisdictions in the state"; and

WHEREAS, as enacted, in the purpose section of the Retail Telecommunications Excise Tax Act, in 15-53-128(7), the legislature declared a "compelling public need to modify the existing system of property taxation . . . to ensure competitive neutrality and constancy of revenue to taxing jurisdictions in the state of Montana"."

Applicability: Section 4, Ch. 484, L. 2001, provided: "[This act] applies to federal subscriber line charges and other federally authorized charges and fees collected but not remitted to a federal governmental entity by the telecommunications carrier and to retail telecommunications installation and activation charges made only after June 30, 2001."

Administrative Rules

ARM 42.31.501 Definitions.

15-53-130. Imposition of retail telecommunications excise tax — rate.

Compiler's Comments

2003 Amendment: Chapter 515 at beginning of second sentence inserted reference to 15-53-131 and 15-53-132; and made minor changes in style. Amendment effective July 1, 2003.

Applicability: Section 7, Ch. 515, L. 2003, provided: "[This act applies to bills issued on or after the first day of the first month after [the effective date of this act]." Effective July 1, 2003.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

15-53-131. Mobile telecommunications services.

Compiler's Comments

Effective Date: Section 6, Ch. 515, L. 2003, provided: "[This act] is effective July 1, 2003."

Applicability: Section 7, Ch. 515, L. 2003, provided: "[This act applies to bills issued on or after the first day of the first month after [the effective date of this act]." Effective July 1, 2003.

15-53-132. Telecommunications services other than mobile telecommunications services.

Compiler's Comments

Effective Date: Section 6, Ch. 515, L. 2003, provided: "[This act] is effective July 1, 2003."

Applicability: Section 7, Ch. 515, L. 2003, provided: "[This act applies to bills issued on or after the first day of the first month after [the effective date of this act]." Effective July 1, 2003.

15-53-137. Application for permission to report on accrual basis.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.
ARM 42.31.506 Application for reporting on accrual basis.
ARM 42.31.507 Taxation of Internet revenue.

15-53-138. Rural telephone cooperatives and rural electric cooperatives — subject to excise tax.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

15-53-139. Return required of telecommunications services providers.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

15-53-145. Deficiency assessment — review — interest — penalty.

Compiler's Comments

2005 Amendment: Chapter 594 substituted (2) concerning assessment of penalty and interest for "(a) Interest on any deficiency must bear interest until paid at a rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 60 days, the tax is delinquent and a penalty of 10% must be added to the amount of the deficiency"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.
ARM 42.31.510 Penalty and interest.

15-53-146. Credit for overpayment — interest on overpayment.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) substituted "15-1-216" for "15-53-145". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties

for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

15-53-147. Penalty and interest for delinquency — waiver.

Compiler's Comments

2001 Amendment: Chapter 108 in (1) at end of second sentence substituted "penalty and interest, as provided in 15-1-216" for "a penalty of 10% of the excise tax due plus interest at the rate of 1% a month or fraction of a month, computed from the date on which the tax becomes delinquent to the date of payment"; and in (2) at beginning substituted "Penalty and interest, as provided in 15-1-216" for "The 10% penalty". Amendment effective July 1, 2001.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

ARM 42.31.510 Penalty and interest.

15-53-150. Statute of limitations.

Administrative Rules

ARM 42.31.502 Record requirements.

15-53-155. Administration — rules.

Compiler's Comments

Rulemaking Effective Date: Section 42(2), Ch. 426, L. 1999, provided: "For the purposes of promulgating administrative rules under [section 17] [15-53-155], [section 17] and this section are effective on passage and approval." Approved April 23, 1999.

Administrative Rules

Title 42, chapter 22, ARM Centrally assessed property.

Title 42, chapter 31, subchapter 5, ARM Telephone license and telecommunication excise tax.

15-53-156. Retail telecommunications excise tax revenue.

Compiler's Comments

1999 Enactment: The enactment of this section by sec. 18, Ch. 426, L. 1999, was rendered void by sec. 170(1)(a)(ii), Ch. 584, L. 1999, a coordination section. Pursuant to sec. 170(1)(a)(ii), the text of sec. 18 was replaced.

CHAPTER 59
CEMENT TAXES

Chapter Compiler's Comments

Section Not Codified: Section 84-723, R.C.M. 1947, which transferred the duty of collecting the cement producers' and cement dealers' license tax from the State Treasurer to the Department of Revenue, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1927, as amended by sec. 13, Ch. 516, L. 1973, and sec. 7, Ch. 286, L. 1977.

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083

(1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Collateral References

Licenses *key* 27 through 35.

53 C.J.S. Licenses §§51 through 55.

51 Am. Jur. 2d Licenses and Permits §§1 through 87; 71 Am. Jur. 2d State and Local Taxation §§28 through 30.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Part 1
Cement and Gypsum Producers

15-59-102. License tax on producers and importers of gypsum and cement.

Case Notes

Gypsum Wallboard: Under former law, in an action under a predecessor to this section, as amended in 1931 adding "other products", to enjoin collection of tax on manufactured gypsum wallboard, State was in error in contending that "other products" by implication included gypsum wallboard, since, under doctrine of ejusdem generis, the Legislature meant gypsum products made and handled like plaster. The administrative measurements as used in the act being only barrels and tons, and not square feet as wallboard is handled and sold, the uncertainties were resolved in favor of the taxpayer. U.S. Gypsum Co. v. St. Bd. of Equalization, 116 M 275, 149 P2d 774 (1944).

Collateral References

Licenses *key* 2, 15, 29.

53 C.J.S. Licenses §§50 through 55.

51 Am. Jur. 2d Licenses and Permits §§36, 38, 76; 71 Am. Jur. 2d State and Local Taxation §§28 through 30.

15-59-104. Manufacturers to keep records.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in first sentence, near beginning, inserted "subject to 15-59-102"; in second sentence, at end, deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-59-105. Quarterly statement and payment of tax.

Collateral References

Licenses *key* 32.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-59-106. Procedure to estimate tax on failure to file statement — penalty and interest.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) at end substituted reference to 15-1-216 for reference to a 1% a month interest rate; in (4) substituted "A penalty imposed by 15-1-216 may be waived by the department pursuant to 15-1-206" for "The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-53-105 is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within 15 days, a lien may be filed as set forth in 15-59-107" at the end of (3); deleted a sentence at the end of (3) that required payment within 15 days of receiving the letter.

Administrative Rules

ARM 42.2.501 Application of partial payments.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Collateral References

Licenses *key* 48.

53 C.J.S. Licenses §§121 through 124.

72 Am. Jur. 2d State and Local Taxation §650.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceedings. 13 ALR Fed. 877.

15-59-107. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted authorization to issue warrant for distraint for a procedure whereby the department filed a lien on all real property of the taxpayer; deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

Collateral References

Licenses *key* 31; Taxation *key* 501 through 514.5.

53 C.J.S. Licenses §§121 through 124.

51 Am. Jur. 2d Licenses and Permits §110; 72 Am. Jur. 2d State and Local Taxation §§798 through 805.

15-59-108. Deposit of taxes.

Compiler's Comments

1995 Amendment: Chapter 18 near middle, after "15-1-501", deleted reference to subsection (6).

1993 Amendment: Chapter 455 after "part" substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Collateral References

Licenses *key* 33; Taxation *key* 906.75.

15-59-109. License tax supplemental.

Collateral References

Licenses *key* 28.

15-59-112. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning inserted reference to penalty; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) substituted "Interest must be added to the deficiency assessment as provided in 15-1-216" for "Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-59-113. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "charged on unpaid taxes as provided in 15-1-216" for "charged on deficiency assessments provided in 15-59-112"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-59-121. Penalty for violations.

Compiler's Comments

1987 Amendment: Near beginning of section deleted references to 15-59-103 and 15-59-111.

Collateral References

Licenses *key* 40.

53 C.J.S. Licenses §§121 through 124.

51 Am. Jur. 2d Licenses and Permits §108.

CHAPTER 60
NURSING FACILITY UTILIZATION FEE

Chapter Compiler's Comments

Preamble: The preamble attached to Ch. 746, L. 1991, provided: "WHEREAS, the Legislature recognizes that the failure to fully fund the cost of nursing home care for Medicaid beneficiaries creates a burden on individuals who pay privately for nursing home care by shifting cost from Medicaid to non-Medicaid residents in our state's nursing homes; and

WHEREAS, the state has the potential of facing a lawsuit from nursing homes if the Legislature fails to fully fund the cost of nursing home care; and

WHEREAS, the Legislature desires to alleviate the cost-shifting from Medicaid to other patients, while bearing in mind the financial circumstances facing the state; and

WHEREAS, it is the intent of the Legislature to find creative financing solutions and to maximize federal participation in the cost of programs wherever possible; and

WHEREAS, it is the intent of the Legislature to use the utilization fee established in this bill as a means of providing additional Medicaid reimbursements to nursing homes; and

WHEREAS, it is the intent of the Legislature that nursing homes carefully consider the increased Medicaid revenues made available by this legislation when determining reasonable rates to be charged to non-Medicaid patients in their facilities; and

WHEREAS, the Legislature enacts the following legislation as a means of relieving privately paying individuals in nursing homes from the burden of costs shifted from the Medicaid program and of maximizing federal funding of this program."

Effective Date — Applicability: Section 22, Ch. 746, L. 1991, provided in part that this chapter, except 15-60-104, is effective July 1, 1991, and applies to all bed days on or after July 1, 1991.

Part 1
General Provisions

15-60-101. Definitions.

Compiler's Comments

2003 Amendment: Chapter 532 in definition of nursing facility inserted (b) to include the Montana mental health nursing care center; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendments: Chapter 418 in definition of nursing facility substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of nursing facility substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 558 in definition of bed day, in first sentence of (b) after "periods", substituted "of 24 hours described in subsection (1)(a) regardless of the source of payment" for "for which the nursing facility is reimbursed by a third-party payor, including but not limited to a private or governmental insurer or public assistance program, but it does not include any period for which the nursing facility may be reimbursed only by the resident, a friend of the resident, or a member of the resident's family"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

15-60-102. Utilization fee for bed days in nursing facilities.

Compiler's Comments

2005 Amendment: Chapter 523 in (1)(b) and (1)(c) near beginning substituted "2006" for "2004"; in (1)(b) increased utilization fee from $1.70 to $4.25; and in (1)(c) increased utilization fee from $2.50 to $5.50. Amendment effective July 1, 2005.

2003 Amendment: Chapter 541 in (1) at end inserted "for each bed day in the facility in the following amounts"; in (1)(a) at end substituted "which must be applied to maintain the price-based average payment rate to nursing facilities at the fiscal year 2003 base amount" for "or each bed day in the facility"; inserted (1)(b) concerning disposition in fiscal year 2004; inserted (1)(c) concerning disposition beginning July 1, 2004; in (2) at end inserted "as follows"; in (2)(a) at beginning inserted reference to amounts collected as provided in subsection (1)(a); inserted (2)(b) concerning amounts collected as provided in subsections (1)(b) and (1)(c); inserted (3) prohibiting placing fee on patient's bill; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendment: Chapter 509 in first sentence, after "of", deleted "$2 for each bed day in the facility during fiscal year 1994 and" and after "facility" deleted "during fiscal year 1995 and each year thereafter" and in second sentence, after "the", substituted "general fund" for "nursing facility state special revenue account established in 15-60-210". Amendment effective July 1, 1995.

1993 Amendment: Chapter 558 in first sentence increased utilization fee from $1 in fiscal year 1992 and $2 in fiscal year 1993 to $2 in fiscal year 1994 and $2.80 in fiscal year 1995 and inserted second sentence requiring deposit of fees in the nursing facility state special revenue account. Amendment effective July 1, 1993.

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

15-60-104. Rulemaking authority.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 746, L. 1991, provided: "A statement of intent is required for this bill because [section 15] [this section] grants the department of revenue authority to adopt rules necessary to implement and administer [sections 1 through 15] [Title 15, ch. 60].

It is the intent of the legislature that, in adopting rules, the department:

(1) provide procedures and forms for reporting bed days that are subject to payment of the utilization fee imposed in [section 2] [15-60-102];

(2) establish requirements for the maintenance of records and other documents required to ensure proper payment of the utilization fee;

(3) develop a process for the estimation and collection of delinquent or unpaid fees;

(4) provide a process for the reconciliation of disputes relating to the payment of utilization fees; and

(5) establish other procedures for the efficient administration of the utilization fee."

Effective Date: Section 22(1), Ch. 746, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

Administrative Rules

Title 42, chapter 31, subchapter 8, ARM Nursing facilities.

Part 2
Collection of Fee

15-60-201. Reporting and collection of fee.

Compiler's Comments

1995 Amendments: Chapter 418 in (2) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (2) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Administrative Rules

Title 42, chapter 31, subchapter 8, ARM Nursing facilities.

ARM 42.31.802 Tax records.

ARM 42.31.803 Estimation and collection of delinquent or unpaid fees.

15-60-202. Audit — records.

Administrative Rules

ARM 42.31.802 Tax records.

15-60-204. Penalty and interest for delinquent fees — waiver.

Compiler's Comments

1999 Amendment: Chapter 427 at end substituted "penalty and interest as provided in 15-1-216 must be added to the fee" for "a penalty of 10% of the amount of the fee due must be assessed unless it is shown that the failure was due to reasonable cause and not neglect"; deleted former (2) that read: "(2) If any fee due under 15-60-102 is not paid when due, interest is added to the tax due at the rate of 12% a year from the due date until paid"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Administrative Rules

ARM 42.31.803 Estimation and collection of delinquent or unpaid fees.

15-60-205. Estimated fee on failure to file.

Compiler's Comments

Coordination Instruction: Section 19, Ch. 746, L. 1991, provided: "If Senate Bill No. 445 is passed and approved and if it includes a section adopting a uniform tax appeal procedure, then the language contained in [sections 7(1) [15-60-205(1)] and 11 [not codified] of this act] is void and the provisions of Senate Bill No. 445 govern the appeal procedures." Senate Bill No. 445 was approved as Ch. 811, L. 1991, and therefore the language contained in [sections 7(1) [15-60-205(1)] and 11 [not codified]] of Ch. 746, L. 1991, is void.

Severability: Section 20, Ch. 746, L. 1991, was a severability clause.

Nonapplicability: Section 21, Ch. 746, L. 1991, provided: "[Sections 1 through 15] [Title 15, ch. 60] and the fee established under [section 2] [15-60-102] do not apply to facilities licensed to provide intermediate developmental disability care and facilities reimbursed as institutions for mental disease under the medicaid program."

Administrative Rules

ARM 42.31.803 Estimation and collection of delinquent or unpaid fees.

15-60-206. Deficiency assessment — penalty and interest — hearing.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) after "payment" substituted second sentence regarding penalty and interest for "and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment bears interest from the date specified in 15-60-203 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Administrative Rules

ARM 42.31.810 Hearing rights.

15-60-208. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "unpaid taxes as provided in 15-1-216" for "delinquent fees"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-60-210. Disposition of fee.

Compiler's Comments

2003 Amendment: Chapter 532 in (1) at beginning inserted exception clause; inserted (2) providing for allocation of utilization fees; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendments: Chapter 18 after "15-1-501" deleted reference to subsection (6).

Chapter 509 at end substituted "general fund" for "nursing facility state special revenue account established in subsection (2)"; deleted (2) that read: "(2) There is a nursing facility account in the state special revenue fund. The purpose of the account is to provide a continuing source of revenue for nursing facility reimbursements as appropriated by the legislature"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments: Chapter 455 in (1), after "must", inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Chapter 558 at end of (1) substituted "nursing facility state special revenue account established in subsection (2)" for "state general fund"; and inserted (2) establishing the nursing facility account. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

15-60-211. State special revenue account.

Compiler's Comments

Effective Date: Section 5, Ch. 541, L. 2003, provided that this section is effective July 1, 2003.

CHAPTER 61
MEDICAL CARE SAVINGS ACCOUNT

Chapter Compiler's Comments

Effective Date: Section 11, Ch. 295, L. 1995, provided: "[This act] [15-61-101, 15-61-102, and 15-61-201 through 15-61-205] is effective January 1, 1996."

Contingent Voidness: Section 12, Ch. 295, L. 1995, provided: "In order to maintain a balanced budget, because [this act] [House Bill No. 560] reduces revenue, it may not be transmitted to the governor unless a corresponding identified reduction in spending is contained in House Bill No. 2. If a corresponding identified reduction in spending is not contained in House Bill No. 2, [this act] is void." The boilerplate language of sec. 13 of House Bill No. 2 stated that a corresponding spending reduction had been accounted for in House Bill No. 2; therefore, the enactment of Ch. 295, L. 1995, was effective as approved.

Chapter Administrative Rules

Title 42, chapter 15, subchapter 6, ARM Medical savings accounts.

Part 1
General Provisions

15-61-102. Definitions.

Compiler's Comments

2005 Amendment: Chapter 130 in definition of ERISA at end substituted "29 U.S.C. 1001, et seq." for "Public Law 93-406". Amendment effective October 1, 2005.

1999 Amendment: Chapter 51 in (1)(e) after "holder" deleted "of". Amendment effective March 15, 1999.

1997 Amendment: Chapter 296 in definition of account administrator inserted (e) through (h) to include the account holder or an employee, a broker, insurance producer, or investment adviser, an attorney, or a licensed public accountant or an enrolled agent; and made minor changes in style. Amendment effective April 18, 1997.

Retroactive Applicability: Section 4, Ch. 296, L. 1997, provided: "[This act] [15-61-102, 15-61-203, and 15-61-204] applies retroactively, within the meaning of 1-2-109, to medical savings accounts created prior to [the effective date of this act]." Effective April 18, 1997.

Administrative Rules

ARM 42.15.605 Medical savings accounts — definitions.

Part 2
Medical Care Savings Account — Administration

15-61-201. Establishment of account.

Administrative Rules

ARM 42.15.401 Income tax — personal and dependent exemptions — definitions.

15-61-202. Tax exemption — conditions.

Compiler's Comments

1999 Amendment: Chapter 429 in (8) at end inserted provision relating to pay-on-death beneficiary; and made minor changes in style. Amendment effective October 1, 1999.

Administrative Rules

ARM 42.15.602 Medical savings account administrator reporting and payments.

15-61-203. Withdrawal of funds from account for purposes other than medical expenses and long-term care.

Compiler's Comments

1997 Amendment: Chapter 296 inserted (3) defining last business day of the account administrator's business year. Amendment effective April 18, 1997.

Retroactive Applicability: Section 4, Ch. 296, L. 1997, provided: "[This act] [15-61-102, 15-61-203, and 15-61-204] applies retroactively, within the meaning of 1-2-109, to medical savings accounts created prior to [the effective date of this act]." Effective April 18, 1997.

Administrative Rules

ARM 42.15.603 Medical savings account — withdrawals.

ARM 42.15.604 Individual liability.

15-61-204. Administration of account.

Compiler's Comments

1999 Amendment: Chapter 429 in (1)(a) inserted exception clause; in (1)(b) at end substituted "regular deposit or share account and has the same rights and duties pertaining to the account as pertain to a regular deposit or share account. Notwithstanding any other provision of this chapter, a financial institution is not responsible for determining whether a medical expense is eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals are for eligible and nonreimbursable medical expenses" for "regular deposit. A financial institution is not responsible for the use or application of funds"; in (7)(b) at end inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 296 in (1) inserted second and third sentences requiring financial institution to administer account as regular deposit and relieving institution from responsibility for use or application of funds; in (4) inserted second sentence placing burden of proving eligible withdrawal on the account holder; and inserted (7) outlining procedures for an account administrator who is also the account holder. Amendment effective April 18, 1997.

Retroactive Applicability: Section 4, Ch. 296, L. 1997, provided: "[This act] [15-61-102, 15-61-203, and 15-61-204] applies retroactively, within the meaning of 1-2-109, to medical savings accounts created prior to [the effective date of this act]." Effective April 18, 1997.

Administrative Rules

ARM 42.15.601 Medical savings account administrator registration.

ARM 42.15.602 Medical savings account administrator reporting and payments.

CHAPTER 62
FAMILY EDUCATION SAVINGS ACT

Chapter Compiler's Comments

Effective Date: Section 15, Ch. 540, L. 1997, provided: "[This act] is effective July 1, 1997."

Chapter Administrative Rules

Title 42, chapter 15, subchapter 8, ARM Family Education Savings Act.

Part 1
General Provisions

15-62-103. Definitions.

Compiler's Comments

2005 Amendment: Chapter 549 in definition of account inserted "participating" and after "account" deleted "or savings account"; in definition of account owner inserted "who enters into a participating trust agreement and who is"; inserted definitions of participating trust agreement, trust, trustee, and trust interest; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 566 in definition of financial institution after "trust company" substituted "investment adviser" for "mutual fund"; inserted definition of investment products; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 468 in definition of higher education institution after "means" substituted "an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5)" for "(a) an institution described in the Higher Education Act of 1965, 20 U.S.C. 1141(a) and 1088(a); or

(b) an area vocational educational school, as defined in section 521(3) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2471(3)(C) and (3)(D), that is located in this state"; in definition of member of the family after "means" substituted "with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2)" for "(a) an ancestor of a person;

(b) the spouse of a person;

(c) a lineal descendant, including a legally adopted child, of a person, of a person's spouse, or of a parent of a person; or

(d) the spouse of any lineal descendant described in subsection (8)(c)"; in definition of nonqualified withdrawal at end of (d) after "beneficiary" inserted "described in 15-62-202"; in definition of qualified higher education expenses after "means" substituted "qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3)" for "tuition and fees required for enrollment or attendance of a designated beneficiary at a higher education institution"; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.15.805 Definitions.

Part 2
Family Education Savings Program
Account — Administration

15-62-201. Program requirements — application — establishment of account — qualified and nonqualified withdrawal — penalties.

Compiler's Comments

2005 Amendment: Chapter 549 in (1) inserted first and second sentences regarding accounts in trust and in last sentence near beginning substituted "participate in the program and open" for "deposit money into" and inserted "into which funds will be deposited"; inserted (1)(a) regarding entry into participating trust agreement; inserted (1)(b)(v) regarding designation of financial institution; in (10) near middle inserted reference to violation of Internal Revenue Code; deleted former (11) that read: "(11) If, pursuant to 15-62-203(10), the board terminates the authority of a financial institution to serve as program manager and accounts held by or through the program manager must be moved from that financial institution to another financial institution, the board shall select the financial institution to which the accounts are to be moved. If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts unless the account owner is permitted under the applicable rules of the internal revenue service to select new investments for the account without violating rules prohibiting investment direction"; in (12) in first sentence near middle inserted "whose participating trusts are invested with the institution"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 566 in (3) at end of second sentence of introductory clause after "withdrawal" inserted "to the extent that the board concludes that it is necessary for the board or program manager to make that determination"; in (4) at beginning after "If" substituted "the board determines that it is required to impose a penalty on nonqualified withdrawals for the program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in" for "a nonqualified withdrawal is made from an account"; in (5) near end after "state tuition program" inserted "or a qualified tuition program"; in (6)(a) near middle after "state tuition program" inserted "or qualified tuition program"; in (7) near beginning of introductory clause after "penalty" substituted "imposed under subsection (4)" for "amount"; in (11) at beginning of first sentence after "If" inserted "pursuant to 15-62-203(10)", after "institution to" substituted "serve as program manager" for "hold accounts", after "accounts" inserted "held by or through the program manager", and at end after "institution" substituted "to which the accounts are to be moved" for "and type of investment to which the balance of the account is moved" and at beginning of second sentence inserted "If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts", near middle after "unless the" inserted "account owner is permitted under the applicable rules of the", and at end after "service" substituted "to select new investments for the account without violating rules prohibiting investment direction" for "provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified state tuition plan"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 468 in (4) deleted former second sentence that read: "A nonqualified withdrawal constitutes income for Montana purposes to the extent it was previously deducted from income in calculating Montana individual income taxes." Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Administrative Rules

Title 42, chapter 15, subchapter 8, ARM Family Education Savings Act.

15-62-203. Selection of financial institution as program manager — contract — termination.

Compiler's Comments

2005 Amendment: Chapter 549 in (1) in first sentence near beginning inserted "operation of the", in second sentence near middle inserted reference to submittal of application to program manager and inserted "in the trust", and inserted third sentence regarding deposit of money by payment to program manager; in (4) inserted second sentence regarding terms and conditions in contracts; in (6)(f) near beginning substituted reference to participating trusts in name of and for benefit of trust for "all accounts in trust for the benefit of this state"; inserted (6)(g) authorizing assistance to trustee; in (9) inserted first sentence regarding action by board in event of nonrenewal of institution as program manager and in second sentence at beginning inserted exception clause; in (9)(a) inserted "through the efforts of the financial institution", inserted "by the trustee or the board", and at end after "accounts" deleted "in existence at the time of nonrenewal of a contract"; in (9)(b) at beginning inserted "the funds in" and after "new accounts" substituted "established after the termination may not be invested by or through the" for "may not be placed with that"; in (9)(c) at beginning substituted "participating trusts invested by or through the financial institution" for "except as provided in subsection (10), accounts under the supervision of the program manager" and after "prior to the nonrenewal" inserted reference to selection by account owner of different investment product; inserted (9)(d) regarding role of financial institution and services provided by institution; in (10)(a) in first sentence near middle after "financial institution" inserted reference to prohibiting investment of funds under subsection (9) and in second sentence near beginning inserted "or investment is prohibited", substituted "trustee" for "board", substituted "account funds or assets" for "accounts", substituted "reinvest the funds or assets by or through" for "transfer the accounts to", after "program manager" inserted "by the board", inserted "the same investment products or", and inserted "selected by the board that are"; inserted (10)(b) regarding notice to account owners; inserted (10)(c) authorizing emergency action by board or trustee; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 566 throughout section substituted references to program manager for references to depository and manager or depository and program manager and

substituted references to investment products for references to financial instruments or investment instruments; in (1) at end of second sentence after "accounts at" substituted "the location of or through the program manager" for "the depository" and inserted third sentence allowing investment of accounts in one or more approved investment products; in (2) at end substituted "that they propose to offer through the program" for "that will be held in accounts"; in (5) near beginning of first and second sentences of introductory clause substituted "board" for "committee"; in (5)(a) after "state tuition program" inserted "or qualified tuition program"; in (6)(a) near middle after "state tuition" substituted "program or qualified tuition program" for "plan"; in (6)(d) at end inserted "and to comply with any state or federal tax reporting requirements"; in (9)(a) after "established" deleted "and held in investment instruments at the financial institution"; inserted (9)(d) requiring that accounts continue to be invested in the financial products in which they were invested prior to the nonrenewal; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 468 in (5) near beginning of introductory clause after "one financial institution" substituted "to serve as depository and program manager. The committee may select more than one kind of investment instrument to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment instruments must take into account:

(a) the requirements for qualifying as a qualified state tuition program under section 529 of the Internal Revenue Code (26 U.S.C. 529);

(b) differing needs of contributors regarding risk and potential return of investment instruments; and

(c) administrative costs and burdens that may be imposed as the result of the decision" for "and investment for the program if:

(a) the internal revenue service has provided guidance that giving a contributor a choice of two or more investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code, 26 U.S.C. 529; and

(b) the committee concludes that the choice of instrument vehicles is in the best interest of program participants and will not interfere with the promotion of the program". Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

15-62-206. Limitations.

Compiler's Comments

2003 Amendment: Chapter 566 in (3) near beginning after "application" substituted "offering or disclosure document, and any other type of document identified by the board" for "deposit slip, or other document". Amendment effective October 1, 2003.

15-62-207. Deductions for contributions.

Compiler's Comments

2003 Amendment: Chapter 566 near beginning of first sentence after "contributes to" substituted "one or more accounts" for "an account" and near end after "by the" substituted "total amount of the contributions" for "amount of the contribution"; in second sentence inserted requirement that contributor's child be a Montana resident; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.15.802 Contributions to family education savings program accounts.

15-62-208. Tax on certain withdrawals of deductible contributions.

Compiler's Comments

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.15.803 Withdrawals from family education savings program accounts.

ARM 42.15.804 Verification of family education savings program account contributions and withdrawals.

15-62-209. Access to records.

Compiler's Comments

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Part 3
Family Education Savings Trust

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

CHAPTER 63
FIRST-TIME HOME BUYER SAVINGS ACCOUNT

Chapter Compiler's Comments

Effective Date: Section 10, Ch. 544, L. 1997, provided: "[This act] is effective January 1, 1998."

Chapter Administrative Rules

Title 42, chapter 15, subchapter 9, ARM First-time home buyer credits.

Part 1
General Provisions

15-63-102. Definitions.

Administrative Rules

ARM 42.15.901 Definitions.
ARM 42.15.902 First-time home buyer account administrator registration.
ARM 42.15.907 First-time home buyer account — noneligible withdrawal for nonresident.

Part 2
Account Administration

15-63-202. Tax exemption — conditions.

Compiler's Comments

1999 Amendment: Chapter 429 in (9) at end inserted provision relating to pay-on-death beneficiary. Amendment effective October 1, 1999.

Administrative Rules

ARM 42.15.903 Account administrator reporting and payments.

15-63-203. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.

Administrative Rules

ARM 42.15.904 First-time home buyer account - withdrawals.
ARM 42.15.905 Individual liability.
ARM 42.15.906 Tax exemption for first-time home buyer.
ARM 42.15.907 First-time home buyer account — noneligible withdrawal for nonresident.

15-63-204. Administration of account.

Compiler's Comments

1999 Amendment: Chapter 429 in (5)(b) at end inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

Administrative Rules

ARM 42.15.902 First-time home buyer account administrator registration.
ARM 42.15.903 Account administrator reporting and payments.

CHAPTER 65
LODGING FACILITY USE TAX

Chapter Attorney General's Opinions

Applicability of Open Meeting Law to Local Chamber of Commerce Receiving Bed Tax Funds: A local chamber of commerce, when acting as a nonprofit convention and visitor bureau, is an organization supported at least in part by public funds in the form of bed tax money. By accepting public funds and deciding how those funds are to be spent, the convention and visitor bureau takes on the responsibility of accounting to the public for those funds. Therefore, meetings of a local chamber of commerce or other organization recognized and acting as a nonprofit convention and visitor bureau must be open to the public in accordance with the open meeting law unless the demands of individual privacy of the chamber clearly exceed the merits of public disclosure. 44 A.G. Op. 40 (1992).

Chapter Collateral References

Tax on hotel-motel room occupancy. 58 ALR 4th 274.

Part 1
General Provisions

Part Compiler's Comments

Plan for Tourist Welcoming and Information Centers: Chapter 688, L. 1989, provided: "AN ACT REQUIRING THE DEPARTMENT OF COMMERCE, ACTING AS LEAD AGENCY IN CONJUNCTION WITH OTHERS, TO PRESENT TO THE 52ND LEGISLATURE A PLAN FOR TOURIST WELCOMING AND INFORMATION CENTERS IN MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, travel and tourism are among Montana's leading industries and are steadily and rapidly increasing in importance in the Montana economy; and

WHEREAS, the competition among states and provinces to attract travelers and vacationers to scenic, recreational, and historic locations adds new dimensions to the efforts of each state and province to increase its share of the profits derived from this industry; and

WHEREAS, travel and tourism detract nothing from the attributes of Montana and the impact on the environment is negligible or subject to amelioration; and

WHEREAS, the Legislature intended that the proceeds of the lodging facility use tax enacted in 1987 be dedicated to the promotion of Montana's travel and tourism industries; and

WHEREAS, the Department of Commerce is charged with the responsibility of administering the uses of the proceeds of the lodging facility use tax; and

WHEREAS, the Legislature finds that informing visitors to Montana of the many points of scenic interest, historical sites, and recreational opportunities awaiting them under the Big Sky promises benefits not only for the travel and tourism industry but also for all Montanans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Department of commerce to present plan for welcoming and information centers. (1) The department of commerce shall develop and present to the 52nd legislature on or before the second legislative day a plan for a system of up-to-date, technologically complete, and architecturally appropriate visitor welcoming and information centers to be located in Montana. The department shall act as the lead agency in preparing the plan, in cooperation with the university system travel research program, the department of highways [now department of transportation], the department of fish, wildlife, and parks, the Montana state university [now Montana state university-Bozeman] school of architecture, and other appropriate agencies.

(2) The plan for welcoming and information centers must include:

(a) designation of the most beneficial and cost-effective sites;

(b) a determination of the land needed for the centers and the estimated cost of acquiring the land;

(c) architectural and artistic designs for the centers that are consistent with the state of the art and that provide for all services necessary to achieve the purposes of [this act];

(d) qualifications for personnel to staff the centers;

(e) suggestions for periods during each year when full or partial staffing and operation of the centers is needed; and

(f) a formal, documented proposal for funding the design, construction, maintenance, and operation of the centers.

Section 2. Funding. (1) Funding to implement [this act] must be provided from existing appropriations as follows:

(a) two-thirds by the university system from the special revenue fund in 15-65-121(1)(b); and

(b) one-third by the department of highways [now department of transportation] from the special revenue fund.

(2) Total planning costs may not exceed $49,000.

Section 3. Effective date. [This act] is effective on passage and approval." Approved May 18, 1989.

15-65-101. Definitions.

Compiler's Comments

2001 Amendment: Chapter 195 in definition of nonprofit convention and visitors bureau near end after "consolidated city-county" inserted "resort area, or resort area district"; inserted definitions of resort area and resort area district; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules

ARM 42.14.101 Definitions.
ARM 42.14.102 Who must collect tax and file returns.
ARM 42.14.103 Exempt facilities/accommodation charges.

15-65-102. Rulemaking authority.

Compiler's Comments

1987 Statement of Intent: The statement of intent attached to Ch. 607, L. 1987, provided: "This bill needs a statement of intent because it allows the department of revenue and department of commerce to adopt rules negotiating the administration of this act.

The rules will be necessary to effectively and efficiently collect the tax and disburse the funds. This includes rules clarifying persons subject to the tax, reporting requirements, recordkeeping requirements, qualification for funds requirements, delineation/clarification of the statutorily created council powers, and other requirements. Since this is a new tax in Montana, it is anticipated that many issues will arise requiring rulemaking for resolution.

The intent of the legislature in exempting certain facilities that charge rates not exceeding 60% of the state rate for state officers and employees traveling in Montana is to avoid taxing rooms that are primarily used by pensioners and similarly disposed persons who may use a hotel as a residence, but who nonetheless rent a room by the day or week. Such facilities may also rent rooms to drop-in trade from time to time, but such trade is not the primary business of the facility. Rules adopted should be sensitive to drawing the distinction authorized by the legislature."

Administrative Rules

Title 42, chapter 14, ARM Lodging facility use tax.

15-65-111. Tax rate.

Administrative Rules

ARM 42.14.102 Who must collect tax and file returns.
ARM 42.14.103 Exempt facilities/accommodation charges.
ARM 42.14.104 Multipurpose facilities.
ARM 42.14.105 Combined charge for services.

15-65-112. Collection and reporting.

Compiler's Comments

1991 Amendment: In (2), in second sentence after "due", substituted "on or before the last day of the month" for "within 30 days". Amendment effective April 27, 1991.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Administrative Rules

ARM 42.14.102 Who must collect tax and file returns.
ARM 42.14.107 Quarterly reports and payments — due dates.

15-65-113. Audits — records.

Administrative Rules

ARM 42.14.105 Combined charge for services.
ARM 42.14.109 Records required — audit.

15-65-114. Registration number — application to department.

Administrative Rules

ARM 42.14.106 Facility registration.
ARM 42.14.107 Quarterly reports and payments — due dates.
ARM 42.14.108 Penalties and interest.

15-65-115. Failure to pay or file — penalty and interest — review — interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (3)(b) deleted former second sentence that read: "The tax is due and payable at the expiration of 30 days after the notice and demand were mailed" and in second sentence at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must be computed"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (1) at end substituted "a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206" for "a penalty of 10% of the tax that should have been collected during the calendar quarter. Upon a showing of good cause, the department of revenue may waive the penalty"; in (2) at end substituted "penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206" for "a penalty of 10% of the amount that was not paid. Upon a showing of good cause, the department may waive the penalty"; in (3)(b) increased delinquency from 10 days to 30 days and at end substituted reference to 15-1-216 for reference to a 1% a month interest rate; deleted former (4) that read: "(4) The amount required to be paid under 15-65-112 accrues interest at the rate of 1% a month or part thereof from delinquency until paid"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendments: Chapter 676 in (1) and (2) increased penalty from 2% to 10%; and inserted (3)(b) providing for notice, date of payment, interest, and interest on delinquency. Amendment effective April 27, 1991.

Chapter 811 in (3) inserted last two sentences relating to review of assessment under 15-1-211.

Coordination: Section 19, Ch. 676, L. 1991, was a coordination section that provided that if Senate Bill No. 445 was passed and approved and if it included a section adopting a uniform tax appeal procedure, the bracketed language that constituted subsection (3)(b) of this section was void. Senate Bill No. 445 was passed and approved as Ch. 811, L. 1991.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Administrative Rules

ARM 42.14.107 Quarterly reports and payments — due dates.
ARM 42.14.108 Penalties and interest.
ARM 42.14.110 Failure to furnish requested information.

15-65-116. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "unpaid taxes as provided in 15-1-216" for "deficiency assessments"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Effective Date: Section 21, Ch. 676, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 27, 1991.

15-65-121. Distribution of tax proceeds.

Compiler's Comments

2005 Amendment: (Temporary version) Chapter 130 in (1) deleted former sixth sentence that read: "For the fiscal year ending June 30, 2003, the amount of $1.7 million must be deposited in the state general fund"; in (1)(d) after "commerce" deleted "except as provided in section 1, Chapter 11, Special Laws of August 2002"; and made minor changes in style. Amendment effective October 1, 2005.

2002 Amendments — Composite Section: (Temporary version) Chapter 11 in (1)(d) inserted "except as provided in section 1, Chapter 11, Special Laws of August 2002". Amendment effective August 16, 2002.

(Temporary version) Chapter 13 in (1) near middle inserted "For the fiscal year ending June 30, 2003, the amount of $1.7 million must be deposited in the state general fund." Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2001 Amendments — Composite Section: Chapter 195 in (1)(e)(ii) in three places after "consolidated city-county" inserted "resort area, or resort area district"; in (2) near beginning and near end after "consolidated city-county" inserted "resort area, or resort area district"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 469 in (1) inserted fifth sentence requiring deposit of $400,000 each year in the Montana heritage preservation and development account and near middle of sixth sentence after "state agencies" inserted "or deposited in the heritage preservation and development account"; and made minor changes in style. Amendment effective April 30, 2001, and terminates July 1, 2007.

1999 Amendment: (Temporary version) Chapter 490 in (1) in fourth sentence substituted "fund or funds from which in-state lodging expenditures were paid by state agencies" for "general fund" and in seventh sentence inserted "fund or funds from which in-state lodging expenditures were paid by state agencies or in the" and after "development account" deleted "or the general fund"; and made minor changes in style. Amendment effective July 1, 1999.

(Version effective July 1, 2001) In (1) in fourth sentence substituted "fund or funds from which in-state lodging expenditures were paid by state agencies" for "general fund" and in fifth sentence substituted "fund or funds from which in-state lodging expenditures were paid by state agencies" for "general fund"; and made minor changes in style.

Effective Date — Applicability: Section 3, Ch. 490, L. 1991, provided: "[This act] is effective July 1, 1999, and applies to in-state lodging expenditures incurred by state agencies after June 30, 1999."

1997 Amendment: Chapter 469 in (1) inserted fifth sentence concerning allocation to heritage preservation and development account, inserted sixth sentence concerning allocation to Fort Peck Interpretive Center, and in seventh sentence inserted "Montana heritage preservation and development account or the". Amendment effective May 1, 1997, and terminates July 1, 2001.

Severability: Section 21, Ch. 469, L. 1997, was a severability clause.

Termination: Section 23(3), Ch. 469, L. 1997, provided: "[Section 11] [15-65-121] terminates July 1, 2001."

1995 Amendments: Chapter 18 in (1), in first and third sentences after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

Chapter 442 in (1)(d) deleted introductory clause that read: "the balance of the proceeds as follows" and changed allocation from 75% of remainder to 67.5% of total; in (1)(e)(i) and (1)(e)(ii) changed allocation from 25% of balance to 22.5% of total; deleted (4) that read: "(4) The department of commerce may use general fund loans for efficient implementation of this section"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Code Commissioner Correction: In (1)(c), the Code Commissioner deleted a reference to 23-1-131 pursuant to the authority contained in sec. 73, Ch. 18, L. 1995.

1993 Amendments: Chapter 455 in first and third sentences of (1) inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Chapter 574 in (1), near middle, substituted "subsections (1)(a) through (1)(d)" for "subsections (1)(a) through (1)(c)" and near end inserted "and to the department of fish, wildlife, and parks"; inserted (1)(c) giving that Department 6.5% for maintenance of state park facilities; in (1)(d) substituted "subsection (1)(d)(iii)" for "subsection (1)(c)(iii)"; and made minor changes in style. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendment: Chapter 11, Sp. L. July 1992, in (1), at beginning, inserted exception clause; and inserted (5) transferring $220,000 from the accommodations tax account to the general fund. Amendment effective August 6, 1992, and terminates September 2, 1992.

Severability: Section 7, Ch. 11, Sp. L. July 1992, was a severability clause.

1989 Amendments: Chapter 83 in (2) substituted "regional nonprofit tourism corporation in the region" for "tourism region".

Chapter 647 in (1) inserted third and fourth sentences relating to determining and deducting 4% of state agency in-state lodging expenses for deposit in the state general fund and in fifth sentence inserted "or deposited in the general fund". Amendment effective July 1, 1989.

1987 Amendment: In (1) substituted second sentence and introductory portion of third sentence relating to allocation of tax proceeds.

Termination of Statutory Appropriation: Section 15, Ch. 607, L. 1987, terminated the statutory appropriation contained in the temporary version and amended (1) of the version effective July 1, 1989, as indicated in the compiler's comment.

Administrative Rules

ARM 42.14.111 Summary report required.

15-65-122. Qualification of nonprofit entities for receipt of funds — limitation on administrative costs.

Compiler's Comments

2001 Amendment: Chapter 195 in (1) near end after "consolidated city-counties" inserted "resort areas, and resort area districts"; and made minor changes in style. Amendment effective July 1, 2001.

15-65-131. State agencies to account for in-state lodging expenditures.

Compiler's Comments

1999 Amendment: Chapter 490 in first sentence near end substituted "appropriate fund or funds" for "general fund" and inserted second sentence regarding reimbursement of state general fund; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 3, Ch. 490, L. 1991, provided: "[This act] is effective July 1, 1999, and applies to in-state lodging expenditures incurred by state agencies after June 30, 1999."

Effective Date: Section 5, Ch. 647, L. 1989, provided that this section is effective July 1, 1989.

CHAPTER 66
HOSPITAL FACILITY UTILIZATION FEE

Chapter Compiler's Comments

Extension of Termination Date: Section 4, Ch. 606, L. 2005, amended sec. 20, Ch. 390, L. 2003, by extending the termination date imposed by Ch. 390 to June 30, 2007.

Severability: Section 17, Ch. 390, L. 2003, was a severability clause.

Effective Date: Section 19, Ch. 390, L. 2003, provided: "[This act] is effective July 1, 2003."

Termination: Section 20, Ch. 390, L. 2003, provided: "[This act] terminates June 30, 2005."

Part 1
General Provisions

15-66-101. Definitions.

Compiler's Comments

2005 Amendment: Chapter 606 in definition of hospital at end inserted "and includes a critical access hospital"; and made minor changes in style. Amendment effective May 6, 2005, and terminates June 30, 2007.

Effective Date: Section 6, Ch. 606, L. 2005, provided: "[This act] is effective on passage and approval." Chapter 606 was passed by the legislature and delivered to the governor on April 25, 2005. Pursuant to 5-4-307(1), the bill became law on May 6, 2005, without being returned by the governor within 10 days after delivery.

15-66-102. Utilization fee for inpatient bed days.

Compiler's Comments

2005 Amendment: Chapter 606 deleted former (1)(a) that read: "(a) $32.44 for each inpatient bed day between July 1, 2003, and December 31, 2003"; inserted (1)(b) establishing the fee for each inpatient bed day between July 1, 2005, and December 31, 2005; inserted (1)(c) establishing the fee for each inpatient bed day between January 1, 2006, and December 31, 2006; inserted (1)(d) providing that the fee be set by rule after January 1, 2007; inserted (2) requiring that the department determine the fee by rule prior to each calendar year; in (3)(a) near end after "revenue" substituted "account" for "fund"; and made minor changes in style. Amendment effective May 6, 2005, and terminates June 30, 2007.

Cessation on Collection and Expenditure: Section 5, Ch. 606, L. 2005, provided: "The collection of the utilization fee under 15-66-102 and 15-66-201 and related expenditures of the revenue authorized in House Bill No. 2 must cease if a court issues a final order that the state expenditure limit contained in 17-8-106 has been exceeded. If expenditures of the revenue authorized in House Bill No. 2 cease, any collected but unexpended utilization fees must be returned to the hospital."

Effective Date: Section 6, Ch. 606, L. 2005, provided: "[This act] is effective on passage and approval." Chapter 606 was passed by the legislature and delivered to the governor on April 25, 2005. Pursuant to 5-4-307(1), the bill became law on May 6, 2005, without being returned by the governor within 10 days after delivery.

Part 2
Collection of Fee

15-66-201. Reporting and collection of fee.

Compiler's Comments

2005 Amendment: Chapter 606 in (1) near beginning of first sentence after "January 31" substituted "2006" for "2004" and near middle after "during" substituted "each of the 6-month periods beginning January 1, 2005, and ending June 30, 2005, and beginning July 1, 2005, and ending December 31, 2005" for "the 6-month period beginning July 1, 2003, and ending December 31, 2003" and in second sentence after "equal to the" inserted "appropriate" and at end after "15-66-102" deleted "(1)(a)"; deleted former (1)(b) that read: "(b) On or before January 31, 2004, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the 6-month period beginning July 1, 2003, and ending December 31, 2003"; in (2)(a) at end after "15-66-102" deleted "(1)(b)"; in (2)(b) at beginning deleted "Except as provided in subsection (1)"; and made minor changes in style. Amendment effective May 6, 2005, and terminates June 30, 2007.

Cessation on Collection and Expenditure: Section 5, Ch. 606, L. 2005, provided: "The collection of the utilization fee under 15-66-102 and 15-66-201 and related expenditures of the revenue authorized in House Bill No. 2 must cease if a court issues a final order that the state expenditure limit contained in 17-8-106 has been exceeded. If expenditures of the revenue authorized in House Bill No. 2 cease, any collected but unexpended utilization fees must be returned to the hospital."

Effective Date: Section 6, Ch. 606, L. 2005, provided: "[This act] is effective on passage and approval." Chapter 606 was passed by the legislature and delivered to the governor on April 25, 2005. Pursuant to 5-4-307(1), the bill became law on May 6, 2005, without being returned by the governor within 10 days after delivery.

15-66-206. Deficiency assessment — penalty and interest — hearing.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) in first sentence at end after "hospital" deleted "and the fees become due and payable at the expiration of 10 days from the date of the notice and demand" and in second sentence at beginning before "any" inserted "Penalty and interest must be added to" and after "assessment" substituted "as provided in 15-1-216" for "bears interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

CHAPTER 67
INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED — UTILIZATION FEE

Chapter Compiler's Comments

Severability: Section 19, Ch. 531, L. 2003, was a severability clause.

Effective Date: Section 20, Ch. 531, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 29, 2003.

Retroactive Applicability: Section 21, Ch. 531, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002."

Part 1
General Provisions

15-67-101. Definitions.

Compiler's Comments

2005 Amendment: Chapter 377 in definition of intermediate care facility at end after "50-5-238" inserted "or an intermediate care facility for the mentally retarded that is in compliance with the federal standards provided in 42 CFR, part 483, subpart I, for medicaid conditions of participation". Amendment effective April 25, 2005.

Retroactive Applicability: Section 4, Ch. 377, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

15-67-102. Utilization fee for resident bed days.

Compiler's Comments

2005 Amendment: Chapter 377 in (2) near beginning increased utilization fee from 5% to 6%. Amendment effective April 25, 2005.

Retroactive Applicability: Section 4, Ch. 377, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Part 2
Collection of Fee

15-67-206. Deficiency assessment — penalty and interest — hearing.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) in first sentence at end after "facility" deleted "and the fees become due and payable at the expiration of 10 days from the date of the notice and demand" and in second sentence at beginning inserted reference to penalty and after "assessment" inserted "and". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

CHAPTER 68
SALES TAX

Chapter Compiler's Comments

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Effective Date: Section 61(1), Ch. 544, L. 2003, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval." Approved April 30, 2003.

Applicability: Section 62(1)(b) and (1)(c), Ch. 544, L. 2003, provided: "(1) [This act] applies to the sale of the following goods and services:

[. . .]

(b) accommodation and campground charges under [section 3(1)(b) and (3)(a)(ii)] [15-68-102(1)(a) and (3)(a)(i)] made on or after June 1, 2003; and

(c) base rental charges for rental vehicles under [section 3(1)(c) and (3)(a)(iii)] [15-68-102(1)(b) and (3)(a)(ii)] made on or after July 1, 2003." In sec. 62(1)(b) and (1)(c), pursuant to sec. 138, Ch. 114, L. 2003, the code commissioner substituted "(1)(a)" for "(1)(b)", "(3)(a)(i)" for "(3)(a)(ii)", "(1)(b)" for "(1)(c)", and "(3)(a)(ii)" for "(3)(a)(iii)".

Part 1
Imposition of Tax

15-68-101. Definitions.

Compiler's Comments

2005 Amendment: Chapter 542 in definition of motor vehicle after first "defined in" substituted "61-1-101" for "61-1-139", after second "defined in" substituted "61-1-101" for "61-1-105", after third "defined in" substituted "61-1-101" for "61-1-106", and after fourth "defined in" substituted "61-1-101" for "61-1-133". Amendment effective January 1, 2006.

Part 5
Returns and Payment

15-68-513. Examination of return — adjustments — penalty and interest — delivery of notices and demands.

Compiler's Comments

2005 Amendment: Chapter 594 in (2)(a) after "department" deleted "within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return"; inserted (2)(b) related to penalty and interest; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

CHAPTER 70
GASOLINE AND VEHICLE FUELS TAXES

Chapter Compiler's Comments

Transfer of Functions: Sections 12 through 14, Ch. 512, L. 1991, provided: "Section 12. Transfer of rulemaking authority. Any existing authority of the department of highways, the department of commerce, or the department of revenue to make rules on the various functions transferred by the provisions of [sections 1 through 14] is extended to the provisions of [sections 1 through 14].

Section 13. Application of transfer provisions. The provisions of 2-15-131 through 2-15-137 govern:

(1) the merger into the department of transportation [of] the functions of the department of highways and those functions of the departments of commerce and revenue specified in [sections 1 through 14]; and

(2) the transfer of the various functions contained in [sections 1 through 14].

Section 14. Governor to implement. The governor shall implement the provisions of [sections 1 through 14] by executive order."

Section Not Codified: Section 84-723, R.C.M. 1947, which transferred the duty of collecting the gasoline distributors' and dealers' license tax from the State Treasurer to the Department of Revenue (transferred to Department of Transportation by Ch. 512, L. 1991), was not codified in

the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1927, as amended by sec. 13, Ch. 516, L. 1973, and sec. 7, Ch. 286, L. 1977.

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue (transferred to Department of Transportation by Ch. 512, L. 1991) and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue (transferred to Department of Transportation by Ch. 512, L. 1991), while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Administrative Rules

Title 18, chapter 9, ARM Motor fuels — gasoline tax.

Title 18, chapter 10, ARM Motor fuels — other fuels.

Title 18, chapter 11, ARM Motor fuels — seizure.

Chapter Collateral References

Licenses *key* 27 through 35.

53 C.J.S. Licenses §§50 through 55.

71 Am. Jur. 2d State and Local Taxation §§616 through 634.

Provisions of tax statute as to time for performance of acts by officers or boards as mandatory or directory. 151 ALR 248.

Constitutionality and construction of gasoline tax statutes. 47 ALR 980, supplemented in 84 ALR 839 and 111 ALR 185.

Part 1
General Provisions

15-70-101. Disposition of funds.

Compiler's Comments

2003 Amendment: Chapter 594 in (5) at end after "excess of" substituted "$25,000" for "$4,000". Amendment effective May 9, 2003.

2001 Amendment: Chapter 158 in (2)(a) increased amount from $54,000 to $100,000; in (2)(b) decreased amount from $6,323,000 to $6,306,000; in (2)(c) decreased amount from $10,389,000 to $10,360,000; and made minor changes in style. Amendment effective July 1, 2001.

2000 Amendment by Referendum: Chapter 515, L. 1999, in (1) inserted second sentence concerning deposit of interest and income earned on account. Amendment effective January 1, 2001.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52, Ch. 515, L. 1999, provided: "(1) If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.

(2) [Sections 12, 13, and 46] are effective January 1, 2001."

1999 Amendment: Chapter 415 in middle of second sentence in (3)(a) after "former city" inserted "unless revised boundaries based on the location of the urban area have been approved by the department of transportation". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 415, L. 1999, provided: "WHEREAS, gasoline and fuel tax revenue is allocated among cities, towns, and counties pursuant to 15-70-101, MCA, based on a formula that distinguishes between rural and urban areas; and

WHEREAS, the boundaries between urban and rural areas change over time; and

WHEREAS, the boundary between the urban area and the rural area for a consolidated city-county government should be revised to reflect changes in settlement patterns over time."

1997 Amendment: Chapter 239 throughout section, in seven places, inserted "and consolidated city-county governments"; in (2)(a) substituted "local" for "rural"; in (2)(a)(i) and (2)(c)(ii), in two places, substituted "national highway system" for "federal aid interstate system" and in two places, before "primary system", deleted "federal aid"; inserted (3) regarding allocation of funds to consolidated city-county governments; in (4), near end of first sentence after "that are part of the", deleted "federal aid"; in (6), at end, substituted "annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census" for "by the last preceding official federal census"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 18 in (1), in two places after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

Chapter 509 in (1) and (2), after "chapter", deleted "except those collected by a justice's court"; near beginning, after "taxes", deleted "interest and penalties" and after "placed in" inserted "a highway revenue account in"; in (2), near beginning before "collected", substituted "taxes" for "funds"; in (8), at end, deleted "only"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 10 in (1), before "must be allocated", inserted "is statutorily appropriated, as provided in 17-7-502, to the department of transportation and". Amendment effective December 20, 1993.

Retroactive Applicability: Section 22, Ch. 10, Sp. L. November 1993, provided that this section applies retroactively to July 1, 1993.

1993 Amendments: Chapter 455 in first sentence of introductory clause, after "must", substituted "in accordance with the provisions of 15-1-501(6), be placed" for "be turned over promptly to the state treasurer, who shall place the money" and in second sentence, after "must", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 605 in (1), at beginning, substituted "$16,766,000" for "$14,000,000" and near beginning, after "justice's court", deleted "is statutorily appropriated, as provided in 17-7-502, to the department of transportation and"; and in (1)(c), at beginning, substituted "$10,389,000" for "$7,623,000". Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1991 Amendments: Chapter 82 deleted former (3) that read: "(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements"; and made minor changes in style. Amendment effective March 18, 1991.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1987 Amendments: Chapter 292, in (1), at end of introductory clause, changed reference to reflect inserted material; inserted (1)(a) relating to rural technical assistance transportation program; in (1)(b) substituted "$6,323,000" for "$6,350,000"; and in (1)(c) substituted "$7,623,000" for "$7,650,000".

Chapter 557 near beginning of first sentence of introduction and near beginning of (1) inserted "except those collected by a justice's court".

1985 Amendments: Chapter 257 at end of (2) after "there to", inserted remainder of subsection relating to expenditures by towns or third-class cities; and at beginning of (7) inserted exception clause.

Chapter 703 near beginning of (1) after "chapter", inserted "is statutorily appropriated, as provided in 17-7-502, to the department of highways and".

1983 Amendments: Chapter 238, in introductory clause, before "funds hereinbelow allocated" substituted "Those" for "except those"; after "counties" deleted "which funds"; near end of introductory clause after "paid by the" substituted "department of highways from the earmarked revenue fund" for "state treasurer directly"; and in (6) after "department of highways" deleted "and state treasurer".

Chapter 277, in introduction, substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 624, in introductory portion, inserted "special" before "revenue fund"; in (1) at beginning changed $6,500,000 to $14,000,000; in (1)(a) at beginning changed $2,950,000 to $6,350,000; in (1)(b) changed $3,550,000 to $7,650,000; and inserted (8) relating to use of funds for construction and maintenance programs.

Effective Date: Section 6, Ch. 632, L. 1979, provided: "Sections 1 and 4 are effective for fiscal years 1980 and 1981 only." The reference to sec. 4 is apparently an error. The correct reference is apparently a reference to sec. 5, Ch. 632.

Purported 1979 Amendment: Although sec. 4, Ch. 632, L. 1979, purports to amend this code section, all amendments were removed from sec. 4 during the legislative process and no actual

amendment was made. If normal procedure had been followed, sec. 4 would have been stricken in its entirety from the bill.

Coordination: Section 7, Ch. 473, L. 1975, provided: "If House Bill No. 198 and this bill are each enacted into law in 1975, it is the intent of the legislature that section 2 of this act controls the taxation of liquid petroleum gas under section 84-1832.1 [15-70-321]." House Bill No. 198 was enacted and is 15-70-101.

Severability: Section 4, Ch. 6, Ex. L. 1967, read: "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 4, Ch. 355, L. 1969, read: "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 2, Ch. 384, L. 1971, read: "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Case Notes

Local Government's Right to Do Work or Contract It Out: This section's provision that funds allocated to local governments shall be disbursed to the lowest bidder when the contract for construction or repair is above $4,000 (2003 amendment increased amount to $25,000) means either that all work above $4,000 (2003 amendment increased amount to $25,000) must be contracted out by bid or that the local government may do the work itself or contract it out by bid. The court construed the provision to mean the latter. Numerous other statutes relating to construction and repair of roads authorize the local government to do the work itself. It would not be reasonable to assume that only construction and repair funded by gas tax dollars must be contracted out. Attempts to require this by legislation in 1979 and 1985 failed, and the failure is significant. Finally, the entities administering that provision have for 12 years interpreted it to mean that a local government may do the work itself and must follow the provision only if the work is contracted out. Mont. Contractors' Ass'n, Inc. v. Dept. of Highways, 220 M 392, 715 P2d 1056, 43 St. Rep. 470 (1986).

Funds From Sources Other Than Gasoline Tax Used for Nonhighway Purposes: Prohibition against expenditure of gasoline tax revenues for nonhighway purposes has no application to street funds derived from other sources; thus proceeds of levy under another statute could be committed to finance proportionate share of construction costs of city shop complex to be used by various city departments. Greener v. Great Falls, 157 M 376, 485 P2d 932 (1971).

Effect of Appropriation: The appropriation by L. 1947, p. 761, from the gasoline drawback fund "as much as may be necessary to comply with the provisions of the law" was likewise an appropriation of the 1 cent per gallon transferred to the aviation fund under the provisions of 67-1-301. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948), overruled in part in Bd. of Regents v. Judge, 168 M 433, 543 P2d 1323 (1975).

Use of Funds for Erection of Highway Building: Under the implied powers of the Highway Commission (now Transportation Commission) considered necessary to render the granted powers efficacious and the performance of its duties effectual, the erection of the building is a proper function in the administration of the highway program, providing expenditures therefor do not exceed 8% of the Commission's available funds. Guillot v. Highway Comm'n, 102 M 149, 56 P2d 1072 (1936).

Use of Funds Collected Under Prior Act: The fact that a road was a part of the federal forest road did not deprive the Highway Commission (now Transportation Commission) of authority of expending any portion of the gasoline license tax funds derived under a prior act, in matching funds provided by the Federal Aid Act. State ex rel. Mineral County v. Highway Comm'n, 82 M 63, 265 P 1 (1928).

Attorney General's Opinions

Construction of Streets With Gas Tax Revenues — Subject to General Debt Limitation: If a city contracts for street construction work to be paid exclusively from gasoline tax revenue received from the state, the indebtedness is considered part of the city's general debt limitation under 7-7-4201 unless the conditions of some specific exception are otherwise met. 42 A.G. Op. 120 (1988).

Municipal Construction of Storm Sewers With Gas Tax Revenues Allowed — Sinking Fund for General Obligation Bonds Allowed: A city may use its gas tax allocation to construct streets and highways, and because a highway is defined as including "drainage structures", the city may use its share of gasoline tax allocation for construction of storm sewers and drains in and under city

streets for removal of runoff water. The city may also place the money allocated in a sinking fund used to pay general obligation bonds sold to finance construction of those sewers, as the only statutory restriction on the use of the funds is that the funds must be used exclusively for city streets. Nor do the statutes governing municipal financing prohibit the use of such money in a sinking fund for general obligation bonds. 40 A.G. Op. 19 (1983).

Collateral References

Highways *key* 90, 99.25; Licenses *key* 33.
40 C.J.S. Highways §176; 53 C.J.S. Licenses §56.
71 Am. Jur. 2d State and Local Taxation §616.

15-70-102. Allocation of funds — participation in railroad grade crossing protection.

Compiler's Comments

1995 Amendment: Chapter 509 in (1), at beginning, substituted "The amount determined necessary" for "The sum of $100,000", after "fund" substituted "highway revenue account" for "state highway account", and after "account" substituted "for each fiscal year for expenditures and commitments made" for "for the fiscal year ending June 30, 1973, and so much for each succeeding fiscal year as may be necessary to reimburse the fund for expenditures and commitments made and to maintain the fund at $100,000 at the beginning of each fiscal year thereafter"; in (2), near beginning of first sentence, substituted "this section is" for "the fund shall be" and at beginning of second sentence substituted "The account" for "the fund"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Collateral References

40 C.J.S. Highways §176; 53 C.J.S. Licenses §56.

15-70-103. Time of mailing and filing.

Collateral References

71 Am. Jur. 2d State and Local Taxation §632.

15-70-104. Rules to be established by department.

Compiler's Comments

1997 Amendment: Chapter 236 inserted (2)(a) concerning part 2; and made minor changes in style. Amendment effective April 11, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 236, L. 1997, provided: "A statement of intent is required for this bill because it requires the department of transportation to establish rules to govern the bidding process determining the licensed Montana distributor that will be allowed to purchase improperly imported fuel seized by the department."

1995 Amendment: Chapter 405 inserted (2)(b) allowing rules implementing part 7; and made minor changes in style. Amendment effective April 13, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 405, L. 1995, provided: "A statement of intent is required for this bill because the department of transportation is required by 15-70-104 to adopt rules for the administration and enforcement of the tax on compressed natural gas. The legislature contemplates that rules promulgated under 15-70-104 address, at a minimum, the licensing of compressed natural gas dealers and, with respect to compressed natural gas dealers, requirements established by the department for reporting, recordkeeping, and invoicing."

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: Inserted (2)(b) referring to International Fuel Tax Agreement; and made minor change in form.

Administrative Rules

Title 18, chapter 9, ARM Motor fuels — gasoline tax.
Title 18, chapter 10, ARM Motor fuels — other fuels.
Title 18, chapter 11, ARM Motor fuels — seizure.
Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

15-70-105. Writeoff of collection of tax, penalty, or interest — rules.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 428, L. 1993, provided: "A statement of intent is required for this bill because [section 3] [15-70-105 and 15-71-110 (now repealed)] grants the department of transportation authority to adopt rules for establishing procedures to determine whether it is cost-effective to collect any tax, penalty, or interest from a delinquent taxpayer. The legislature intends that the rules adopted by the department address the circumstances under which it is no longer cost-effective to pursue the collection of a tax, penalty, or interest. These circumstances include but are not limited to the difficulty of finding the delinquent taxpayer, the difficulty of locating the assets of the taxpayer, or the financial condition of the taxpayer. In addition, the rules adopted by the department may include procedures to remove, for accounting purposes, a delinquency from the department's accounts receivable.

The legislature also intends that rules provide that if a tax delinquency is written off, it is not forgiven, but the department will incur no further expense in collecting the tax."

Applicability: Section 5, Ch. 428, L. 1993, provided: "[This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales." Effective July 1, 1993.

Effective Date: Section 6, Ch. 428, L. 1993, provided: "[This act] is effective July 1, 1993."

15-70-108. Payment of taxes by negotiable instrument.

Compiler's Comments

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

Effective Date: Section 10(1), Ch. 158, L. 1995, provided that this section is effective on passage and approval. Approved March 17, 1995.

15-70-110. Authority to collect delinquent motor fuel taxes — offset — hearing.

Compiler's Comments

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

Effective Date: Section 10(1), Ch. 158, L. 1995, provided that this section is effective on passage and approval. Approved March 17, 1995.

15-70-111. Judicial review and appeals.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

15-70-112. Definitions.

Compiler's Comments

1999 Amendment: Chapter 77 inserted definition of total remittance. Amendment effective October 1, 1999.

Effective Date: Section 9, Ch. 561, L. 1995, provided that this section is effective July 1, 1995.

15-70-113. Total remittance payable by electronic funds transfer.

Compiler's Comments

2001 Amendment: Chapter 110 near end of (3) substituted "5 days after the 25th day of each calendar month" for "the 28th day of each calendar month". Amendment effective July 1, 2001.

1999 Amendment: Chapter 77 at beginning of (1) substituted "Total remittance" for "Taxes"; near beginning of (2) substituted "total remittance" for "taxes"; and inserted (3) concerning due date of electronic tax payments. Amendment effective October 1, 1999.

Effective Date: Section 9, Ch. 561, L. 1995, provided that this section is effective July 1, 1995.

Administrative Rules

ARM 18.9.705 Late file and pay penalties when filing electronically.

15-70-114. Electronic filing of tax returns and required information.

Compiler's Comments

1999 Amendment: Chapter 77 near middle substituted "fuel" for "taxable fuels"; and made minor changes in style. Amendment effective October 1, 1999.

Effective Date: Section 9, Ch. 561, L. 1995, provided that this section is effective July 1, 1995.

Administrative Rules

ARM 18.9.705 Late file and pay penalties when filing electronically.

15-70-115. Rules.

Compiler's Comments

1999 Amendment: Chapter 77 in (1) substituted "total remittance" for "taxes"; and at end of (2) substituted "payment of total remittance" for "tax payment". Amendment effective October 1, 1999.

1995 Statement of Intent: The statement of intent attached to Ch. 561, L. 1995, provided: "A statement of intent is required for this bill because the department of transportation is required in [section 7] [15-70-115] to adopt rules relating to the filing of certain tax returns by electronic means and to the payment of certain taxes by electronic funds transfer. It is anticipated that the department will adopt rules that address, at a minimum:

(1) coordinating the filing of tax returns with the payment of taxes by electronic funds transfer;

(2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the tax payment; and

(3) specifying the form and content of information required by the department in an approved, computer-generated, magnetic media data format in order to ensure the proper receipt of the information."

Effective Date: Section 9, Ch. 561, L. 1995, provided that this section is effective July 1, 1995.

Administrative Rules

ARM 18.9.705 Late file and pay penalties when filing electronically.

15-70-121. International Fuel Tax Agreement.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 111, L. 1989, provided: "[Section 1] [15-70-121] of the bill requires the department of revenue [now department of transportation] to adopt rules implementing the International Fuel Tax Agreement. The rules are intended to provide for the exchange of information with member states, the timely collection and distribution of motor fuel taxes, and the efficient administration and enforcement of the provisions contained in the agreement.

The legislature intends that the rules to be adopted by the department should, at a minimum, address the following:

(1) the issuance of licenses and decals to Montana-based interstate carriers;

(2) the necessary forms and required procedures for an interstate carrier to report mileage, fuel consumption, and taxes due;

(3) the timely collection and distribution of taxes to member states;

(4) auditing and monitoring procedures for the enforcement of the agreement; and

(5) definition of terms and establishment of administrative policies and procedures to adhere to the terms of the agreement."

Severability: Section 6, Ch. 111, L. 1989, was a severability clause.

Administrative Rules

ARM 18.10.106 IFTA agreement.
ARM 18.10.124 IFTA license bond requirement.
ARM 18.10.125 IFTA reinstatement fee.
ARM 18.10.404 Seller invoices.

15-70-122. Collection of fuel tax.

Compiler's Comments

1991 Amendment: At beginning changed "department of revenue and the department of highways" to "department of transportation" and near end, after "department", deleted "of highways". Amendment effective July 1, 1991.

Severability: Section 6, Ch. 111, L. 1989, was a severability clause.

15-70-123. Report by unlicensed petroleum dealer — definition — penalty.

Compiler's Comments

1999 Amendment: Chapter 340 in middle of first sentence in (1) after "chapter 70" deleted "or 71"; in (2)(a) after "delivering" inserted "transporting" and after "(CNG)" deleted "to a consumer. Amendment effective October 1, 1999.

Effective Date: Section 3, Ch. 34, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 10, 1993.

15-70-124. Agreements with other governmental entities relating to collection of certain fuel taxes.

Compiler's Comments

Effective Date: Section 2, Ch. 438, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 21, 1993.

15-70-125. Highway nonrestricted account.

Compiler's Comments

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted third sentence concerning deposit of interest and income earned on account. Amendment effective January 1, 2001.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52, Ch. 515, L. 1999, provided: "(1) If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.

(2) [Sections 12, 13, and 46] are effective January 1, 2001."

1997 Amendments: Chapters 42 and 422 in second sentence, after "15-1-501", deleted "(6)". Amendment effective March 12, 1997.

Effective Date: Section 84, Ch. 509, L. 1995, provided that this section is effective July 1, 1995.

Part 2
Basic Gasoline License Tax

Part Compiler's Comments

Section Not Codified: Section 84-1845, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 369, L. 1969.

Severability: Section 18, Ch. 369, L. 1969, read: "If any section, subsection, sentence or clause in the act shall, for any reason, be held unconstitutional or void, such decision shall not affect the validity or meaning of any other portion of this act." This clause applies to most of the sections in this part.

Part Administrative Rules

Title 18, chapter 9, ARM Motor fuels — gasoline tax.

Part Collateral References

Licenses *key* 27 through 35.

53 C.J.S. Licenses §§50 through 55.

51 Am. Jur. 2d Licenses and Permits §10; 71 Am. Jur. 2d State and Local Taxation §§616 through 627.

15-70-201. Definitions.

Compiler's Comments

2005 Amendment: Chapter 452 substituted definition of gasohol for former definition that read: ""Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10"." Amendment effective April 28, 2005.

Contingent Effective Date Revised: Section 16, Ch. 452, L. 2005, amended sec. 12, Ch. 568, L. 2001, to remove this section from its application.

Contingent Termination Revised: Section 17, Ch. 452, L. 2005, amended sec. 13, Ch. 568, L. 2001, to remove this section from its application.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2003 Amendment: Chapter 114 substituted definition of distributed for former definition that read: "(a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state." Amendment effective October 1, 2003.

2001 Amendment: Chapter 568 inserted definition of gasohol; in definition of gasoline at beginning of (a)(i) after "all" inserted "petroleum" and at beginning of (a)(ii) inserted "except for alcohol blended into gasohol"; and made minor changes in style. Amendment effective on occurrence of contingency.

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

1999 Amendment: Chapter 461 in definition of agricultural use after "person" substituted "who earns income while engaging in" for "whose major endeavor and primary source of earned income is from" and after "ranching" inserted "and who files farm income reports for tax purposes as required by the United States internal revenue service". Amendment effective July 1, 1999, and terminates June 30, 2001.

1997 Amendment: Chapter 236 inserted definition of improperly imported fuel; and made minor changes in style. Amendment effective April 11, 1997.

1995 Amendment: Chapter 158 in definition of gasoline inserted subsection (a)(ii) concerning additives; and made minor changes in style. Amendment effective March 17, 1995.

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

1993 Amendments: Chapter 231 inserted definition of importer.

Chapter 642 in definitions of aviation dealer, aviation fuel, and gasoline substituted "fuel" for "gasoline"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (6)(d) to include exporter; in (7) substituted "to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana" for "export as defined in 15-70-503"; and inserted definition of exporter.

Saving Clause: Section 8, Ch. 8, L. 1989, was a saving clause.

Severability: Section 9, Ch. 8, L. 1989, was a severability clause.

Termination of Amendment: The definition of gasohol inserted by sec. 1, Ch. 576, L. 1979, terminated April 1, 1989, pursuant to sec. 4, Ch. 576, L. 1979.

1987 Amendment: In (9) changed "15-70-301(6)" to "15-70-301".

1985 Amendment: Inserted (6)(e) that reads: "any person in Montana who blends alcohol with gasoline"; inserted definition of export; in (8) after "sold as gasohol", substituted "used" for "produced and sold in Montana", and at end of (8) inserted "including Montana wood or wood products".

1983 Amendment: Inserted (6)(c) that reads: "any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability" to be effective Jan. 1, 1984.

Termination of Gasohol Amendments: Section 4, Ch. 576, L. 1979, provided: "This act terminates April 1, 1989."

Administrative Rules

Title 18, chapter 9, subchapter 4, ARM Gasohol.

15-70-202. License and security of gasoline distributors — denial or revocation of license.

Compiler's Comments

Contingent Effective Date Revised: Section 16, Ch. 452, L. 2005, amended sec. 12, Ch. 568, L. 2001, to remove this section from its application.

Contingent Termination Revised: Section 17, Ch. 452, L. 2005, amended sec. 13, Ch. 568, L. 2001, to remove this section from its application.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2001 Amendments — Composite Section: Chapter 142 in (1)(b)(i) at beginning inserted exception clause; inserted (1)(b)(ii) regarding minimum required security for distributor of gasoline; inserted (2) regarding denial and revocation of gasoline distributor license; inserted (3) regarding appeal of denial or revocation of gasoline distributor license; inserted (6) providing exception for owner of commercial motor vehicle under certain conditions; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective on occurrence of contingency) Chapter 568 inserted (7) requiring licensing of a distributor who blends gasohol and requiring the distributor to buy preblended gasohol if the distributor cannot be licensed. Amendment effective on occurrence of contingency.

1999 Amendment: Chapter 37 deleted former (2) that read: "(2) A person who engages in the wholesale distribution of gasoline in this state exercising the option under 15-70-201(6)(c) shall pay an annual license fee of $200"; and made minor changes in style. Amendment effective February 24, 1999.

Retroactive Applicability: Section 7, Ch. 37, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the license year after December 31, 1998."

1997 Amendment: Chapter 236 inserted (4) regarding penalty for failure to obtain license; and made minor changes in style. Amendment effective April 11, 1997.

1993 Amendment: Chapter 231 in (1), near beginning, deleted reference to subsection (8) of 15-70-201 and inserted "and a person who imports, as defined in 15-70-201"; at end of (2) deleted "and upon renewal of the license shall pay an annual fee of $200"; and made minor changes in style.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: Near beginning of (1) inserted phrase including exporters.

Saving Clause: Section 8, Ch. 8, L. 1989, was a saving clause.

Severability: Section 9, Ch. 8, L. 1989, was a severability clause.

1983 Amendment: Inserted (2) relating to wholesale distribution of gasoline. Amendment effective Jan. 1, 1984.

Administrative Rules

ARM 18.9.102 Distributor's bond.

ARM 18.9.116 Incidence of fuel tax.

Collateral References

53 C.J.S. Licenses §§50 through 55, 82 through 100.

51 Am. Jur. 2d Licenses and Permits §§10, 11, 80 through 86.

15-70-204. Gasoline license tax — rate.

Compiler's Comments

2005 Amendment: Chapter 452 inserted (4) regarding date of imposition of tax. Amendment effective April 28, 2005.

Contingent Effective Date Revised: Section 16, Ch. 452, L. 2005, amended sec. 12, Ch. 568, L. 2001, to remove this section from its application.

Contingent Termination Revised: Section 17, Ch. 452, L. 2005, amended sec. 13, Ch. 568, L. 2001, to remove this section from its application.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2001 Amendments — Composite Section: Chapter 404 in (1)(a) increased aviation fuel tax from 3 to 4 cents per gallon; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective on occurrence of contingency) Chapter 568 inserted (3) subjecting gasohol to 85% of the 27 cent gasoline tax; deleted former (3) that read: "(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)"; and made minor changes in style. Amendment effective on occurrence of contingency.

2000 Amendment: Chapter 8 in (1)(a) substituted "3 cents" for "2 cents" and inserted "other than fuel sold to the federal defense fuel supply center"; and made minor changes in style. Amendment effective May 18, 2000.

1999 Amendment: Chapter 585 in (1) and (1)(a) after "department" deleted "of transportation"; in temporary version in (1)(a) increased amount from 3 cents to 4 cents and after "fuel" inserted "other than fuel sold to the federal defense fuel supply center"; in (1)(b) inserted "27 cents, beginning July 1, 1994"; deleted former (1)(b)(i) and (1)(b)(ii) that read: "(i) 24 cents per gallon beginning July 1, 1993; and

(ii) 27 cents per gallon beginning July 1, 1994"; and made minor changes in style. Amendment in temporary version effective July 1, 1999. (Amendments from same chapter are identical for both versions with exception of increase and insertion in (1)(a).)

1993 Amendments: Chapter 231 at end of (2) inserted "unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for"; and made minor changes in style.

Chapter 605 in (1)(b) increased tax from 20 cents a gallon to 24 cents a gallon beginning July 1, 1993, and to 27 cents a gallon beginning July 1, 1994; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 642 in (1) increased tax from 1 cent a gallon to 3 cents a gallon and substituted "fuel" for "gasoline", effective July 1, 1993, and decreased tax to 2 cents a gallon on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million; and made minor changes in style.

Effective Date — Contingent Termination: Section 17, Ch. 642, L. 1993, provided that this section is effective July 1, 1993, and terminates on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million. The balance in the aeronautical loan account reached $1 million in December 2000, and the amendments to this section terminated on the first day of the month 60 days after that occurrence.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue and Department of Commerce. The reference to the Department of Commerce was changed pursuant to the authority of sec. 62, Ch. 16, L. 1991, which allows the Code Commissioner to correct erroneous references. Amendment effective July 1, 1991.

1989 Amendment: Near beginning of (2), after "exported", deleted "or sold for export out of the state".

Saving Clause: Section 8, Ch. 8, L. 1989, was a saving clause.

Severability: Section 9, Ch. 8, L. 1989, was a severability clause.

1987 Amendment: In (1) increased tax per gallon of gasoline from 17 to 20 cents.

1986 Amendment: In (1) increased gasoline license tax from 15 to 17 cents.

1983 Amendments: Chapter 624, in (1) near middle, raised tax on gallon from 9 cents to 15 cents; and made permanent the 1-cent increment that was to have terminated July 1, 1983 (sec. 2, Ch. 632, L. 1979).

Chapter 649 in (3) substituted "Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)" for "Gasohol shall be subject to gasoline license taxes in accordance with the following schedule:

(a) beginning April 1, 1979, gasohol shall be taxed at the rate of 2 cents per gallon;

(b) beginning April 1, 1985, gasohol shall be taxed at the rate of 4 cents per gallon;

(c) beginning April 1, 1987, gasohol shall be taxed at the rate of 6 cents per gallon."; and deleted (4), which provided: "If at any time the gasoline license tax is lower than the current applicable tax on gasohol, the lower tax rate shall be adopted for gasohol."

1981 Amendment: Chapter 274 substituted "department of commerce" for "department of community affairs" in (1).

1979 Gasohol Amendment — Suspension — Termination: Chapter 576, L. 1979, inserted (3) and (4) relating to gasohol.

Section 3, Ch. 576, L. 1979, repealed by Ch. 649, L. 1983, provided: "The governor may, upon recommendation of the director of the department of revenue and the director of the department of highways [functions now combined in department of transportation], suspend this act if the fiscal impact of this act significantly impairs the maintenance or construction of state or interstate highway systems."

Section 4, Ch. 576, L. 1979, provided: "This act terminates April 1, 1989."

Administrative Rules

Title 18, chapter 9, subchapter 1, ARM Distributor's license tax.

ARM 18.9.116 Incidence of fuel tax.

Title 18, chapter 9, subchapter 2, ARM Exemptions from distributor's license tax.

ARM 18.9.204 Blending stocks.

ARM 18.9.401 Treatment of gasohol.

ARM 18.9.501 Alcohol distributors.

ARM 18.9.704 Definitions.

Case Notes

Chippewa-Cree Tribal Member Without Standing to Challenge Gas Tax — Incidence of Tax Upon Distributor: Carter, an enrolled member of the Chippewa-Cree Tribe, sold gasoline from a convenience store on the Rocky Boy's Reservation. Carter held a business license issued by the tribe and was not licensed by the state. She alleged that the gasoline tax was unconstitutionally applied to sales by tribal members inside the reservation because the tax is preempted by federal law. The District Court granted summary judgment, holding that Carter lacked standing. Citing Okla. Tax Comm'n v. Chickasaw Nation, 515 US 450, 132 L Ed 2d 400, 115 S Ct 2214 (1995), the Supreme Court affirmed, holding that the incidence of the tax fell upon the distributor and not upon the retailer and that the distributor is not a member of the tribe. For this reason, Carter was not directly and adversely affected by the tax and had no standing to bring the action. Carter v. Dept. of Transportation, 274 M 39, 905 P2d 1102, 52 St. Rep. 1111 (1995).

Effect of Appropriation: The appropriation by Laws 1947, p. 761 from the gasoline drawback fund "as much as may be necessary to comply with the provisions of the law" was likewise an appropriation of the 1 cent per gallon transferred to the aviation fund under the provisions of 67-1-301. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948), overruled in part in Bd. of Regents v. Judge, 168 M 433, 543 P2d 1323 (1975).

Use of Funds For Erection of Highway Building: Under the implied powers of the Highway Commission (now Transportation Commission) considered necessary to render the granted powers efficacious and the performance of its duties effectual, the erection of the building is a proper function in the administration of the highway program, providing expenditures therefor do not exceed 8% of the Commission's available funds. Guillot v. Highway Comm'n, 102 M 149, 56 P2d 1072 (1936).

Collateral References

Licenses *key* 29.

51 Am. Jur. 2d Licenses and Permits §§64, 65; 71 Am. Jur. 2d State and Local Taxation §628.

15-70-205. Distributor's statement and payment — confidentiality.

Compiler's Comments

2001 Amendment: Chapter 404 in (1) in last sentence near end after "deducted from the" substituted "4-cent tax" for "3-cent tax". Amendment effective July 1, 2001.

2000 Amendment: Chapter 8 near end of last sentence of (1) substituted "3-cent tax" for "2-cent tax". Amendment effective May 18, 2000.

1999 Amendments — Composite Section: Chapter 77 in (1) near beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 585 in first sentence in (1) after "department" deleted "of transportation" and in temporary version in third sentence increased tax from 3 cents to 4 cents; and made minor

changes in style. Amendment in temporary version effective July 1, 1999. (Amendments from same chapter are identical for both versions with exception of increase in third sentence in (1).)

1995 Amendment: Chapter 158 in both versions in (1), in second sentence after "allowance", substituted "for collecting the tax" for "for evaporation and other loss of gasoline distributed by the distributor"; and made minor changes in style. Amendment effective March 17, 1995.

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

1993 Amendment: Chapter 642 in (1), near end, substituted "3-cent" for "1-cent" and substituted "fuel" for "gasoline", effective July 1, 1993, and provided that the allowance may not be deducted from the 2-cent tax on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million; and made minor changes in style.

Effective Date — Contingent Termination: Section 17, Ch. 642, L. 1993, provided that this section is effective July 1, 1993, and terminates on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million. The balance in the aeronautical loan account reached $1 million in December 2000, and the amendments to this section terminated on the first day of the month 60 days after that occurrence.

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Chapter 521 inserted (3) prohibiting Department, deputy, assistant, agent, clerk, or other Department employee from publishing or disseminating information identifying individual gasoline distributor or purchaser and outlining particular information that may be published or inspected; and made minor changes in style.

1987 Amendment: In second sentence of (1) substituted "1% of the total tax" for "2% of the first 6 cents tax".

Administrative Rules

ARM 18.9.103 Distributor's statements.
ARM 18.9.205 Exemption — U.S. and other states.

Case Notes

Loss of Gasoline — Refund: The fact that Ch. 39, L. 1945, providing for license tax on gasoline to provide funds for payment of state highway debentures allowed a deduction of 2% "for evaporation and other loss of gasoline handled by such dealer" did not preclude refund for entire amount where entire gallonage of gasoline was destroyed in derailment of tank cars. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 121 M 583, 194 P2d 627 (1948).

Collateral References

Licenses *key* 32.
71 Am. Jur. 2d State and Local Taxation §§28, 632.

15-70-206. Recordkeeping requirements.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Administrative Rules

ARM 18.9.104 Distributor's records.
ARM 18.9.302 Sellers' invoice.

15-70-207. Invoice of distributors and aviation dealers.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Administrative Rules

ARM 18.9.105 Distributor's invoice.
ARM 18.9.106 Invoice error.
ARM 18.9.107 Multidistributor invoice requirements.
ARM 18.9.302 Sellers' invoice.

15-70-208. Examination of records.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1983 Amendment: At end of (1), substituted "furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer." for "furnished to the department for review or such dealer must bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept. However, the taxpayer is not liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing unless the result of such examination is the payment of a tax deficiency."

15-70-209. Information reports — confidentiality.

Compiler's Comments

1999 Amendment: Chapter 340 in first sentence in (2) increased penalty from $25 to $100; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 231 in (1), near beginning after "exporter", inserted "importer"; and made minor changes in style.

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Chapter 521 at beginning of (2) deleted "In case of any"; inserted (3) prohibiting Department, deputy, assistant, agent, clerk, or other Department employee from publishing or disseminating information identifying individual gasoline distributor or purchaser and outlining particular information that may be published or inspected; and made minor changes in style.

1989 Amendment: Near beginning of (1) inserted "exporter"; and near beginning of (2) inserted "or exporters".

Saving Clause: Section 8, Ch. 8, L. 1989, was a saving clause.

Severability: Section 9, Ch. 8, L. 1989, was a severability clause.

Collateral References

71 Am. Jur. 2d State and Local Taxation §632.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-70-210. Tax penalty for delinquency.

Compiler's Comments

2001 Amendment: Chapter 120 in (1) inserted reference to 15-70-113(3) and provided that interest be prorated daily; in (3) increased penalty from $25 to $100 and provided that interest be prorated daily; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 120, L. 2001, provided: "[This act] applies to gasoline and special fuel tax liabilities occurring after June 30, 2001."

1999 Amendment: Chapter 340 in first sentence in (1) inserted "in 15-70-205"; in two places in (4) substituted "department" for "state treasurer"; and made minor changes in style. Amendment effective October 1, 1999.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Administrative Rules

ARM 18.9.701 Waiver of motor fuel penalties.

ARM 18.9.702 Suspension of penalties.

ARM 18.9.703 Proration of interest.

Collateral References

53 C.J.S. Licenses §§121 through 124.

71 Am. Jur. 2d State and Local Taxation §631; 72 Am. Jur. 2d State and Local Taxation §§759 through 761, 763 through 770.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceedings. 13 ALR Fed. 877.

15-70-211. Warrant for distraint.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Section Not Codified: Section 9, Ch. 512, L. 1991, was not codified because it is redundant with this section.

1981 Amendment: Substituted authorization to issue a warrant for distraint for a procedure whereby the department had a lien in the amount owing on the property of the taxpayer; deleted a sentence before the last sentence that provided for the enforcement of the lien provided by this section in the same manner as judgment liens; substituted "No action may be maintained" for "No action shall be maintained" at the beginning of the last sentence; deleted subsection (2) which was the procedure used by the state treasurer to release the lien.

Collateral References

Licenses *key* 31; Taxation *key* 501 through 514.5.
53 C.J.S. Licenses §§121 through 124.
72 Am. Jur. 2d State and Local Taxation §801.

15-70-212. Statute of limitations.

Collateral References

51 Am. Jur. 2d Licenses and Permits §107.

15-70-221. Refund or credit authorized.

Compiler's Comments

2001 Amendment: Chapter 404 in (5) near middle after "may claim a refund of" increased amount of allowed refund on aviation fuel from 1 cent a gallon to 2 cents a gallon; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 340 in first sentence in (1) after "operating" deleted "or propelling", after "engines" deleted "or tractors", and after "other than" deleted "propelling"; in second sentence in (3)(a) after "federal" inserted "or state"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 585 deleted former (6) that read: "(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 2 cents a gallon for each gallon that is sold to the supply center and on which the gasoline license tax has been paid"; and made minor changes in style. Amendment in temporary version effective July 1, 1999.

1993 Amendments: Chapter 231 in (1), at beginning of second sentence, substituted "The refund may not" for "Such refund or drawback should in no instance"; in (4), at end of first sentence, inserted "unless the person is not licensed and is not paying the tax to the state the fuel is destined for" and at beginning of second sentence inserted "The credit or refund will be made upon"; and made minor changes in style.

Chapter 428 in (1), near beginning of second sentence after "refund", deleted "or drawback"; in (3)(a), near beginning of first sentence after "gasoline", inserted "with a tax liability of $200 or greater" and at end, after "purchaser", inserted "and for which the distributor has not forgiven any liability" and in second sentence substituted "may not" for "shall", after "worthless" inserted "more than once during a 3-year period", and after "and" inserted "the distributor must have"; in (3)(b), after "due", inserted "must be prorated"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 642 in (1), near beginning of second sentence after "refund", deleted "or drawback" and at beginning of last sentence inserted exception clause and substituted "fuel" for "gasoline", effective July 1, 1993; inserted (5) allowing certain air carriers a 2-cent-per-gallon refund and (6) allowing certain refineries and distributors a 2-cent-per-gallon credit or refund, effective July 1, 1993, and reducing the refund to a 1-cent refund on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million; and made minor changes in style.

Applicability: Section 5, Ch. 428, L. 1993, provided: "[This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales." Effective July 1, 1993.

Effective Date — Contingent Termination: Section 17, Ch. 642, L. 1993, provided that this section is effective July 1, 1993, and terminates on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million. The balance in the aeronautical loan account reached $1 million in December 2000, and the amendments to this section terminated on the first day of the month 60 days after that occurrence.

Code Commissioner Correction: Near end of (1) changed "department of commerce" to "department of transportation", pursuant to the authority of sec. 62, Ch. 16, L. 1991, which

allows the Code Commissioner to correct erroneous references. Amendment effective July 1, 1991.

1989 Amendments: Chapter 8 inserted (4) authorizing credit or refund to person who follows stated procedure.

Chapter 562 inserted (3) providing a credit for gasoline taxes paid by a dealer for unpaid accounts.

Saving Clause: Section 8, Ch. 8, L. 1989, was a saving clause.

Severability: Section 9, Ch. 8, L. 1989, was a severability clause.

Source: Section 1, Ch. 562, L. 1989, contained provisions similar to Revised Codes of Washington, 82.38.070.

1983 Amendment: In (1), after "paid for" inserted "denaturing alcohol to be used in gasohol or".

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (1).

Administrative Rules

ARM 18.9.202 Export deliveries.

ARM 18.9.306 Refund percentages for PTO or auxiliary engines.

ARM 18.9.311 Refund for gasoline lost or destroyed.

Case Notes

Fuel Used in Motorboat — Constitutionality: Under prior law which did not provide for tax refund for gasoline used in motorboats, one who consumed gasoline in motorboat in off-highway use was not entitled to refund on basis of Due Process and Equal Protection Clauses of constitution, since dealer rather than the consumer is the taxpayer, and since consumer, as a boat user, was not proper party to represent all nonhighway users. Harvey v. Blewett, 151 M 427, 443 P2d 902 (1968). (Annotator's Note: The 1979 amendment to this section removed motorboats from the uses for which a refund is authorized.)

Gasoline Lost or Destroyed:

Since there has been no amendment to this law expressing disapproval of an earlier Supreme Court decision that gasoline lost or destroyed should be included in the provision for a refund of the tax paid, the Legislature in effect approved the interpretation. State ex rel. Roeder v. St. Bd. of Equalization, 133 M 393, 324 P2d 1057 (1958).

When gasoline was lost during a flood that tipped over storage tank, the purchaser was entitled to a refund of the tax paid. State ex rel. Roeder v. St. Bd. of Equalization, 133 M 393, 324 P2d 1057 (1958).

When gasoline was lost in derailment of tank cars, the purchaser of the gasoline was entitled to a refund of the license tax paid. State ex rel. Great N. Ry. v. St. Bd of Equalization, 121 M 583, 194 P2d 627 (1948).

Sufficiency of Claim — Substantial Compliance:

When it has been decided that a claimant is entitled to a refund but the claim is such that it cannot be regularly itemized on prescribed forms, the Board (now Department of Transportation) could not set up the failure to comply with technical regulations as a reason for denying the claim. State ex rel. Roeder v. St. Bd. of Equalization, 133 M 393, 324 P2d 1057 (1958).

The State Board of Equalization (now Department of Transportation) could not deny a valid refund claim for the reason that the claim did not comply with the forms provided by the Board when the nature of the claim was such that it could not be regularly itemized on the prescribed form. Where the claimant has complied with the administrative regulations insofar as it was possible under the circumstances, he has substantially complied and is entitled to the refund. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 126 M 187, 246 P2d 220 (1952).

Assignment of Claim: There was nothing in a predecessor to this statute which prevented the claimant who was the actual purchaser of the gasoline from assigning his claim for refund to another where he himself has made the application for refund before assignment. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 121 M 583, 194 P2d 627 (1948).

Mandamus: In action for mandamus to require approval of claim for refund, the petition must allege that the invoice accompanied the claim. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 121 M 583, 194 P2d 627 (1948).

Application for Refund by County: When county brought mandamus to compel State Board of Equalization (now Department of Transportation) to grant county's application for refund of gasoline taxes paid, the entry of a money judgment for the county was error but the court should have ordered a peremptory Writ of Mandate to issue requiring the Board to rescind its action in

rejecting claim and requiring that such claim be allowed in proper sum and transmitted to Board of Examiners and Auditor for approval and payment. Roosevelt County v. St. Bd. of Equalization, 118 M 31, 162 P2d 887 (1945).

Collateral References

Licenses *key* 34.

71 Am. Jur. 2d State and Local Taxation §629.

Refunds of gasoline tax. 47 ALR 998, supplemented in 84 ALR 868 and 111 ALR 201.

15-70-222. Required records.

Compiler's Comments

1995 Amendment: Chapter 158 deleted former (2) that read: "(2) If separate storage tanks are maintained on claimant's premises for use in licensed vehicles and in unlicensed equipment, the bulk delivery invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided refunds are claimed only on the number of gallons delivered into the unlicensed equipment tank. Withdrawal of gasoline from the unlicensed vehicle tank for licensed vehicles will invalidate this method of determining refundable gallonage"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 9, Ch. 158 L. 1995, was a saving clause.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: Inserted (7) requiring exporter or other person to maintain certain records regarding export of gasoline.

Saving Clause: Section 8, Ch. 8, L. 1989, was a saving clause.

Severability: Section 9, Ch. 8, L. 1989, was a severability clause.

Administrative Rules

ARM 18.9.302 Seller's invoice.

ARM 18.9.303 Filing invoices.

ARM 18.9.306 Refund percentages for PTO or auxiliary engines.

ARM 18.9.311 Lost or destroyed gasoline, special fuel, or aviation fuel.

ARM 18.9.312 Gasoline, special fuel, or aviation fuel lost from storage.

15-70-223. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

1999 Amendments — Composite Section: Chapter 37 in (2) at end deleted "or a person licensed under 15-70-203 from whom the gasoline was purchased"; and made minor changes in style. Amendment effective February 24, 1999.

Chapter 461 in (1) in first sentence after "refund" deleted "of 60%" and in two places in second sentence inserted "earned" and after second "income" inserted "excluding unearned income"; inserted (3) authorizing applicant to apply for refund and outlining ratios for refund percentages; inserted (4) requiring use of highest ratio to calculate eligible refunds if ratio in any of 3 previous years is higher than present ratio; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Retroactive Applicability: Section 7, Ch. 37, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the license year after December 31, 1998."

1993 Amendment: Chapter 245 inserted second sentence in (1) allowing Department of Transportation to request certain income information to determine whether gasoline use qualifies as agricultural use, subject to notice to the applicant. Amendment effective April 1, 1993.

Effective Date — Applicability: Section 3, Ch. 245, L. 1993, provided: "[This act] is effective on passage and approval and applies to claims for refunds filed on or after [the effective date of this act]." Effective April 1, 1993.

1991 Amendments: Chapter 67 inserted (2) requiring Department to accept a vendor's signed statement as evidence of certain gasoline purchases. Amendment effective March 13, 1991.

Chapter 512 substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: In (1), near end after "invoices", inserted "or by evidence of keylock or cardtrol purchases"; and in (2), near beginning after "invoice", inserted "or evidence". Amendment effective March 28, 1989.

Administrative Rules

ARM 18.10.406 Cardtrol compliance and administration.

15-70-224. Determination of highway use.

Compiler's Comments

1999 Amendment: Chapter 340 inserted second sentence authorizing department, when records are not available, to use average of 4 miles per gallon or other acceptable methods to determine fuel use. Amendment effective October 1, 1999.

15-70-225. Application for refund or credit — filing — correction by department.

Compiler's Comments

2001 Amendment: Chapter 110 at beginning of (1) inserted exception clause and near beginning of second sentence after "accounts" inserted "or a claim for a refund filed electronically"; inserted (1)(b) providing that a signature or original invoice is not required for claiming refund filed electronically; inserted (1)(c) providing that claim for refund filed electronically does not relieve taxpayer from maintaining refund records; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 340 in (4) increased refund filing time from 14 months to 36 months. Amendment effective October 1, 1999.

1993 Amendment: Chapter 642 in (1), near end after "purchased", inserted "or aviation fuel purchased by a certified scheduled passenger air carrier" and after "gasoline" inserted "or aviation fuel"; in (4) inserted "or aviation fuel"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: At beginning of second sentence of (1) inserted exception clause and inserted third sentence relating to documents that must accompany a claim for credit; near end of (3), after "erroneously paid", inserted "or for a credit for taxes paid by him on unpaid accounts" and at end, before "payment", deleted "such erroneous"; and made minor changes in phraseology.

Administrative Rules

ARM 18.9.117 Supporting documentation for bad debt credit.

ARM 18.9.321 Processing claims for refunds.

15-70-226. Approval or rejection of claim.

Compiler's Comments

1995 Amendment: Chapter 158 in (1) substituted "120 working days" for "120 days"; and made minor changes in style. Amendment effective March 17, 1995.

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Administrative Rules

ARM 18.9.321 Processing claims for refunds.

Case Notes

Sufficiency of Claim — Substantial Compliance:

When it has been decided that a claimant is entitled to a refund but the claim is such that it cannot be regularly itemized on prescribed forms, the Board (now Department of Transportation) could not set up the failure to comply with technical regulations as a reason for denying the claim. State ex rel. Roeder v. St. Bd. of Equalization, 133 M 393, 324 P2d 1057 (1958).

The State Board of Equalization (now Department of Transportation) could not deny a valid refund claim for the reason that the claim did not comply with the forms provided by the Board when the nature of the claim was such that it could not be regularly itemized on the prescribed form. Where the claimant has complied with the administrative regulations insofar as it was possible under the circumstances, he has substantially complied and is entitled to the refund. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 126 M 187, 246 P2d 220 (1952).

15-70-231. Unlawful use of aviation fuel.

Compiler's Comments

1993 Amendment: Chapter 642 in first sentence, in two places, substituted "fuel" for "gasoline"; and made minor changes in style. Amendment effective July 1, 1993.

15-70-232. Penalties.

Collateral References

53 C.J.S. Licenses §§121 through 124.

51 Am. Jur. 2d Licenses and Permits §108; 71 Am. Jur. 2d State and Local Taxation §632.

15-70-233. Improperly imported fuel — seizure.

Compiler's Comments

2005 Amendment: Chapter 366 in (1)(c) in definition of peace officer after "transportation" inserted "designated or" and after "under" inserted "61-10-154 or"; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: Section 8, Ch. 236, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 11, 1997.

Administrative Rules

Title 18, chapter 11, subchapter 1, ARM Seizure of improperly imported fuel.

15-70-234. Cooperative agreement — motor fuels taxes.

Compiler's Comments

1999 Amendment: Chapter 19 in third sentence at end substituted "to the revenue and taxation interim committee" (now revenue and transportation interim committee) for "to each meeting of the revenue oversight committee" and in fourth sentence inserted "and if the legislature is not in session" and before "committee" deleted "revenue oversight"; and made minor changes in style. Amendment effective February 17, 1999.

1993 Amendment: Chapter 625 at end, after "approval", inserted "pursuant to 18-11-105" and deleted last two sentences of former (1) specifying level of taxation to be addressed in agreement and that agreement provide for nonwaiver of rights (see 1993 Session Law for text); deleted (2) authorizing agreement to prohibit dual taxation of distributor (see 1993 Session Law for text); deleted (3) and (4) authorizing agreement to provide for distribution of tax (see 1993 Session Law for text); and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

Coordination Instruction: Section 5, Ch. 772, L. 1991, provided: "If Senate Bill No. 164 is passed and approved and if it includes a section that provides for the transfer of motor fuels tax functions to the department of transportation, then any reference to the department of revenue in [this act] is changed to the department of transportation." Senate Bill No. 164 was approved April 20, 1991, as Ch. 512, L. 1991, and included a transfer of motor fuels tax functions to the Department of Transportation. Therefore, the Code Commissioner has changed references to the respective Departments in this section in conformity with the coordination instruction.

Effective Date: Section 6, Ch. 772, L. 1991, provided: "[This act] is effective July 1, 1991."

15-70-235. Tribal motor fuels administration account.

Compiler's Comments

1997 Amendment: Chapter 42 in (2) substituted "an agreement" for "15-70-234(3)"; and in (3) substituted "an agreement" for "15-70-234". Amendment effective March 12, 1997.

1995 Amendment: Chapter 158 in (3), after "transportation", inserted "or by the department of justice". Amendment effective March 17, 1995.

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

Coordination Instruction: Section 5, Ch. 772, L. 1991, provided: "If Senate Bill No. 164 is passed and approved and if it includes a section that provides for the transfer of motor fuels tax functions to the department of transportation, then any reference to the department of revenue in [this act] is changed to the department of transportation." Senate Bill No. 164 was approved April 20, 1991, as Ch. 512, L. 1991, and included a transfer of motor fuels tax functions to the Department of Transportation. Therefore, the Code Commissioner has changed references to the respective Departments in this section in conformity with the coordination instruction.

Effective Date: Section 6, Ch. 772, L. 1991, provided: "[This act] is effective July 1, 1991."

15-70-236. Tribal motor fuels tax account.

Compiler's Comments

1997 Amendment: Chapter 42 in (2) substituted "an agreement" for "15-70-234(3)". Amendment effective March 12, 1997.

Effective Date: Section 6, Ch. 772, L. 1991, provided: "[This act] is effective July 1, 1991."

15-70-242. Civil penalty.

Compiler's Comments

Effective Date: Section 6, Ch. 115, L. 2001, provided: "[This act] is effective July 1, 2001."

Part 3
Special Fuels Use Tax

Part Compiler's Comments

Saving Clause: Section 46, Ch. 525, L. 1993, was a saving clause.

Section Not Codified: Section 84-1830, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 162, L. 1955.

Part Administrative Rules

Title 18, chapter 10, ARM Motor fuels — other fuels.

Title 18, chapter 10, subchapter 1, ARM Special fuels user tax.

Part Attorney General's Opinions

Vehicles Operated Solely on Forest Development Roads Exempt: The special fuels tax does not apply to vehicles operated solely upon forest development roads. 37 A.G. Op. 9 (1977).

Part Collateral References

Licenses *key* 27 through 35.

53 C.J.S. Licenses §§50 through 55.

51 Am. Jur. 2d Licenses and Permits §10; 71 Am. Jur. 2d State and Local Taxation §§616 through 627.

15-70-301. Definitions.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in definition of biodiesel in (a) substituted "American society for testing and materials" for "American society of testing and materials". Amendment effective October 1, 2005.

Chapter 525 in definition of biodiesel in (a) substituted language defining biodiesel as a fuel produced from monoalkyl esters meeting the requirements of ASTM D6751 for former language that read: "(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials" and in (b) substituted "B-100" for "B-20"; inserted definition of biodiesel blend; and made minor changes in style. Amendment effective April 28, 2005.

Contingent Effective Date Revised: Section 7, Ch. 525, L. 2005, amended sec. 12, Ch. 568, L. 2001, to remove this section from its application.

Contingent Termination Revised: Section 8, Ch. 525, L. 2005, amended sec. 13, Ch. 568, L. 2001, to remove this section from its application.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2001 Amendments — Composite Section: Chapter 125 in definition of public roads and highways of this state in (c) inserted references to Title 60, chapter 4, and Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

(Version effective on occurrence of contingency) Chapter 568 inserted definition of biodiesel; in definition of special fuel near beginning of second sentence after "fuel includes" substituted "biodiesel and additives of all types" for "all other types of additives"; and made minor changes in style. Amendment effective on occurrence of contingency.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See *Eminent Domain in Montana*, published by the Legislative Environmental Policy Office, May 2001.

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

1999 Amendment: Chapter 461 in definition of agricultural use after "person" substituted "who earns income while engaging in" for "whose major endeavor is" and after "ranching" substituted "and who files farm income reports for tax purposes as required by the United State internal revenue service" for "and whose primary source of earned income is from the business of farming or ranching". Amendment effective July 1, 1999, and terminates June 30, 2001.

1997 Amendment: Chapter 236 inserted definition of improperly imported fuel; and made minor changes in style. Amendment effective April 11, 1997.

1995 Amendment: Chapter 43 in definition of agricultural use, after "endeavor is", inserted "the business of farming or ranching"; in definition of distributor, in (d) after "exporter", deleted "as defined in this section"; in definition of special fuel inserted second sentence regarding additives; near beginning of definition of special fuel user, after "other than", inserted "the U.S. government, a state, or"; and made minor changes in style. Amendment effective February 9, 1995.

Effective Date — Retroactive Applicability: Section 6, Ch. 43, L. 1995, provided: "[This act] is effective on passage and approval [approved February 9, 1995], and [sections 1 and 4] [amending 15-70-301 and 15-70-321] apply retroactively, within the meaning of 1-2-109, to January 1, 1995."

1993 Special Session Amendment: Chapter 10 deleted definition of authorization that read: ""Authorization" means an uncanceled special fuel tax prepaid authorization issued by the department." Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 inserted definitions of agricultural use, bulk delivery, distributed, distributor, export, exporter, import, and importer; in definition of bond, in (a), near beginning after "executed by a", deleted "special fuel dealer or" and near end, after "obligations of the", deleted "special fuel dealer or" and in (b), after "department by the", deleted "special fuel dealer or"; substituted definition of motor vehicle for former definition that read: "any vehicle which is self-propelled upon the highways"; in definition of special fuel, near end, substituted "operating" for "propelled" and deleted last sentence that read: "The term includes compressed natural gas"; in definition of special fuel dealer deleted former (b) that read: "(b) For the purposes of subsection (9)(a), the term "fuel supply tank or tanks" does not include cargo tanks, even though fuel is withdrawn directly from cargo tanks for propulsion of the vehicle"; in definition of special fuel user, near end, substituted "operation" for "propulsion"; in definition of use, at beginning, inserted "when the term relates to a special fuel user", deleted (a) that read: "(a) the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state", and near end substituted "the operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: Inserted definition of authorization; and made minor changes in form and phraseology.

1987 Amendment: Inserted definition of cardtrol or keylock; and in middle of (8), after "any person who", inserted "sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device or who".

1985 Amendment: In (6) inserted last sentence relating to compressed natural gas.

Administrative Rules

ARM 18.9.204 Blending stocks.

Title 18, chapter 10, subchapter 1, ARM Special fuels user tax.
ARM 18.10.111 Dyed special fuel allowance.
ARM 18.10.201 Certain federally owned roads.
ARM 18.10.202 Off-road usage.

Attorney General's Opinions

School District Not Allowed to Claim Special Fuel Tax Refund Paid by Bus Service Contractor: When a school district has paid a tax on special fuels, the district may seek a special fuel tax refund regardless of the district activity for which the fuels were used. However, a school district may not claim a special fuel tax refund paid on special fuels by a company that contracts with the school district to provide bus service for the district. 51 A.G. Op. 7 (2005).

15-70-302. Special fuel user's permits required — exceptions.

Compiler's Comments

2005 Amendment: Chapter 384 deleted former (1)(a)(i) that read: "(i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight used in an interstate operation"; in (1)(a)(i) after "contract" inserted "or subcontract"; in (2) in third sentence near middle after "department" substituted "motor carrier services enforcement officers and motor carrier services patrol officers" for "scale house personnel, and gross vehicle weight patrol crews"; inserted (4) providing that a special fuel user obtaining a permit may only use fuel on which state tax has been paid; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 43 at end of (1)(a)(i) inserted "used in an interstate operation"; inserted (1)(a)(ii) requiring a special fuel user's permit for a special fuel user awarded a contract under 15-70-321; inserted (1)(a)(iii) requiring a special fuel user's permit for a vehicle permitted pursuant to an agreement under 15-70-121; and made minor changes in style. Amendment effective February 9, 1995.

1993 Special Session Amendment: Chapter 10 near beginning of first sentence of (1), after "obtain", inserted "a special fuel user's permit" and at end deleted "a special fuel user's permit" and inserted "in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight"; deleted (4) that read: "(4) A person whose use of special fuel is in special fuel vehicles up to 26,000 pounds gross weight or registered gross vehicle weight shall obtain annually form the department an authorization, as provided in 15-70-309, if the special fuel is not subject to taxation under 15-70-343"; and made minor changes in style. Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 deleted former (1) that read: "(1) A person may not act as a special fuel dealer in this state unless the person is the holder of an uncanceled fuel dealer's license issued to him by the department"; in (1), near middle of first sentence, substituted "operation" for "propulsion", near beginning of second sentence substituted "subsection (3)" for "subsection (5)", and in third sentence substituted "motor carrier services division employee" for "checking station officer"; deleted former (3) exempting certain vehicles from special fuel user's permit requirement (see 1993 Session Law for text); in (3) substituted "subsection (1)" for "subsection (2)"; deleted former (5)(b) that required the vehicle to be part of a Montana-based fleet (see 1993 Session Law for text); deleted former (5)(c) that required motor vehicle registration card (see 1993 Session Law for text); deleted former (5)(d) requiring that card be carried in vehicle; in (4), after "fuel is", substituted "in special fuel vehicles up to 26,000 pounds gross vehicle weight or registered gross vehicle weight shall" for "predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or light trucks may" and at end inserted "if the special fuel is not subject to taxation under 15-70-343"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendments: Chapter 157 in first sentence of (3), after "passenger automobile", inserted "or of a truck with a single drive axle under 26,000 pounds gross vehicle weight that the user has rented for 30 days or less for the primary purpose of moving his household goods" and after "tax paid" inserted "except special fuel brought into this state in the fuel supply tank of the vehicle"; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1989 Amendments: Chapter 111 inserted (5)(a) allowing use of special fuel without permit display if licensed pursuant to international agreement and if vehicle displays proof; and made minor changes in phraseology, punctuation, and form.

Chapter 547 inserted (6) allowing an authorization to a person with one or more cars or light trucks whose special fuel use is predominantly agricultural and nonhighway; and made minor changes in phraseology.

Saving Clause: Section 10, Ch. 547, L. 1989, was a saving clause.

1985 Amendment: Near beginning of (2) inserted "except as provided in subsection (5)"; and inserted (5) exempting certain special fuel users from permit display requirement.

Administrative Rules

Title 18, chapter 10, subchapter 3, ARM Special fuel permits.

Collateral References

51 Am. Jur. 2d Licenses and Permits §10.

15-70-303. Application for permit.

Compiler's Comments

1993 Special Session Amendment: Chapter 10 in (1), after "permit", deleted "or authorization". Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 in (1), after "Application for a", deleted "special fuel dealer's license"; and made minor changes in style. Amendment effective January 1, 1994.

1989 Amendment: In (1) inserted "or authorization"; and made minor changes in phraseology.

Administrative Rules

ARM 18.10.301 Permit required.

Collateral References

51 Am. Jur. 2d Licenses and Permits §§80 through 87.

15-70-304. Bonding, release of surety, and additional bond.

Compiler's Comments

2005 Amendment: Chapter 525 in (3) in second sentence near end and in (4) in first sentence near middle substituted "15-70-301(4)" for "15-70-301(3)"; and made minor changes in style. Amendment effective April 28, 2005.

Contingent Effective Date Revised: Section 7, Ch. 525, L. 2005, amended sec. 12, Ch. 568, L. 2001, to remove this section from its application.

Contingent Termination Revised: Section 8, Ch. 525, L. 2005, amended sec. 13, Ch. 568, L. 2001, to remove this section from its application.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2001 Amendment: Chapter 568 in (3) near end of second sentence and in (4) near middle of first sentence substituted reference to 15-70-301(3) for reference to 15-70-301(2). Amendment effective on occurrence of contingency.

1993 Special Session Amendment: Chapter 10 in (3) and (4) substituted "15-70-301(2)" for "15-70-301(3)"; and made minor changes in style. Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 in (1), near beginning after "this section, a", deleted "special fuel dealer's license or" and deleted last sentence that read: "Upon application, the department shall waive the bond requirement of a public contractor licensed under Title 15, chapter 50, who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity"; in (2), near beginning after "required of a", deleted "special fuel dealer must be equivalent to twice his estimated monthly tax payments, and the total amount of the bond or bonds required of a"; deleted (2)(c) setting a bond at "$1,000 for a special fuel dealer"; in (3), in three places before "special fuel user", deleted "special fuel dealer or", substituted "15-70-301(3)" for "15-70-301(2)", and at end, after "cancel the", deleted "special fuel dealer's license or"; in (4), in four places before "special fuel user", deleted "special fuel dealer or", substituted "15-70-301(3)" for "15-70-301(2)", and at end substituted "the permit" for "his license"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Deleted former (2)(b)(i) that required a bond for special fuel users who possessed special fuel in bulk storage on which the tax had not been paid; and made minor changes in style.

1989 Amendment: In (3) and (4) substituted "15-70-301(2)" for "15-70-301(1)"; and made minor changes in phraseology.

1987 Amendment: In (1) substituted "The department shall waive the bond requirement of any special fuel user not subject to subsection (2)(a) or (2)(b)" for "Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the department that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this part"; at end of (2)(a) deleted "or less than"; in (2)(b), after "user", inserted "who :"; inserted (2)(b)(i) through (2)(b)(iii) that read: "(i) possesses special fuel in bulk storage in this state on which the tax has not been paid;

(ii) requests a special fuel user's permit to be reissued after being canceled for cause; or

(iii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327"; and at end of (2)(b)(iii), after "15-70-327; and", deleted "not less than".

Administrative Rules

ARM 18.10.124 IFTA license bond requirement.

Collateral References

51 Am. Jur. 2d Licenses and Permits §86.

15-70-305. Issuance of permit — grounds for refusal — hearing.

Compiler's Comments

1993 Special Session Amendment: Chapter 10 in (1) substituted "subsection (3)" for "subsection (4)"; deleted former (2) that read: "(2) Except as provided in subsection (4), upon receipt of the application in proper form, the department shall issue to the applicant an authorization. A holder of an authorization is not required to furnish bond as provided under 15-70-304. The authorization must be issued annually and is valid from the date of its issuance through December 31 of the calendar year, unless a motor vehicle for which the tax is prepaid is sold, or until suspended or revoked for cause or otherwise canceled"; and in (3), (3)(a), (3)(b), (4), and (5), after "permit", deleted "or authorization". Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 in (1) and (2) substituted "subsection (4)" for "subsection (3)"; in (1), near middle of first sentence after "the applicant a", deleted "license or", after "permit to" substituted "operate" for "act", and after "operate as a" deleted "special fuel dealer or" and in second sentence, after "Each", deleted "special fuel dealer's license or"; inserted (3) concerning payment of a reissuance fee; in (4), after "to issue a", deleted "special fuel dealer's license", in (4)(a), after "held a", deleted "license"; in (4)(b), after "interest and the", deleted "license"; in (5), after "to issue a", deleted "license"; in (6), at beginning after "A", deleted "special fuel dealer's license"; and made minor changes in style. Amendment effective January 1, 1994.

1989 Amendment: In (1), at beginning, inserted exception clause; inserted (2) allowing an authorization to be issued annually without bond; in (3), (4), and (5) inserted reference to an authorization; made minor changes in phraseology; and generally rearranged the section.

Administrative Rules

ARM 18.10.125 IFTA reinstatement fee.

Collateral References

51 Am. Jur. 2d Licenses and Permits §§82, 83.

15-70-306. Revocation, suspension, and cancellation.

Compiler's Comments

1993 Special Session Amendment: Chapter 10 in four places in (1), after "permit", deleted "or authorization"; in (2), after "revocation", inserted "of a permit", after "department" deleted "of any permit or authorization", and near end, after "permit", deleted "or authorization"; and made minor changes in style. Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 in (1), in first sentence near beginning after "may revoke the", deleted "license" and after "authorization of any" deleted "special fuel dealer or" and in second sentence, after "Before revoking a", deleted "license", after "shall notify the" deleted "licensee or", and near end, in two places before "permit", deleted "license"; in (2), in two places before "permit", deleted "license"; and made minor changes in style. Amendment effective January 1, 1994.

1989 Amendment: Throughout section inserted reference to an authorization; near middle of (1), after "certified", deleted "or registered"; and made minor changes in phraseology.

Administrative Rules

ARM 18.10.121 Quarterly reports — tax payment.
ARM 18.10.313 Termination of permits.
ARM 18.10.324 Failure to maintain records.
ARM 18.10.404 Seller invoices.

Collateral References

53 C.J.S. Licenses §§82 through 100.
51 Am. Jur. 2d Licenses and Permits §§88 through 95.

15-70-307. Surrender of permit upon use discontinuance.

Compiler's Comments

1993 Amendment: Chapter 525 after "shall cancel any" deleted "license to act as a special fuel dealer or any"; and made minor changes in style. Amendment effective January 1, 1994.

Administrative Rules

ARM 18.10.313 Termination of permits.

15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit — special fuel user's agricultural product temporary trip permit.

Compiler's Comments

2005 Amendment: Chapter 397 inserted (3) regarding special fuel user's agricultural product temporary trip permit. Amendment effective July 1, 2005.

1993 Special Session Amendment: Deleted (3) that read: "(3) A resident or nonresident operating a special fuel powered vehicle up to 26,000 pounds gross weight or registered gross vehicle weight in this state is exempt from obtaining an authorization under 15-70-309 if the special fuel tax is paid at the time of purchase." Amendment effective January 1, 1994.

1993 Amendments: Chapter 525 in (1) and (2), near beginning, inserted "over 26,000 pounds gross vehicle weight or registered gross vehicle weight" and substituted "motor carrier services division employees" for "scale house personnel, gross vehicle weight patrol crews"; in (1), near middle after "special fuel vehicle permit", deleted "or registration card indicating the special fuel use permit number"; inserted (3) concerning exemption from authorization; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 575 near end of (1) and (2) substituted "motor carrier services division personnel" for "gross vehicle weight patrol crews"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: In two places changed "patrolmen" to "patrol officers".

1985 Amendment: In first sentence of (1) inserted "or registration card indicating the special fuel use permit number".

Administrative Rules

ARM 18.8.426 Custom combines.

Collateral References

51 Am. Jur. 2d Licenses and Permits §10.

15-70-312. Fees for temporary permits — duration of temporary permits.

Compiler's Comments

2005 Amendment: Chapter 397 in (1) in first sentence inserted "issued under 15-70-311(1)"; inserted (3) regarding cost of special fuel user's agricultural product temporary trip permit; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendment: Chapter 525 in (1), in first sentence after "cost", deleted "the special fuel vehicle user a fee of"; in (2)(a) substituted "commodities" for "produce"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendments: Chapter 48, at end of first sentence of (2), substituted "the calendar year in which the fee is collected" for "a period beginning July 1 and ending October 31".

Chapter 277, in (3), substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Increased the special fuel permit from $20 to $30.

Collateral References

51 Am. Jur. 2d Licenses and Permits §64.

15-70-314. Penalty for operation without temporary permit — compliance bond — policy continued.

Collateral References

53 C.J.S. Licenses §§36, 69 through 71.

51 Am. Jur. 2d Licenses and Permits §§86, 108.

15-70-321. Tax on special fuel and volatile liquids.

Compiler's Comments

2005 Amendment: Chapter 384 inserted (3) providing that materials used in connection with work performed under certain contracts must be produced using special fuel on which state tax has been paid. Amendment effective October 1, 2005.

Repeal of 2001 Amendments: Section 9, Ch. 525, L. 2005, repealed sec. 7, Ch. 568, L. 2001, amending 15-70-321.

2001 Amendment: Chapter 568 in (1)(a) near middle after "petroleum gas" inserted "and biodiesel"; in (1)(b) near beginning after "petroleum gas" inserted "and biodiesel"; inserted (1)(d) establishing a tax on biodiesel; in (2)(a) after "imposed in" substituted "subsections (1)(a) through (1)(c)" for "subsection (1)"; inserted (2)(b) establishing the tax rate on biodiesel; and made minor changes in style. Amendment effective on occurrence of contingency.

1995 Amendment: Chapter 43 near beginning of (1)(a) and (1)(b) substituted reference to special fuel for reference to diesel fuel; near end of (1)(a) substituted reference to public roads for reference to public streets; inserted (1)(c) requiring collection of a tax for dyed special fuel; deleted (2)(a) that read: "(a) 24 cents per gallon beginning July 1, 1993"; deleted (2)(b) that read: "(b) 24 ¾ cents per gallon beginning January 1, 1994"; at end of (2), after "gallon", deleted "beginning July 1, 1994"; and made minor changes in style. Amendment effective February 9, 1995.

Effective Date — Retroactive Applicability: Section 6, Ch. 43, L. 1995, provided: "[This act] is effective on passage and approval [approved February 9, 1995], and [sections 1 and 4] [amending 15-70-301 and 15-70-321] apply retroactively, within the meaning of 1-2-109, to January 1, 1995."

1993 Special Session Amendment: Chapter 10 in (1)(a), before "diesel fuel", inserted "undyed"; at beginning of (1)(b) inserted "for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold"; and made minor changes in style. Amendment effective January 1, 1994.

1993 Amendments: Chapter 525 near middle, after "power to", substituted "operate" for "propel". Amendment effective January 1, 1994.

Chapter 605 in (1), near beginning after "tax", substituted "as provided in subsection (2)" for "in an amount equal to 20 cents"; inserted (2) providing for a tax of 24 cents a gallon beginning July 1, 1993, and 27 cents a gallon beginning July 1, 1994; and made minor changes in style. Amendment effective July 1, 1993.

Compiler's Comment: Section 4, Ch. 575, L. 1993, increased the tax by 3/4 cent per gallon effective January 1, 1994. Section 23, Ch. 575, L. 1993, a coordination provision, voided the amendment made by sec. 4, Ch. 575, L. 1993, and increased the tax rates in sec. 3, Ch. 605, by 3/4 cent per gallon effective January 1, 1994. The Code Commissioner inserted the rate of 24 ¾ cents per gallon effective January 1, 1994, and increased the rate to 27 ¾ cents per gallon effective July 1, 1994, to reflect the coordination instruction.

1987 Amendment: Increased tax per gallon of diesel fuel or other volatile liquid from 17 to 20 cents.

1983 Amendment: Raised tax on gallon from 10 cents to 17 cents; 1 cent of raise is attributable to the making permanent of 1-cent motor fuels tax increment of 1979 that was to have terminated July 1, 1983 (sec. 3, Ch. 632, L. 1979).

Coordination: Section 7, Ch. 473, L. 1975, provided: "If House Bill No. 198 and this bill are each enacted into law in 1975, it is the intent of the legislature that section 2 of this act controls the taxation of liquid petroleum gas under section 84-1832.1 [15-70-321]." House Bill No. 198 was enacted and is in 15-70-101.

Administrative Rules

ARM 18.9.203 Import deliveries.
ARM 18.9.204 Blending stocks.
ARM 18.9.205 Exemption — U.S. and other states.
ARM 18.9.704 Definitions.
Title 18, chapter 10, subchapter 1, ARM Special fuels user tax.
ARM 18.10.112 Dyed special fuel.
ARM 18.10.201 Certain federally owned roads.
ARM 18.10.202 Off-road usage.
ARM 18.10.406 Cardtrol compliance and administration.

Attorney General's Opinions

School District Not Allowed to Claim Special Fuel Tax Refund Paid by Bus Service Contractor: When a school district has paid a tax on special fuels, the district may seek a special fuel tax refund regardless of the district activity for which the fuels were used. However, a school district may not claim a special fuel tax refund paid on special fuels by a company that contracts with the school district to provide bus service for the district. 51 A.G. Op. 7 (2005).

Collateral References

Licenses *key* 29.
53 C.J.S. Licenses §§50 through 55.
71 Am. Jur. 2d State and Local Taxation §628.

15-70-323. Special fuel user's records.

Compiler's Comments

2005 Amendment: Chapter 384 in (1) at beginning inserted exception clause; inserted (3) providing for exempting certain special fuel users from provisions of this section; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 525 in (1), at beginning after "Every", deleted "special fuel dealer"; and made minor changes in style. Amendment effective January 1, 1994.

1985 Amendment: In (2) reduced retention period from 5 years to 3 years.

Administrative Rules

ARM 18.10.321 Required records — audits.
ARM 18.10.322 Records when bulk storage involved.
ARM 18.10.323 Trip and fuel consumption records.
ARM 18.10.324 Failure to maintain records.
ARM 18.10.404 Seller invoices.

15-70-324. Examination of records — enforcement of part.

Compiler's Comments

1993 Special Session Amendment: Chapter 10 inserted (4) authorizing the Department to establish inspection sites and to stop, detain, and inspect vehicles and making it a misdemeanor punishable by a fine not exceeding $500 for first offense, not exceeding $1,000 for second offense, and not exceeding $2,000 for subsequent offenses to purposely or knowingly refuse to permit an authorized inspection; and made minor changes in style. Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 in (2), (3), and (4), in five places before "special fuel user", deleted "special fuel dealer or"; in (3), near end after "consumed in the", substituted "operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

1983 Amendment: At end of (2), substituted "furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and shall be, if requested by the department, accompanied by the special fuel dealer or special fuel user." for "furnished to the department for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing unless the result of said examination is the payment of a tax deficiency."

Administrative Rules

ARM 18.10.321 Required records — audits.

15-70-325. Returns.

Compiler's Comments

2005 Amendment: Chapter 384 deleted former (2) that read: "(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that the user's annual tax liability is or will be $200 or less"; in (2) at beginning deleted first two sentences that read: "The user shall make an annual report and return to the department on forms prescribed by the department, on or before January 31 of each year. If the department determines that a user filing annual returns is delinquent in making reports and payments, it shall require the person to file quarterly returns" and in first sentence near beginning after "return" deleted "annual or quarterly"; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 525 in (1), before "tax", inserted "special fuel" and after "special fuel tax" deleted "herein imposed, each special fuel dealer shall file with the department a monthly tax return and"; deleted former (4) relating to inventory control data for certain types of bulk storage of special fuels (see 1993 Session Law for text); in (4), at beginning after "The", deleted "special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

1985 Amendment: In (2) increased maximum tax liability triggering waiver from $100 to $200.

Administrative Rules

ARM 18.10.121 Quarterly reports — tax payment.

Collateral References

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

15-70-326. Computation.

Compiler's Comments

Repeal of 2001 Amendments: Section 9, Ch. 525, L. 2005, repealed sec. 9, Ch. 568, L. 2001, amending 15-70-326.

2001 Amendment: Chapter 568 near middle after "multiplying the" inserted "appropriate" and after "gallons of" inserted "the type of". Amendment effective on occurrence of contingency.

1993 Amendment: Chapter 525 deleted (1) that provided that the tax must be computed "with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle"; after "has not been paid" deleted "to a special fuel dealer" and near end, after "in the", substituted "operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-327. Payment.

Compiler's Comments

1993 Amendment: Chapter 525 deleted second sentence that read: "A licensed special fuel dealer is allowed a deduction equal to 1% of the first 6 cents per gallon of the taxes paid by the dealer under 15-70-321 as an allowance for shrinkage, spillage, and evaporation of special fuels and other losses beyond the dealer's control"; and made minor changes in style. Amendment effective January 1, 1994.

Administrative Rules

ARM 18.10.121 Quarterly reports — tax payment.

Collateral References

Licenses *key* 32.

71 Am. Jur. 2d State and Local Taxation §632.

15-70-328. Credits.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 428 in (3)(a) (deleted by Ch. 525), in first sentence after "fuels", inserted "with a tax liability of $200 or greater" and at end inserted "and for which the special fuel dealer has not forgiven any liability" and in second sentence, near beginning, substituted "may not" for "shall" and after "worthless" inserted "more than once during a 3-year period"; in (3)(b) (deleted by Ch. 525), after "due", inserted "must be prorated"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 525 near beginning, after "special fuel user", deleted "or licensed special fuel dealer" and at end of former (1) deleted sentence that read: "Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state"; deleted former (2) providing for a credit for the amount of a temporary special fuel permit (see 1993 Session Law for text); deleted former (3) concerning credits for special fuel taxes paid on sales on uncollectible accounts (see 1993 Session Law for text); and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 5, Ch. 428, L. 1993, provided: "[This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales." Effective July 1, 1993.

1989 Amendment: Inserted (3) providing a credit for special fuel taxes paid by a dealer for unpaid accounts.

Source: Section 3, Ch. 562, L. 1989, contained provisions similar to Revised Codes of Washington, 82.38.070.

15-70-329. Procedures for credits — deadline.

Compiler's Comments

1993 Amendments: Chapter 33 inserted (3) specifying date for request for refund or credit; and made minor changes in style.

Chapter 525 in (1), in first sentence near beginning after "special fuel user", deleted "or licensed special fuel dealer" and after "user" deleted "or dealer" and in second sentence, near middle after "payable from the", deleted "special fuel dealer or" and near end, after "credit of the", deleted "dealer or"; in (2), near beginning after "user", deleted "or special fuel dealer"; inserted (3) specifying date for request for refund or credit; and made minor changes in style. Amendment effective January 1, 1994.

Code Commissioner Correction: Section 1(2), Ch. 33, substituted "the user's or dealer's" for "his". Because sec. 19, Ch. 525, deleted references to fuel dealers in the section, the reference to dealers in Ch. 33 was not codified.

Applicability: Section 2, Ch. 33, L. 1993, provided: "[This act] applies to special fuel taxes and temporary permit fees paid on or after October 1, 1993."

15-70-330. Special fuel penalties.

Compiler's Comments

2005 Amendment: Chapter 384 in (3) in first sentence near middle after "unless" deleted "the fuel is subject to taxation under 15-70-321(1)(b) or", in second sentence at end after "under" substituted "15-70-372(2)" for "15-70-372 for the first offense", and deleted former third sentence that read: "A subsequent offense is a misdemeanor punishable as provided in 15-70-336." Amendment effective October 1, 2005.

2001 Amendment: Chapter 115 at end of second sentence in (3)(a) inserted language imposing civil penalty under 15-70-372 for first offense and in third sentence substituted language providing that subsequent offense is punishable as provided in 15-70-336 for "punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 43 in (3)(a), in two places, substituted reference to public roads for reference to public streets; inserted (4) imposing operator liability for payment of the special fuel tax imposed in 15-70-321; and made minor changes in style. Amendment effective February 9, 1995.

1993 Special Session Amendment: Chapter 10 inserted (3) prohibiting the use of dyed special fuel to operate a motor vehicle unless the fuel is subject to taxation or the use is permitted by adopted rules, making it a misdemeanor to purposely or knowingly use a dyed special fuel in a motor vehicle in violation of subsection (3) punishable by a fine not to exceed $500 for first offense, not to exceed $1,000 for second offense, and not to exceed $2,000 for subsequent offenses, and requiring the Department to adopt and enforce reasonable rules for movement of off-highway vehicles traveling from one location to another on public roads when using dyed or nontaxed fuels; and made minor changes in style. Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 in (1), near beginning after "case of any", deleted "special fuel dealer or" and near middle, after "that if any", deleted "such special fuel dealer"; in (2), at beginning, substituted "Whenever" for "Where a special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

Administrative Rules

ARM 18.9.705 Late file and pay penalties when filing electronically.
ARM 18.10.110 Off-highway vehicle equipment.
ARM 18.10.111 Dyed special fuel allowance.
ARM 18.10.112 Dyed special fuel.

Collateral References

71 Am. Jur. 2d State and Local Taxation §631; 72 Am. Jur. 2d State and Local Taxation §§759 through 761, 763 through 770.

What amounts to "reasonable cause" for failure to file or delay in filing tax return. 3 ALR 2d 617.

Right of taxing authorities to collect post-petition interest on tax claim in bankruptcy or related proceedings. 13 ALR Fed. 877.

15-70-331. Deficiency.

Compiler's Comments

1993 Amendment: Chapter 525 after "tax reported by any" deleted "special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-332. Determination if no return made.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), near beginning after "If any" and near middle after "liability of the", deleted "special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-333. Fraudulent return — penalty.

Compiler's Comments

1993 Amendment: Chapter 525 at beginning, after "If", deleted "any special fuel dealer or"; inserted (2) making person who files false return guilty of misdemeanor; and made minor changes in style. Amendment effective January 1, 1994.

Collateral References

53 C.J.S. Licenses §§121 through 124.

15-70-334. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted authorization to issue warrant for distraint for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

Collateral References

Licenses *key* 31.
53 C.J.S. Licenses §§121 through 124.
72 Am. Jur. 2d State and Local Taxation §801.

15-70-335. Statute of limitation.

Compiler's Comments

1985 Amendment: Reduced limitation period from 5 years to 3 years in two places.

Collateral References

51 Am. Jur. 2d Licenses and Permits §107.

15-70-336. Criminal penalties.

Compiler's Comments

2001 Amendment: Chapter 115 near beginning of (1) deleted reference to 15-70-101, after "misdemeanor" deleted "unless the act is by any other law of this state declared to be a felony", and decreased maximum fine from $2,000 to $1,000; and made minor changes in style. Amendment effective July 1, 2001.

Collateral References

51 Am. Jur. 2d Licenses and Permits §108.

15-70-341. License and security of special fuel distributors — denial or revocation of license — reissuance fee.

Compiler's Comments

2005 Amendment: Chapter 525 in (8) at end substituted "biodiesel fuel on which the tax has been paid" for "preblended biodiesel". Amendment effective April 28, 2005.

Contingent Effective Date Revised: Section 7, Ch. 525, L. 2005, amended sec. 12, Ch. 568, L. 2001, to remove this section from its application.

Contingent Termination Revised: Section 8, Ch. 525, L. 2005, amended sec. 13, Ch. 568, L. 2001, to remove this section from its application.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2001 Amendments — Composite Section: Chapter 142 in (1)(b)(i) at beginning inserted exception clause; inserted (1)(b)(ii) regarding minimum required security for distributor of special fuel; inserted (2) regarding denial or revocation of special fuel distributor license; inserted (3) regarding right to appeal denial or revocation of special fuel distributor license; inserted (7) providing exception for owner of commercial motor vehicle under certain conditions; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 568 inserted (8) requiring licensing of a distributor who blends biodiesel and requiring the distributor to buy preblended biodiesel if the distributor cannot be licensed. Amendment effective on occurrence of contingency.

1999 Amendment: Chapter 37 deleted former (2) that read: "(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(7)(c) and not already licensed under 15-70-202 shall pay an annual license fee of $200"; and made minor changes in style. Amendment effective February 24, 1999.

Retroactive Applicability: Section 7, Ch. 37, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the license year after December 31, 1998."

1997 Amendment: Chapter 236 inserted (4) regarding penalty for failure to obtain license; and made minor changes in style. Amendment effective April 11, 1997.

1993 Special Session Amendment: Chapter 10 in (2) substituted "15-70-301(7)(c)" for "15-70-301(8)(c)"; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-343. Special fuel license tax — rate.

Compiler's Comments

1999 Amendment: Chapter 340 in (2)(a) after "dyed" inserted "by injector". Amendment effective October 1, 1999.

1993 Special Session Amendment: Chapter 10 in (1), in second sentence, substituted "amount imposed under 15-70-321" for "amount of 20 cents"; in (2), at end of introductory clause after "tax if", deleted "sold" and inserted "it is", substituted (2)(a) concerning fuel dyed for off-highway use for "to the United States government, state of Montana, any other state, and any county, incorporated city, town, and school district of this state", deleted former (2)(b) that read: "in bulk delivery quantities of 200 gallons or more"; at beginning of (2)(b) inserted "sold"; and made minor changes in style. Amendment effective January 1, 1994.

Code Commissioner Clarification: In second sentence of (1), after "amount", the Code Commissioner substituted the bracketed reference to 15-70-321 for "of 20 cents" to reflect the coordination of Ch. 575 and Ch. 605, L. 1993.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.201 Intrastate fuel deliveries.

15-70-344. Distributor's statement and payment — confidentiality.

Compiler's Comments

1999 Amendment: Chapter 77 in (1) near beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-345. Recordkeeping requirements.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.302 Sellers' invoice.

15-70-348. Invoice of distributors.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.302 Sellers' invoice.

15-70-349. Examination of records.

Compiler's Comments

1993 Special Session Amendment: Chapter 10 inserted (3) authorizing the Department to physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities and making it a misdemeanor punishable by a fine not exceeding $500 for first offense, not exceeding $1,000 for second offense, and not exceeding $2,000 for subsequent offenses to purposely or knowingly refuse to permit an authorized inspection; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-351. Information reports — penalty — confidentiality.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-352. Penalties for delinquency.

Compiler's Comments

2001 Amendment: Chapter 120 in (1) and (3) substituted daily proration of interest for interest determined on a fraction of a month; in (3) increased penalty from $25 to $100; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 120, L. 2001, provided: "[This act] applies to gasoline and special fuel tax liabilities occurring after June 30, 2001."

1999 Amendment: Chapter 77 in (1) near beginning of first sentence inserted "15-70-113(3) and". Amendment effective October 1, 1999.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.701 Waiver of motor fuel penalties.

ARM 18.9.702 Suspension of penalties.

ARM 18.9.703 Proration of interest.

15-70-353. Fraudulent returns — penalty.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.703 Proration of interest.

15-70-354. Warrant for distraint.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-355. Statute of limitations.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-356. Refund or credit authorized.

Compiler's Comments

2005 Amendment: Chapter 384 in (1) in first sentence at end inserted "if the person has records, as provided in 15-70-323, to prove nontaxable use". Amendment effective October 1, 2005.

1999 Amendment: Chapter 340 in first sentence in (1) after "engines" deleted "tractors"; in second sentence in (4)(a) after "federal" inserted "or state"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 569 inserted (2)(b)(i) authorizing a nonpublic school to use dyed special fuel in buses owned by the nonpublic school for transporting pupils for school-related purposes; and inserted (2)(b)(ii) describing nonpublic schools as schools accredited under 20-7-102. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 10 inserted (2) concerning refund of the taxes paid on special fuel by government entities; deleted former (3) that read: "(3) A distributor who sells special fuel that is not subject to taxation under 15-70-343 shall complete an exemption certificate for each sale and submit the certificate with the distributor's monthly report"; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.202 Export deliveries.

Attorney General's Opinions

School District Not Allowed to Claim Special Fuel Tax Refund Paid by Bus Service Contractor: When a school district has paid a tax on special fuels, the district may seek a special fuel tax refund regardless of the district activity for which the fuels were used. However, a school district may not claim a special fuel tax refund paid on special fuels by a company that contracts with the school district to provide bus service for the district. 51 A.G. Op. 7 (2005).

15-70-357. Improperly imported fuel — seizure.

Compiler's Comments

2005 Amendment: Chapter 366 in (1)(c) in definition of peace officer after "transportation" inserted "designated or" and after "under" inserted "61-10-154 or"; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: Section 8, Ch. 236, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 11, 1997.

Administrative Rules

Title 18, chapter 11, subchapter 1, ARM Seizure of improperly imported fuel.

15-70-361. Required records.

Compiler's Comments

1993 Special Session Amendment: Chapter 10 at beginning of (1) inserted exception clause; near end of (2), after "fuel for", deleted "own use upon"; inserted (5) exempting government entities from keeping dispersal records in order to claim a refund of special fuel taxes; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.302 Sellers' invoice.

ARM 18.9.303 Filing invoices.

ARM 18.9.306 Refund percentages for PTO or auxiliary engines.
ARM 18.9.311 Lost or destroyed gasoline, special fuel, or aviation fuel.
ARM 18.9.312 Gasoline, special fuel, or aviation fuel lost from storage.

15-70-362. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

1999 Amendment: Chapter 461 in (1) after "refund" deleted "of 60%"; inserted (2) authorizing applicant to apply for refund and outlining ratios for refund percentages; inserted (3) requiring use of highest ratio to calculate eligible refunds if ratio in any of 3 previous years is higher than present ratio; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2001.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.10.407 Statement for keylock cardtrol reporting.

15-70-363. Determination of highway use.

Compiler's Comments

1999 Amendment: Chapter 340 inserted second sentence authorizing department, when records are not available, to use average of 4 miles per gallon or other acceptable methods to determine fuel use. Amendment effective October 1, 1999.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-364. Application for refund or credit — filing — correction by department.

Compiler's Comments

2001 Amendment: Chapter 110 at beginning of (1)(a) inserted exception clause and near middle of second sentence after "of this state" inserted exception for refund claim filed electronically; inserted (1)(b) providing that a signature or original invoice is not required for claiming refund filed electronically; inserted (1)(c) providing that claim for refund filed electronically does not relieve taxpayer from maintaining refund records; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 340 in first sentence in (3) increased refund filing time from 14 months to 36 months. Amendment effective October 1, 1999.

1993 Special Session Amendment: Chapter 10 in (1), near beginning of second sentence after "unpaid accounts", inserted "or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state"; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.321 Processing claims for refunds.

15-70-365. Approval or rejection of claim.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.9.321 Processing claims for refunds.

15-70-366. Penalties.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-369. Refund for taxes paid on biodiesel by distributor or retailer — statement — payment — appropriation — records — report to interim committee.

Compiler's Comments

Effective Date: Section 11, Ch. 525, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

Applicability: Section 12(2), Ch. 525, L. 2005, provided: "(2) [Section 2] [15-70-369] applies to biodiesel blend distributed or purchased in calendar quarters beginning after June 30, 2005."

15-70-371. Marking of dyed diesel fuel pumps.

Compiler's Comments

2001 Amendment: Chapter 119 near beginning of (1) inserted "motor fuel"; inserted (2) authorizing the department, after a requested hearing, to impose a $100 civil penalty for failure to mark a dyed fuel pump; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 3, Ch. 295, L. 1999, provided: "[This act] is effective July 1, 1999."

15-70-372. Civil penalties.

Compiler's Comments

2005 Amendment: Chapter 384 in (1) in first sentence at beginning inserted exception clause; inserted (2) providing for the imposition of a civil penalty for offenses relating to the use of dyed special fuel; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: Section 6, Ch. 115, L. 2001, provided: "[This act] is effective July 1, 2001."

Part 5
Alcohol Tax Incentive and Administration

Part Administrative Rules

Title 18, chapter 9, subchapter 6, ARM Alcohol tax incentive.

15-70-503. Definitions.

Compiler's Comments

2005 Amendment: Chapter 452 inserted definition of gasohol; and made minor changes in style. Amendment effective April 28, 2005.

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Chapter 723 in definition of alcohol distributor deleted (b) that read: "(b) imports alcohol for sale, use, or distribution"; and made minor changes in style. Amendment effective April 29, 1991.

Retroactive Applicability: Section 4, Ch. 723, L. 1991, provided: "If [this act] is passed and approved after April 1, 1991, the provisions of [this act] apply retroactively, within the meaning of 1-2-109, to April 1, 1991." Approved April 29, 1991.

1985 Amendment: In (1)(a) and (1)(b), after "distribution", deleted "in this state"; and inserted definition of export.

15-70-512. Distributor's statement.

Administrative Rules

Title 18, chapter 9, subchapter 4, ARM Gasohol.

ARM 18.9.501 Alcohol distributors.

15-70-522. Tax incentive for production of alcohol — rules.

Compiler's Comments

2005 Amendment: Chapter 452 in (2) in first sentence near middle lowered tax incentive from 30 cents to 20 cents a gallon, deleted former second sentence that read: "Beginning July 1, 2010, there is no tax incentive", and inserted second through fourth sentences regarding facility producing distilled alcohol; inserted (3)(b) regarding prevailing rate of wages; inserted (3)(c) regarding percent of Montana product used to produce alcohol; in (4)(a) in first sentence decreased payments from $3 million to $2 million and inserted second and third sentences regarding distributor tax incentive payments and reports to department; inserted (4)(b) regarding contents of distributor's report; inserted (5) regarding incentive payments; deleted former (5) through (7) that read: "(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written business plan to the department of transportation at least 24 months before the distributor's anticipated collection of

the tax incentives and has complied with the schedule provided for in subsection (6). The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of alcohol for use in gasohol;

(b) the anticipated source of agricultural products used in the production of alcohol for use in gasohol; and

(c) the anticipated time, quantity, and duration of production of alcohol for use in gasohol.

(6) An applicant that has provided the department with a written business plan shall meet the following schedule to be able to receive alcohol tax incentive payments:

(a) start building construction or remodeling within 24 months of the date on which the department received the business plan;

(b) complete 50% of construction or remodeling of a production facility within 36 months of the date on which the business plan was received; and

(c) complete 100% of construction or remodeling of a production facility and be in production of alcohol for use in gasohol for distribution within 48 months of the date on which the business plan was received.

(7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for receiving incentive payments"; in (6) after "verified production" inserted reference to application provisions and proof of financing and at end inserted reference to subsection (4); deleted former (9) and (10) that read: "(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production.

(10) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (9)"; in (7) at end of first sentence after "this section" inserted reference to date for adoption of rules and inserted second sentence regarding rulemaking process; and made minor changes in style. Amendment effective April 28, 2005.

2003 Amendment: Chapter 535 in (1)(a)(i) and (1)(a)(iii) at beginning substituted "is to be" for "was"; in (1)(a)(ii) after "Montana" substituted "to be" for "and has been"; in (5)(a) in first sentence near middle after "written" inserted "business" and at end inserted "and has complied with the schedule provided for in subsection (6)"; in (5)(a), (5)(b), and (5)(c) after "production of" inserted "alcohol for use in"; in (6) at beginning of introductory clause deleted "Except as provided in subsection (6)(b)"; deleted former (6)(b) that read: "(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection (6) if the department determines that the alcohol distributor has not materially complied with the written plan"; inserted (6) establishing a schedule that an applicant must meet in order to receive alcohol tax incentive payments; inserted (7) providing that an applicant who does not adhere to the schedule loses its priority for receiving incentive payments; inserted (8) requiring that payments begin following verification of production; in (9) deleted former second sentence that read: "Payment of the alcohol tax incentives must be based on actual production"; and made minor changes in style. Amendment effective April 29, 2003.

2001 Amendment: Chapter 532 in (2) in second sentence substituted "July 1, 2010" for "July 1, 2005"; in (5) near beginning after "distributor" deleted "who begins production after July 1, 1991" and near middle after "at least" substituted "24 months" for "18 months"; deleted former (6) that read: "(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5)"; and made minor changes in style. Amendment effective October 1, 2001.

Saving Clause: Section 2, Ch. 532, L. 2001, was a saving clause.

1997 Amendment: Chapter 510 in (2), after "30 cents per gallon", inserted "for each gallon that is 100% produced from Montana products, with the amount of the tax incentive per gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol" and substituted "2005" for "2001"; in (4) substituted "$3 million" for "$1.5 million"; and made minor changes in style.

1993 Amendment: Chapter 592 in (1)(a)(iii), after "ethyl", inserted "tertiary"; deleted former (2)(a) that read: "(a) beginning July 1, 1983, 70 cents per gallon"; deleted former (2)(b) that read: "(b) beginning April 1, 1985, 50 cents per gallon"; in (2)(a), before "30 cents", deleted "beginning April 1, 1987" and after "gallon" inserted language regarding the tax incentive; in (4) increased

cap on incentive payments from $1.5 million to $3 million; in (5)(a), (5)(b), and (5)(c) substituted "alcohol" for "gasohol"; and made minor changes in style. Amendment terminates July 1, 1997.

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Chapter 723 in (1)(a), after "wood products", inserted "or if the alcohol was produced from non-Montana agricultural products when Montana products are not available"; inserted (1)(a)(iii) concerning production of ethyl butyl ether; in (2) deleted reference to subsection (5); in (2)(d) extended termination of tax incentive from 1993 to 2001; deleted former (3) that read: "(3) The incentive schedule provided for in subsection (2) shall be modified in response to market conditions as follows:

(a) If for any 2 consecutive calendar quarters ending on or before September 30, 1984, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be 50 cents per gallon, effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(b) If for any 2 consecutive calendar quarters ending on or before September 30, 1986, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be 30 cents per gallon effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(c) If for any 2 consecutive calendar quarters ending on or before September 30, 1988, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 18% or more of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be eliminated effective beginning the second calendar quarter after the 2 consecutive quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 18% or more of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(d) Each quarter, the department shall compute the share of the total nonaviation gasoline and gasohol market that is represented by gasohol, according to the information contained in gasoline distributors' returns and the applications for payment of the alcohol production tax incentive. Alcohol that is exported from Montana and eligible for the tax incentive must be included in the computations"; in (3) deleted reference to subsection (3) and increased maximum credit payments from $1,250,000 to $6 million; in (4) increased maximum credit from $1 million to $1.5 million and after "1985" deleted "except as follows. If total tax incentive payments to all eligible alcohol distributors in any consecutive 12-month period beginning April 1, 1985, do not reach the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4), an alcohol distributor who has received the maximum payment of $1,000,000 as herein provided may receive additional tax incentive payments subject to the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4)"; inserted (5) concerning providing written plan provided by an alcohol distributor; inserted (6) exempting producer in production before July 1, 1991, from providing a plan; inserted (7) providing for reservation of tax incentive payments in order that plans are received and providing for determination of compliance with the plan; inserted (8) providing for administration of payments in certain circumstances; inserted (9) granting rulemaking authority; and made minor changes in style. Amendment effective April 29, 1991.

Composite Section: The Code Commissioner has not codified subsection (6) enacted by Ch. 723, L. 1991, because that subsection contemplated that the Department of Revenue share the information provided under subsection (5) with the Department of Transportation. Both the Motor Fuel Division of the Department of Revenue and the Department of Highways are within the Department of Transportation created by Ch. 512, L. 1991. Subsection (6) would have required the Department of Transportation to provide certain information to itself. The Code Commissioner has corrected internal references to reflect the deletion of subsection (6).

1991 Statement of Intent: The statement of intent attached to Ch. 723, L. 1991, provided: "A statement of intent is required for this bill because [section 2(10)] [15-70-522(10)] grants rulemaking authority to the department of revenue to allow the reservation of alcohol tax

incentives for alcohol distributors who begin production after July 1, 1991, and to reduce or cancel those incentives if a new alcohol distributor does not comply with the written plan. The legislature intends that the department adopt rules that specify the information that must be contained in the written plan. The department shall also develop procedures to verify that the alcohol distributor has obtained financing for the acquisition of the plant, land, and equipment and has secured an adequate supply of agricultural products for the production of alcohol. The rules may include procedures for the review of a new alcohol distributor's business plan or prospectus, architectural plans, and process flows. The department shall also develop procedures for reducing or canceling the reservation of alcohol tax incentives if the department determines that the new alcohol distributor does not comply with the written plan."

Retroactive Applicability: Section 4, Ch. 723, L. 1991, provided: "If [this act] is passed and approved after April 1, 1991, the provisions of [this act] apply retroactively, within the meaning of 1-2-109, to April 1, 1991." Approved April 29, 1991.

1989 Amendment: In (2)(d) changed date from April 1, 1989, to July 1, 1993; and in (4) decreased allowable incentive payments from $2,500,000 to $1,250,000. Amendment effective April 20, 1989.

Contingent Retroactive Applicability: Section 4, Ch. 593, L. 1989, provided: "If [this act] is passed and approved after April 1, 1989, the provisions of [this act] apply retroactively, within the meaning of 1-2-109, to April 1, 1989." Approved April 20, 1989.

1985 Amendment: At beginning of (1)(a) inserted "Provided the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products"; in (1)(a)(i) at end substituted "in Montana" for "provided the alcohol is distilled in Montana from Montana agricultural products"; inserted (1)(a)(ii) relating to tax incentive for distilling alcohol exported from Montana and blended as gasohol; in (2) substituted "subsections (3) through (5)" for "subsection (3)"; in (2)(c) substituted "1987" for "1986"; in two places each in (3)(a), (3)(b), and (3)(c), after "gallons of gasohol sold", inserted "or that have received the benefit of the tax incentive during those quarters" and after "gasoline and gasohol sold", inserted "in Montana"; in (3)(d) inserted "and the applications for payment of the alcohol production tax incentive. Alcohol that is exported from Montana and eligible for the tax incentive must be included in the computations"; inserted (4) limiting total incentive payments to $2,500,000 in any 12-month period beginning April 1, 1985; inserted (5) relating to limitations on incentive payments to individual distributors; and made minor changes in phraseology.

Administrative Rules

Title 18, chapter 9, subchapter 6, ARM Alcohol tax incentive.

15-70-523. Application for payment of tax incentive.

Compiler's Comments

1985 Amendment: Inserted (1)(b) relating to certificate of blending; deleted former (3) that read: "The payment of the tax incentives shall be reduced by the amount of tax provided for in 15-70-204(3) that is due on alcohol to be blended for gasohol"; and made minor changes in phraseology.

Administrative Rules

ARM 18.9.401 Treatment of gasohol.

ARM 18.9.501 Alcohol distributors.

Part 6
Biodiesel Production Incentive

Part Compiler's Comments

Effective Date: Section 7, Ch. 524, L. 2005, provided that this part is effective July 1, 2005.

Part 7
Compressed Natural Gas Tax

Part Compiler's Comments

Effective Date: Section 21(1), Ch. 405, L. 1995, provided that this part is effective January 1, 1996.

Part Administrative Rules

Title 18, chapter 10, subchapter 5, ARM Liquid petroleum gases.

15-70-701. Definitions.

Compiler's Comments

2001 Amendment: Chapter 125 in definition of public roads and highways of this state in (c) inserted references to Title 60, chapter 4, and Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See *Eminent Domain in Montana*, published by the Legislative Environmental Policy Office, May 2001.

1997 Amendment: Chapter 125 in definition of bond, in three places, inserted reference to liquefied petroleum gas dealer; inserted definitions of liquefied petroleum gas and liquefied petroleum gas dealer or dealer; in definition of motor vehicle inserted reference to liquefied petroleum gas; and made minor changes in style. Amendment effective January 1, 1998.

15-70-702. Compressed natural gas dealer's or liquefied petroleum gas dealer's license.

Compiler's Comments

1997 Amendment: Chapter 125 inserted reference to liquefied petroleum gas dealer and valid liquefied petroleum gas dealer's license. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.10.503 CNG and LPG dealer license.

Collateral References

53 C.J.S. Licenses §§50 through 55.

51 Am. Jur. 2d Licenses and Permits §10; 71 Am. Jur. 2d State and Local Taxation §616.

15-70-703. Application for license.

Compiler's Comments

1997 Amendment: Chapter 125 inserted reference to liquefied petroleum gas dealer's license. Amendment effective January 1, 1998.

15-70-704. Bonding, release of surety, and additional bond.

Compiler's Comments

1999 Amendment: Chapter 38 in (2) near middle of introductory clause after "estimated" substituted "quarterly" for "monthly". Amendment effective July 1, 1999.

1997 Amendment: Chapter 125 throughout section inserted references to liquefied petroleum gas dealer; and in two places inserted reference to liquefied petroleum gas dealer's license. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.10.507 CNG or LPG dealer's bond.

15-70-705. Issuance of license — grounds for refusal — hearing.

Compiler's Comments

1997 Amendment: Chapter 125 in (1), at end of first sentence, inserted reference to liquefied petroleum gas dealer; in (2) and (4) inserted reference to liquefied petroleum gas dealer's license; and made minor changes in style. Amendment effective January 1, 1998.

15-70-706. Revocation of license — notice.

Compiler's Comments

1997 Amendment: Chapter 125 in (1), in first sentence, inserted reference to liquefied petroleum gas dealer. Amendment effective January 1, 1998.

15-70-707. Cancellation of license upon surrender.

Compiler's Comments

1997 Amendment: Chapter 125 inserted reference to liquefied petroleum gas dealer. Amendment effective January 1, 1998.

15-70-711. Tax on compressed natural gas — tax on liquefied petroleum gas.

Compiler's Comments

1997 Amendment: Chapter 125 in (2)(a), after "total tax due", inserted "on compressed natural gas"; in (3) substituted "compressed natural gas dealer" for "dealer"; inserted (4) requiring liquefied petroleum gas dealer to collect tax from user; inserted (5) establishing formula for computing total tax due on liquefied petroleum gas; inserted (6) requiring liquefied

petroleum gas dealer to pay tax to department; and made minor changes in style. Amendment effective January 1, 1998.

Collateral References

53 C.J.S. Licenses §§50 through 55.

51 Am. Jur. 2d Licenses and Permits §10; 71 Am. Jur. 2d State and Local Taxation §616.

15-70-712. Recordkeeping.

Compiler's Comments

1997 Amendment: Chapter 125 in (1) inserted reference to liquefied petroleum gas dealer and to liquefied petroleum gas. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.10.505 Dealer records — audit.

ARM 18.10.506 Dealer invoices.

15-70-713. Examination of records — enforcement — reciprocity.

Compiler's Comments

1997 Amendment: Chapter 125 in (2), in first sentence, inserted reference to liquefied petroleum gas dealer and inserted two references to liquefied petroleum gas; in (3) inserted reference to liquefied petroleum gas tax law, liquefied petroleum gas, and liquefied petroleum gas dealer; and made minor changes in style. Amendment effective January 1, 1998.

15-70-714. Returns required — payment.

Compiler's Comments

1999 Amendment: Chapter 38 in (1) near end substituted "quarterly" for "monthly"; in (2) at end of first sentence substituted "quarter to which it relates" for "month for which the tax is due"; in (3) at end substituted "quarter" for "month"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 125 in (1) inserted reference to liquefied petroleum gas dealer; and in (3) inserted reference to liquefied petroleum gas. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.10.504 Quarterly tax returns.

15-70-715. Penalties for refusal or failure to file return or pay tax when due.

Compiler's Comments

1997 Amendment: Chapter 125 in three places inserted reference to liquefied petroleum gas dealer; and made minor changes in style. Amendment effective January 1, 1998.

15-70-716. Deficiency — penalty.

Compiler's Comments

1997 Amendment: Chapter 125 in first sentence inserted reference to liquefied petroleum gas dealer; and made minor changes in style. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.9.703 Proration of interest and payment application.

15-70-717. Determination if no return made — penalty — presumption.

Compiler's Comments

1997 Amendment: Chapter 125 in (1) inserted two references to liquefied petroleum gas dealer and inserted reference to liquefied petroleum gas tax return. Amendment effective January 1, 1998.

15-70-718. Fraudulent return — penalty.

Compiler's Comments

1997 Amendment: Chapter 125 in introductory phrase inserted reference to liquefied petroleum gas dealer; and made minor changes in style. Amendment effective January 1, 1998.

CHAPTER 72
ELECTRICAL GENERATION TAX

Chapter Compiler's Comments

Saving Clause: Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

Effective Date: Section 38(1), Ch. 556, L. 1999, provided that this chapter, except for promulgating rules under 15-72-117, is effective January 1, 2000.

Applicability: Section 39(1), Ch. 556, L. 1999, provided that this chapter applies to tax years beginning after December 31, 1999.

Chapter Administrative Rules

Title 42, chapter 22, subchapter 2, ARM Wholesale energy transaction tax.

Part 1
Electrical Generation Tax Reform Act

15-72-102. Legislative findings and declaration of purpose.

Compiler's Comments

2003 Amendment: Chapter 114 in (3) substituted "transaction tax" for "transmission tax". Amendment effective October 1, 2003.

15-72-103. Definitions.

Administrative Rules

ARM 42.22.201 Definitions.

15-72-104. Wholesale energy transaction tax — rate of tax — exemptions — cost recovery.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 541 in (3)(b) near middle after "United States government" inserted "or electricity produced from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within the exterior boundaries of a Montana Indian reservation"; and made minor changes in style. Amendment effective January 1, 2002.

Chapter 591 inserted (3)(c) concerning electricity from wind turbines on state land; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Termination Date: Section 40, Ch. 556, L. 1999, provided: "[Section 4(3)(e)] [now 15-72-104(3)(f)] terminates January 1, 2003."

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

ARM 42.22.201 Definitions.

15-72-106. Collection of wholesale energy transaction tax — disposition of revenue.

Administrative Rules

ARM 42.22.202 Wholesale energy transaction tax — assessment of tax.

15-72-114. Penalty and interest on deficiency.

Compiler's Comments

2005 Amendment: Chapter 594 substituted language regarding penalty and interest for former (1) and (2) that read: "(1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for

delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

15-72-117. Administration — rules.

Compiler's Comments

Effective Date: Section 38(2), Ch. 556, L. 1999, provided that for the purpose of promulgating rules under this section, this section is effective on passage and approval. Approved April 30. 1999.

Administrative Rules

Title 42, chapter 22, ARM Centrally assessed property.

Title 42, chapter 22, subchapter 2, ARM Wholesale energy transaction tax.

TITLE 16
ALCOHOL AND TOBACCO

CHAPTER 1
ADMINISTRATION AND TAXATION

Chapter Compiler's Comments

Section Not Codified: Section 4-1-106, R.C.M. 1947, a saving clause applying to "this code", was not codified in the MCA. It is still valid law as it has not been repealed. It was enacted by sec. 39, Ch. 84, L. 1937 (sec. 4-440, R.C.M. 1947), amended, and redesignated as sec. 4-1-106, R.C.M. 1947, by sec. 105, Ch. 387, L. 1975.

Chapter Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Chapter Law Review Articles

Alcohol, Firearms, and Constitutions, Reynolds, Roberts, & Soderquist, 28 U. Mem. L. Rev. 335 (1998).

Chapter Collateral References

What constitutes a "sale" in violation of law. 89 ALR 3d 551.

Federal law as affecting state law. 10 ALR 1587, supplemented by 11 ALR 1320, 26 ALR 661, and 70 ALR 132.

Politicians in Business: A History of the Liquor Control System in Montana, Quinn, U. of Mont. Press (1970).

Administration of the State Liquor Monopoly, Montana Legislative Council (1964).

Part 1
General Provisions

Part Collateral References

Intoxicating Liquors *key* 1 through 23, 111.

16D C.J.S. Constitutional Law §§1311, 1328; 48 C.J.S. Intoxicating Liquors §44, et seq.

16-1-101. Citation — declaration of policy — subject matters of regulation.

Compiler's Comments

2005 Amendment: Chapter 130 in (1) at beginning after "through" inserted "4 and"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 543 in (2) near middle after "sale" inserted "importation"; and in (3) at end of first sentence substituted "and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state" for "and its provisions shall be construed for the accomplishment of such purposes" and inserted last sentence concerning broad construction. Amendment effective May 1, 2001.

1987 Amendment: In (2) substituted "alcoholic beverages" for "liquor".

Case Notes

Impairment of Contracts: The Montana Alcoholic Beverage Code, ch. 1 through 6 of this title, appears to be a valid exercise of the state police power and is not repugnant to the federal constitutional provisions prohibiting impairment of contracts or similar language in the Montana Constitution. Libbey II v. Jos. Schlitz Brewing Co., 34 St. Rep. 1254 (D.C. Mont. 1977) (apparently not reported in Federal Supplement).

Preemption: Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor because the state has reserved exclusive control of that function. State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966), overruled in Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Police Regulation: The State Liquor Control Act of Montana (Ch. 105, L. 1933) and 16-1-103 are police regulations enacted pursuant to the police powers of the state. The acts prohibited are

mala prohibita as distinguished from acts mala in se. St. v. Erlandson, 126 M 316, 249 P2d 794 (1952).

Construction: The State Liquor Control Act of Montana and the Montana Beer Act (Ch. 105 and 106, L. 1933) are in pari materia and must be construed together; and with the amendments to those acts are one homogeneous and consistent body of law. Fletcher v. Paige, 124 M 114, 220 P2d 484, 19 ALR 2d 1108 (1950).

Referendums: The State Liquor Control Act of Montana (Ch. 105, L. 1933) does not relate to appropriations of public money and is therefore not exempt from referendum. Failure to state that enactment is necessary for the immediate preservation of the public health, etc., and does not alone effect referability; referability is a question for the courts, immediate necessity being an essential condition. State ex rel. Haynes v. District Court, 106 M 470, 78 P2d 937 (1938).

Act Exercise of Police Power: The State Liquor Control Act of Montana (Ch. 105, L. 1933) is an exercise of a governmental function within the police power of the state. St. v. Andre, 101 M 366, 54 P2d 566 (1936).

Act Not for Raising Revenue: The State Liquor Control Act of Montana (Ch. 105, L. 1933), the main purpose of which is to regulate the manufacture and sale of intoxicating liquor, but which incidentally results in profits to the state from the operation of state liquor stores, does not violate Art. V, sec. 32, 1889 Mont. Const. (no counterpart in 1972 Mont. Const.), which provides that bills for raising revenue must originate in the House of Representatives. St. v. Driscoll, 101 M 348, 54 P2d 571 (1936).

Constitutional Law: The State Liquor Control Act of Montana (Ch. 105, L. 1933) does not violate the 1889 Montana Constitution (now Art. V, sec. 11, and Art. VIII, sec. 1, 1972 Mont. Const.) requirements that the subject of an act be clearly expressed in the act's title, and that state revenue come from a mandatory property tax and a permissive license tax, two methods of taxation which are not exclusive under the requirement. Other taxes may be levied. St. v. Driscoll, 101 M 348, 54 P2d 571 (1936).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

Local Governments Preempted From Controlling Beer Sales: In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

City License — Effect on State License: A city may license a beer distributor under 16-4-503 but may not thereby limit or make ineffective a state license. 37 A.G. Op. 100 (1977).

Collateral References

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR 3d 1061.

16-1-102. Policy as to sale of beer.

Attorney General's Opinions

Local Governments Preempted From Controlling Beer Sales: By enacting this section, the Legislature reserved to the State the entire control of the manufacture, sale, and distribution of beer. Thus, neither cities nor counties have authority to enact ordinances requiring distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

Collateral References

Price regulation. 14 ALR 2d 699.

16-1-103. Policy as to retail sale of liquor.

Compiler's Comments

1995 Amendment: Chapter 530 near end of first sentence, after "ensure", substituted "that the department has complete regulatory" for "the entire" and at end substituted "this state" for "the department of revenue" and in second sentence, in three places, substituted reference to agency liquor stores for reference to state liquor stores. Amendment effective April 25, 1995.

Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 11, subchapter 4, ARM Purchasing and distribution.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Case Notes

Regulation of Nude Dancing by Municipality: Under the broad regulatory powers of the twenty-first amendment, a municipality with self-government powers may enact an ordinance that regulates nude and seminude dancing. Billings v. Laedeke, 247 M 151, 805 P2d 1348, 48 St. Rep. 133 (1991).

Preemption: Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor, since the state has taken exclusive control of that function. State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966), overruled in Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Police Regulation: This section is a police regulation and enacted pursuant to the police powers of the state. Deeds prohibited are mala prohibita as distinguished from acts mala in se. St. v. Erlandson, 126 M 316, 249 P2d 794 (1952).

Purpose: The people of this state are to be protected in their "health, welfare and safety" by this section and by the rules and regulations promulgated. Perry v. Luding, 123 M 570, 217 P2d 207 (1950).

Commerce Clause of Federal Constitution Not Violated: The State Liquor Control Act of Montana (Ch. 105, L. 1933), in effect regulating the importation of intoxicating liquor from other states, does not violate the Commerce Clause, in view of the section in the 21st amendment prohibiting the transportation or importation into any state of intoxicating liquor in violation of the laws of a state. St. v. Andre, 101 M 366, 54 P2d 566 (1936).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

Regulation of Live Dance Performance in Licensed Liquor Establishment — Abridgment of Free Expression: The validity of a city ordinance regulating live dance performances in establishments licensed to serve liquor must be measured against free expression standards imposed by Art. II, sec. 7, Mont. Const., and the first amendment to the U.S. Constitution. Therefore, a proposed city ordinance prohibiting any live performance involving dance or the removal of clothing in licensed liquor establishments is an unconstitutional abridgment of the constitutional standards because: (1) it fails to distinguish carefully between protected and unprotected conduct; and (2) the requisite governmental interest in regulating such conduct has not been sufficiently established. 41 A.G. Op. 75 (1986).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

Collateral References

Price regulation. 14 ALR 2d 699.

16-1-104. Intent and construction of code.

Compiler's Comments

2001 Amendment: Chapter 543 inserted (1)(a) concerning purpose of establishing licensing system; in (2) at end inserted "according to subsection (1)"; deleted former last sentence that read: "The provisions of this code dealing with the importation, sale, and disposition of alcoholic beverages within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the

legislative authority of the state"; and made minor changes in style. Amendment effective May 1, 2001.

1987 Amendment: In two places substituted "alcoholic beverages" for "liquor".

Case Notes

Commerce Clause of Federal Constitution Not Violated: The State Liquor Control Act of Montana (Ch. 105, L. 1933), in effect regulating the importation of intoxicating liquor from other states, does not violate the Commerce Clause, in view of the section in the 21st amendment prohibiting the transportation or importation into any state of intoxicating liquor in violation of the laws of a state. St. v. Andre, 101 M 366, 54 P2d 566 (1936).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

Law Review Articles

The Wine Is in the Mail: The Twenty-First Amendment and State Laws Against Direct Shipment of Alcoholic Beverages, Miller, 54 Vand. L. Rev. 2495 (2001).

Collateral References

Grandfather clause. 4 ALR 2d 667.

16-1-105. Divisions of code.

Compiler's Comments

1995 Amendment: Chapter 530 in third sentence, after "establishment of", substituted "agency liquor" for "state". Amendment effective April 25, 1995.

1987 Amendments: Chapters 68 and 370 in sixth sentence, after "Chapter 5", inserted "now repealed" and made minor change in phraseology.

16-1-106. Definitions.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 110 in definition of department after "specified" inserted remainder of sentence including department of justice for certain purposes; and made minor changes in style. Amendment effective March 24, 2003.

Chapter 369 inserted definition of special event; and made minor changes in style. Amendment effective April 16, 2003.

1997 Amendments: Chapter 42 deleted definition of industrial use that read: ""Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 399 inserted definition of hard cider; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 530 inserted definitions of agency liquor store and community; in definition of posted price, after "means the", substituted "wholesale" for "retail" and after "liquor" substituted "for sale to persons who hold liquor licenses" for "and table wine"; inserted definition of retail price; substituted definition of state liquor warehouse for state liquor facility, after "means a" substituted "building" for "facility", and at end inserted "to agency liquor stores"; deleted definition of state liquor store that read: ""State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine"; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendments: Chapter 228 substituted agency franchise agreement for agency agreement as defined term; and made minor changes in style. Amendment effective March 30, 1993.

Chapter 414 in definition of Department, at end, inserted "unless otherwise specified"; in definition of rules substituted "adopted" for "published" and after "department" inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

1991 Amendment: Inserted definition of table wine distributor.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

1987 Amendment: In definitions of agency agreement, posted price, and state liquor store inserted reference to table wine.

1985 Amendments: Chapter 16 in (22) changed 14% to 16%; and in first sentence of (24) inserted "or containing" after "an alcoholic beverage made from" and substituted "contains more than 0.5% but not more than 24%" for "contains not less than 7% or more than 24%".

Chapter 19 inserted (5) defining beer importer; and inserted (9) defining import.

Chapter 141 inserted (21) defining subwarehouse; and in (23) after "structure", inserted "located in Montana", after "licensed" inserted "beer", after "wholesaler" inserted "or table wine distributor", and after "distribution of beer" inserted "or table wine".

1983 Amendment: Deleted former (15), which read: "Public road or highway means the same as in 15-70-301(5).".

1981 Amendment: Added (15) defining "public road or highway".

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Administrative Rules

ARM 42.11.201 and 42.11.301 Definitions.

Collateral References

Intoxicating Liquors *key* 132, 134.

48 C.J.S. Intoxicating Liquors §§1 through 28.

"Restaurant" or "restaurant business" within meaning of liquor laws. 105 ALR 566.

"Meal" within contemplation of liquor law. 93 ALR 962.

Test of intoxicating character of liquor. 4 ALR 1137, supplemented by 11 ALR 1233, 19 ALR 512, 36 ALR 725, and 91 ALR 513.

Part 2
Scope of Code and Exemptions

Part Collateral References

Intoxicating Liquors *key* 1 through 23, 111.

48 C.J.S. Intoxicating Liquors §44, et seq.

16-1-201. Acts not covered by code.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), at end, substituted "chapter 51 of the Internal Revenue Code" for "Internal Revenue Code, 26 U.S.C. 5001 through 5693, inclusive"; and made minor changes in style. Amendment effective March 12, 1997.

1987 Amendment: In (1), in two places, and near beginning of (2) substituted "alcoholic beverages" for "liquor"; and in (3)(a) and (3)(b) inserted reference to table wine.

Case Notes

Purchase of Materials: The 1965 amendment to this section indicates that materials to be used in the manufacture of liquor are not required to be purchased through the Montana Liquor Control Board (now Department of Revenue), but may be purchased in any manner not inconsistent with the laws and regulations of the federal government. Alpha Indus., Inc. v. Mont. Liquor Control Bd., 146 M 23, 403 P2d 606 (1965).

Scope: The 1965 amendment to this section made it clearly permissible to engage in the manufacture of liquor in Montana provided such business is also authorized by the statutes of the United States of America. Alpha Indus., Inc. v. Mont. Liquor Control Bd., 146 M 23, 403 P2d 606 (1965).

Collateral References

Grandfather clause. 4 ALR 2d 667.

16-1-202. Preparations not subject to code.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), near end, substituted "except by an agency liquor store" for "except by a state liquor store"; and made minor changes in style. Amendment effective March 12, 1997.

16-1-203. Health professions exemption.

Collateral References

Sale by prescription not in the course of professional practice. 133 ALR 1140.

16-1-204. Licensed hospital or health care facility.

Compiler's Comments

1987 Amendment: In two places substituted "alcoholic beverages" for "liquor".

16-1-205. Local option.

Compiler's Comments

1985 Amendment: In first sentence substituted "7-5-131 through 7-5-137" for "Title 7, chapter 5, part 22".

Collateral References

Intoxicating Liquors *key* 12, 14, 24 through 43.

48 C.J.S. Intoxicating Liquors §§57, 80 through 89.

Transportation of liquor within state with "dry" counties. 134 ALR 424.

Part 3
Department of Revenue
Powers, Duties, and Limitations

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

Part Collateral References

Intoxicating Liquors *key* 1 through 23, 111.

48 C.J.S. Intoxicating Liquors §44, et seq.

Government liquor control agency's immunity from suit. 9 ALR 2d 1292.

16-1-301. Administration of code.

Compiler's Comments

1995 Amendment: Chapter 530 near end, after "all", substituted "agency" for "state". Amendment effective April 25, 1995.

16-1-302. Functions, powers, and duties of department.

Compiler's Comments

2003 Amendment: Chapter 110 in (6) after "services" inserted language allowing department of justice to receive and process but not grant or deny applications; and inserted last sentence in (6) concerning contracted services. Amendment effective March 24, 2003.

1995 Amendment: Chapter 530 in (1), at end, deleted "and table wine"; in (3), after "where", substituted "agency" for "state"; and in (6), at beginning after "employ", substituted "the necessary" for "store managers and other". Amendment effective April 25, 1995.

1993 Amendment: Chapter 414 in (1), at end, deleted "in the manner set forth in this code"; in (4) substituted "to administer its duties under" for "for the operation of"; in (5), after "equipment", substituted "necessary to administer its duties under" for "it may consider necessary and useful in carrying into effect the objects and purposes of"; in (6), after "managers and", deleted "also every officer, investigator, clerk, or", after "required" substituted "to administer" for "for the operation or carrying out of", after "them" deleted "fix their salaries or remuneration", and before "the services" inserted "contract with the department of justice for

investigative services or to contract for"; in (10), after "things", substituted "necessary to administer" for "considered necessary or advisable by the department for the purpose of carrying into effect the provisions of" and after "rules" deleted "made under the provisions of this code"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: At end of (6) substituted "considered appropriate" for "deemed expedient"; inserted (9) allowing Department to place special restrictions on use of a particular license; and made minor changes in style.

Administrative Rules

Title 42, chapter 11, subchapter 1, ARM General liquor provisions.

Title 42, chapter 11, subchapter 2, ARM Vendors selling liquor to Department of Revenue.

Case Notes

Denial of License — Lack of Public Convenience and Necessity — Adjudicative Process Warranted: Appellants contended that the Department of Revenue's denial of the issuance of all-beverages licenses based on a lack of evidence of public convenience and necessity was improper. In affirming the denial, the Supreme Court noted that the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. Therefore, the Department's use of the adjudicatory process to determine whether the licenses were warranted was not an invalid exercise of rulemaking authority. Because the determination of public convenience and necessity involves a fact-intensive inquiry, it is not necessary that the Department adopt rigid rules defining the term. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989), followed in Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

Legality of Contract of Purchase: In a declaratory judgment action by the State Treasurer to determine his duties with regard to a $150,000 draft drawn upon him by the Montana Liquor Control Board (now Department of Revenue) on funds deposited with him and raised by the Board through participation of 127 state retail dealers to cover a downpayment on 15,000 cases of liquor to meet a war emergency shortage, the state to take its markup and sell the liquor to the dealers, held that the purchase was made within the Board's power under this section, nothing herein qualifying or limiting its right or method of purchase. Carey v. McFatridge, 115 M 278, 142 P2d 229 (1943).

Collateral References

Intoxicating Liquors *key* 5 through 7, 15.

48 C.J.S. Intoxicating Liquors §§52 through 56.

16-1-303. Department rules.

Compiler's Comments

1995 Amendment: Chapter 530 in (2)(a), (2)(c), in two places, (2)(d), (2)(f), and (2)(h), after "liquor", deleted reference to table wine; in (2)(a), after "regulating the", substituted "contractual operation of agency liquor" for "equipment and management of state"; in (2)(c), at end, substituted "agency liquor" for "state"; in (2)(d), after "to be", substituted "available for distribution from the state liquor warehouse" for "kept for sale at any state store"; in (2)(e), near beginning, inserted "minimum" and after "which" substituted "agency" for "state"; inserted (5) requiring the use of negotiated rulemaking procedures; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendment: Chapter 414 in (1), near beginning after "department", inserted "and the department of justice" and after "necessary" deleted "for carrying out the provisions of"; in (2) substituted introductory clause concerning rules for former language that read: "Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following"; in (2)(b) substituted "department employees" for "employees of the liquor division"; in (2)(c), at end, deleted "established under this code"; in (2)(e), after "prescribing", deleted "subject to this code"; in (2)(h) substituted "department" for "division"; in (2)(k), at end, deleted "and providing for the inspection of such licensed premises"; in (2)(m), in two places after "time", deleted "and periods" and in two places, after "manner", deleted "methods, and means"; inserted (3) allowing the Department of Justice to adopt rules relating to its responsibilities under this title; substituted (4) concerning acts authorized by rule for former text that read: "Whenever it is provided in this code that any act, matter, or thing may be done if permitted or authorized by the rules or may be done in accordance with the rules or as provided by the rules, the department, subject to the restrictions set out in subsection (1) hereof,

shall have the power to make rules respecting such act, matter, or thing"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 414, L. 1993, provided: "A statement of intent is required for this bill because [sections 3 and 28] [section 3 amended 16-1-303 and section 28 was codified as 16-11-105 and 53-2-505] authorize the department of justice to adopt rules to carry out the investigative functions transferred to the department of justice from the department of revenue under the provisions of this bill. The investigative functions that rulemaking may address are limited to the factfinding responsibilities of investigators and the search and seizure functions associated with illegally stored or transported alcoholic beverages or tobacco products. It is the intent of the legislature to consolidate investigative functions under the supervision of the state attorney general."

1987 Amendment: In (2)(c), in two places, inserted reference to table wine; in (2)(k) substituted "alcoholic beverage licenses" for "a liquor or beer license"; in (2)(l) and (2)(n) substituted "alcoholic beverages" for "liquor or beer"; and in (2)(m), in two places, substituted "alcoholic beverages" for "liquor".

1983 Amendment: Deleted (2)(g), which read: "prescribing an official seal which shall be attached to every package of liquor sold or sealed under this code".

Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.

Title 42, chapter 12, ARM Licenses and permits.

Title 42, chapter 13, ARM Regulation of licensees.

ARM 42.13.102 Retention of records.

Case Notes

Rationing System: The Montana Liquor Control Board's (now Department of Revenue) agreement with retail liquor dealers, advancing $10 a case toward enabling the Board to make an advance payment was not invalidated by the Board's rationing system, since under this section, as it read at the time, the Board could establish, amend, and alter its system either directly or by lawful transactions with exception of discrimination among holders of any class of permits. Carey v. McFatridge, 115 M 278, 142 P2d 229 (1943).

Scope of Rules: The Montana Liquor Control Board (now Department of Revenue) is an administrative body; it has no lawmaking power, and while it is authorized to make rules, they must be limited in their purpose and effect as an aid in the administration of the law of its creation, and any such rules calculated to widen the scope of the law and extend the Board's discretionary powers to matters beyond the purview of the act are void and of no effect. McFatridge v. District Court, 113 M 81, 122 P2d 834 (1942).

Rules of Substitute Board: Delegation of power to the State Board of Equalization (now State Tax Appeal Board) acting ex officio as beer board administering Montana Beer Act (Ch. 106, L. 1933) to make rules for the proper carrying into effect of the Act, held not objectionable as a delegation of legislative power. State ex rel. Steward v. District Court, 103 M 487, 63 P2d 141 (1936).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

Collateral References

Intoxicating Liquors *key* 7, 110, 112.1, 112.2.

48 C.J.S. Intoxicating Liquors §288.

16-1-304. Prohibited acts.

Compiler's Comments

2003 Amendment: Chapter 110 in (1) near middle after "involved with" inserted "license applications or"; and made minor changes in style. Amendment effective March 24, 2003.

1995 Amendment: Chapter 530 in (1), near beginning after "state", inserted "liquor", after "warehouse" deleted "or state liquor stores", and near middle, after "dealing in liquor", deleted "or table wine"; in (2), near beginning, inserted "a state agent, or any person having any ownership interest in an agency liquor store", after "gift" inserted "or other thing tangible or intangible of value", and after "liquor" deleted "or table wine"; in (3), near beginning after "liquor", deleted "or table wine", near middle, after "gift to any", deleted "member or", after "state" inserted "any state agent, or any person having any ownership interest in an agency liquor store", and after "behalf of" substituted "an" for "the member or"; in (4), (4)(a), and (4)(b), after "liquor", deleted "or table wine"; in (5), at beginning of first sentence after "Liquor", deleted "wine, or other alcoholic beverage", before "liquor stores" substituted "agency" for "state", after "sale" inserted "to persons who hold liquor licenses at the posted price and sale to the consumer", and after "at the" substituted "retail price established by the agent" for "prevailing state retail prices" and in second sentence, after "warehouse", deleted "or state store"; in (6), after "amounts of liquor", deleted "or wine" and after "distiller" deleted "or winery"; deleted (7) that read: "(7) The state may not require a company that bottled and sold less than 100,000 wine gallons of table wine nationwide in the previous calendar year to maintain minimum amounts of table wine in the state warehouse while the company retains ownership of the product"; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendment: Chapter 414 in (1) substituted "An employee of the department involved in the operation of the state warehouse or state liquor stores" for "No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor or table wine stores" and after "stores" inserted "the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages"; in (2), at beginning, substituted "An employee of the state may not" for "No member or employee of the division or any employee of the state may" and near end, after "state", deleted "or division"; in (3), after "from the state", deleted "liquor division" and after "employee of the" deleted "division, to any employee of the"; throughout (4) through (7) substituted references to the state for references to the Division and the Liquor Division; in (5), in first sentence after "stores", deleted "of the Montana liquor division"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (6) prohibiting Division from requiring that a low-volume liquor company maintain minimum amounts of liquor or wine in the state warehouse while the distiller or winery retains ownership; and inserted (7) prohibiting Division from requiring that a low-volume wine company maintain minimum amounts of table wine in the state warehouse while the company retains ownership. Amendment effective May 16, 1991.

16-1-306. Revenue to be paid to state treasurer.

Compiler's Comments

1997 Amendment: Chapter 422 substituted "16-1-406" for "16-1-408, 16-1-410". Amendment effective July 1, 1997.

1995 Amendment: Chapter 18 near end, after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

1993 Amendment: Chapter 455 after "department" substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall" and after "deposited" deleted "with the state treasurer"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1987 Amendment: Near beginning of section substituted statutory citations to 16-1-404, 16-1-405, 16-1-408, 16-1-410, and 16-1-411 for "Except as provided in 16-1-410".

Part 4
Taxation of Alcoholic Beverages

Part Law Review Articles

Alcohol Taxes and Beverage Prices, Young & Bielinska-Kwapisz, 55 Nat'l Tax J. 57 (2002).

Ad Valorem Excise the Wrong Tax for Cheap Booze, Muten, 12 Tax Notes Int'l 1791 (1996).

Citizens or Sinners? — the Economic and Political Inequity of "Sin Taxes" on Tobacco and Alcohol Products, Reiter, 29 Colum. J.L. & Soc. Probs. 443 (1996).

State Lawmakers Discuss Pros and Cons of Tobacco and Liquor Taxes, Douglas, 32 Tax Notes 630 (1986).

Part Collateral References

Intoxicating Liquors *key* 89 through 97.

48 C.J.S. Intoxicating Liquors §267, et seq.

Construction of taxation or regulation of sale for off-premises consumption. 167 ALR 206.

State's right to interfere with intrastate liquor shipments. 110 ALR 931, supplemented by 138 ALR 1150; 27 ALR 108.

16-1-401. Liquor excise tax.

Compiler's Comments

1995 Amendment: Chapter 18 near middle of (2), after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

1993 Amendment: Chapter 455 near middle of (2), after "shall", inserted "in accordance with the provisions of 15-1-501(6)" and after "deposit" deleted "with the state treasurer"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1985 Amendment: In (1)(a), after "sold and delivered", inserted remainder of (1)(a) and (1)(b) differentiating liquor vendors selling more and those selling less than 200,000 proof gallons nationwide.

Preamble: Chapter 690, L. 1985, which amended this section, contained the following preamble: "WHEREAS, the Montana Legislature recognizes the need to foster small business growth and development as an essential component of the Montana economy; and

WHEREAS, the Montana Legislature finds that small, emerging companies engaged in the business of manufacturing, distilling, rectifying, bottling, and processing liquor are particularly vulnerable to variables in the marketplace in comparison to larger well-established companies; and

WHEREAS, tax reductions to such smaller, emerging companies are a means of fostering their economic growth without impinging upon interstate commerce."

Administrative Rules

ARM 42.11.104 Retail selling price.

Case Notes

Items Taxed: License and excise taxes are due and collectible only upon liquor purchased by the Montana Liquor Control Board (now Department of Revenue) at the time of sale and delivery to the Board, and are not due and collectible upon materials, products, and distilled spirits containing alcohol for manufacturing purposes. Alpha Indus., Inc. v. Mont. Liquor Control Bd., 146 M 23, 403 P2d 606 (1965).

16-1-402. Payment of excise tax by carriers.

Compiler's Comments

1995 Amendment: Chapter 530 in (1), near end after "purchased from", substituted "an agency" for "the state"; and made minor changes in style. Amendment effective April 25, 1995.

Collateral References

Intoxicating Liquors *key* 92 through 94.

48 C.J.S. Intoxicating Liquors §§271, 272.

16-1-403. Excise tax accounting methods — report forms — penalty and interest.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) deleted former first sentence that read: "The method provided in 16-1-402 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption within this state" and in first sentence inserted reference to 16-1-402; inserted (2)(b) relating to penalty and interest provisions of 15-1-216; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

16-1-404. License tax on liquor — amount — distribution of proceeds.

Compiler's Comments

2005 Amendment: Chapter 591 in (1)(b) near middle after "sold" inserted "more than 50,000 proof gallons but"; inserted (1)(c) providing reduced tax rate on liquor sold by companies that sell not more than 50,000 proof gallons nationwide; and in (2) in first sentence after "liquor" inserted "produced in or". Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 470 in (2)(b) at end and in (3) in two places inserted "and chemical dependency". Amendment effective April 30, 2001.

Chapter 574 substituted (2)(a) allocating 34.5% to state general fund for former (2)(a) and (2)(b) that read: "(a) Thirty percent is allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (4).

(b) Four and one-half percent is allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes"; deleted former (3) and (4) that read: "(3) (a) In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405.

(b) The department shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501, to be allocated to the incorporated cities and towns of the county. The payments to counties under this section are statutorily appropriated, as provided in 17-7-502.

(4) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 389 in (2) at beginning of fifth sentence substituted present language pertaining to allocation of revenue for former language that read: "The revenue is statutorily appropriated, as provided in 17-5-502, to the department and must, in accordance with the provisions of 15-1-501, be disbursed as follows"; in (3)(b) inserted second sentence concerning statutory appropriation of payments to counties; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 422 in (2), in last sentence of introductory clause, deleted "Thirty percent of" and at end inserted "disbursed as follows"; in (2)(a), at beginning, inserted "Thirty percent is"; in (2)(b), after "percent", substituted "is" for "of this revenue is statutorily appropriated, as provided in 17-7-502, and must, in accordance with the provisions of 15-1-501, be"; in (2)(c), at beginning, substituted "Sixty-five and one-half percent must" for "The remaining revenue must, in accordance with the provisions of 15-1-501" and deleted from beginning of last sentence "That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments — Composite Section: Chapter 18 in (2), in four places after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

Chapter 546 in (2), in seventh sentence, and in (4), in two places, substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 455 in fifth, sixth, seventh, and ninth sentences of (2) inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1985 Amendments: Chapter 690 redesignated former (1) as (1) (lead-in), (1)(a), and (2); in (1)(a) following "delivered", inserted remainder of (1)(a) and (1)(b) differentiating liquor vendors selling more and those selling less than 200,000 proof gallons nationwide; and in (2), at beginning substituted "The license" for "Said", at beginning of third sentence substituted "The" for "Said 10%", and near end of fourth sentence substituted "the" for "such 10%".

Chapter 703 in (2), near beginning of fifth sentence, after "revenues", inserted "are statutorily appropriated, as provided in 17-7-502, to the department and", near beginning of sixth sentence, after "revenues", inserted "are statutorily appropriated, as provided in 17-7-502, and", and at beginning of last sentence substituted "That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the department, which shall" for "The department shall".

Preamble: Chapter 690, L. 1985, which amended this section, contained the following preamble: "WHEREAS, the Montana Legislature recognizes the need to foster small business growth and development as an essential component of the Montana economy; and

WHEREAS, the Montana Legislature finds that small, emerging companies engaged in the business of manufacturing, distilling, rectifying, bottling, and processing liquor are particularly vulnerable to variables in the marketplace in comparison to larger well-established companies; and

WHEREAS, tax reductions to such smaller, emerging companies are a means of fostering their economic growth without impinging upon interstate commerce."

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 42.11.104 Retail selling price.

Case Notes

Items Taxed: License and excise taxes are due and collectible only upon liquor purchased by the Montana Liquor Control Board (now Department of Revenue) at the time of sale and delivery to the Board, and are not due and collectible upon materials, products, and distilled spirits containing alcohol for manufacturing purposes. Alpha Indus., Inc. v. Mont. Liquor Control Bd., 146 M 23, 403 P2d 606 (1965).

16-1-405. Use of license tax proceeds.

Compiler's Comments

1987 Amendment: Near end substituted "alcoholic beverages" for "liquor".

16-1-406. Taxes on beer.

Compiler's Comments

2001 Amendments — Composite Section — Coordination: Chapter 405 in (1)(a) substituted first and second sentences regarding wholesale beer tax and number of gallons in barrel for "A tax of $4.30 per barrel of 31 gallons is imposed on each barrel of beer sold in Montana by a wholesaler" and inserted third sentence regarding basis for tax, introductory clause, and (1)(a)(i) through (1)(a)(iii) specifying amount of tax per number of barrels; inserted (1)(b) regarding tax on brewer producing more than 20,000 barrels; in (3)(a) at beginning substituted "23.26%" for "$1"; in (3)(b) at beginning substituted 111.63%" for "50 cents"; in (3)(c) at beginning substituted "65.11%" for "$2.80"; and made minor changes in style. Amendment effective July 1, 2001. Pursuant to sec. 255(7), Ch. 574, L. 2001, a coordination section, the code commissioner has not codified the amendments made by Ch. 405.

Chapter 470 in (3)(a) at end inserted "and chemical dependency". Amendment effective April 30, 2001.

Section 255(7), Ch. 574, L. 2001, a coordination section, provided that if Senate Bill No. 317 and Ch. 574 were both passed and approved, then 16-1-406 was amended as provided in the coordination section. Senate Bill No. 317 was passed and approved as Ch. 405, L. 2001. Chapter 574 in (1)(a) at beginning substituted "A tax" for "A tax of $4.30" and inserted remainder of subsection specifying that a barrel of beer equals 31 gallons, imposing tax based on total barrels of beer produced in a year, and establishing schedule of tax for production of less than 20,000 barrels of beer a year; inserted (1)(b) setting tax at $4.30 for brewers producing over 20,000 barrels a year; in (2) at beginning after "tax" inserted "imposed pursuant to subsection (1)"; in (3)(a) at beginning substituted "23.26%" for "$1"; in (2)(b) at beginning substituted "the balance" for "50 cents"; deleted former (2)(c) that read: "(c) $2.80 must be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund"; deleted former (3) that read: "(3) (a) The money in the incorporated cities and towns beer tax account is statutorily appropriated, as provided in 17-7-502, to the department, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(b) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 405, L. 2001, provided: "[This act] applies to beer sold by a wholesaler on or after July 1, 2001."

1997 Amendment: Chapter 422 in (1), near beginning, substituted "$4.30" for "$3"; inserted (2) relating to deposit of the tax; inserted (3) relating to distribution of the cities and towns beer tax account; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendment: Near middle of first sentence, after "beer", substituted "sold in Montana" for "manufactured out of this state and sold herein"; and near beginning of second sentence, after "beer", deleted "imported and".

Administrative Rules

ARM 42.13.701 Production threshold.

16-1-409. Failure to make beer tax returns — penalties and interest.

Compiler's Comments

1999 Amendment: Chapter 427 deleted former (2), (3), and (4) that read: "(2) The department shall add to the amount of tax due a penalty of:

(a) 5% for the first failure;

(b) 10% for the second failure;

(c) 15% for the third failure; and

(d) 25% for the fourth and each subsequent failure.

(3) The penalty provided for in subsection (2) is in addition to the 5% penalty provided for nonpayment of the tax within the time provided.

(4) The tax and penalties bear interest at the rate of 1% per month from the date returns should have been made and the tax paid"; in (5) at end substituted "penalty and interest must be added to the delinquent tax as provided in 15-1-216" for "a penalty of 5% must be added to the tax. The tax and penalty bear interest at the rate of 1% per month from the date of delinquency until paid"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 422 in (1), near beginning after "16-1-406", deleted "and 16-1-408" and after "the time has expired" deleted "proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and, from such information as it may be able to obtain, to make a statement showing such matters and things and"; in (2)(a), at end, deleted "willful neglect or refusal"; at end of (2)(d) deleted "neglect, or

refusal"; in (5), after "prosecute", deleted "to final determination"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: In (1) substituted "16-1-406 and 16-1-408" for "16-1-406 through 16-1-408"; and throughout section made minor changes in phraseology.

1981 Amendment: In (5) substituted the first sentence providing for a warrant of distraint for provision stating that the department of revenue had a lien on all property of the brewer or wholesaler for all amounts due under this title; deleted the provision at the end of (5) that the liens provided for in this section are enforced in the same manner as other liens are enforced; deleted a sentence at the end of (6) that provided for the release of the lien upon payment of the amount due; deleted former (7) that allowed the department to release the lien to enable the brewer or wholesaler to dispose of his property in order to pay the amount due.

16-1-411. Tax on wine and hard cider — penalty and interest.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 470 in (3)(b) at end inserted "and chemical dependency". Amendment effective April 30, 2001.

Chapter 574 in (3)(a) at beginning substituted "69%" for "59%"; deleted former (3)(c) and (3)(d) that read: "(c) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(d) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the cities and towns, based on population, for the purpose established in 16-1-405"; in (5) deleted definition of based on population that read: ""Based on population" means:

(i) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-406; and

(ii) for cities, the distribution described in 16-1-406"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 427 in (2) at end substituted "15-1-216" for "16-1-409". Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 399 in (1)(a) inserted "except hard cider"; inserted (1)(b) imposing tax on hard cider; in first sentence of (2), near beginning, substituted "imposed in subsection (1)" for "on table wine imported by a table wine distributor" and near middle, after "the table wine", inserted "or hard cider" and in second sentence, near beginning after "Failure to file a", deleted "table wine"; deleted (2)(b) that read: "(b) The tax on table wine imported by the department must be collected at the time of sale"; in (3), after "in accordance with subsection (2)", deleted "(a) and the tax collected by the department in accordance with subsection (2)(b)"; in (3)(a) substituted "59%" for "16 cents"; in (3)(b), at beginning, substituted "31%" for "of the remaining 11 cents: (i) 8 ⅓ cents"; in (3)(c) substituted "5%" for "1 ⅓ cents"; in (3)(d) substituted "5%" for "1 ⅓ cents"; in (5)(b) inserted definition of table wine; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 18 near end of introductory clause of (3), after "15-1-501", deleted reference to subsection (6); at beginning of (3)(b)(i) substituted "8 ⅓ cents" for "8.34 cents"; and made minor changes in style.

Chapter 546 in (3)(b)(i) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments — Composite Section: Chapter 60 inserted definition of based on population; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 455 in (3) substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall"; and made minor changes in style. Amendment effective April 21, 1993.

A style change in (4) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Applicability: Section 3, Ch. 60, L. 1993, provided: "[This act] applies to all beer and wine tax revenue recorded on or after July 1, 1993, regardless of when the tax obligation accrued."

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, in (4) inserted references to 16-1-423 (now terminated) and 16-2-301; inserted (5) concerning deposit of surtax; and made minor changes in style.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Applicability — Termination: Section 39(5), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax or fee liabilities for months beginning after August 14, 1992. This section terminates upon receipt of taxes or fees for the final month of applicability.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1985 Amendments: Chapter 703 in (3)(b)(ii) and (3)(b)(iii) at beginning after "1 ⅓ cents", inserted "is statutorily appropriated, as provided in 17-7-502, to the department, for allocation".

Chapter 721 in (1) increased tax from 20 cents to 27 cents per liter; and in (3)(b) near beginning and in (3)(b)(i) substituted "of the remaining 11 cents, 8.34 cents to the state special revenue fund" for "of the remaining 4 cents, one-third to the state special revenue fund", in (3)(b)(ii) substituted "1 ⅓ cents to the counties" for "one-third to the counties", and in (3)(b)(iii) substituted "1 ⅓ cents to the cities and towns" for "one-third to the cities and towns".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue account.

1981 Amendments: Chapter 219 added (2)(b) providing for collection at time of sale of tax on table wine imported by Department and redesignated former (2)(b) as (3); inserted "in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b)" and "as follows" into the introductory clause of (3); deleted former (3) relating to the disposition of tax collected on table wines imported by the department.

Chapter 241 changed the time for payment of tax on table wine imported by distributor from the 15th day of the month following receipt at the warehouse to the month following sale from the warehouse; and added the last sentence in (2)(a) providing for penalties and interest.

Administrative Rules

ARM 42.11.104 Retail selling price.

ARM 42.13.402 Filing monthly report and tax due.

16-1-424. Distillery — reporting — tax payment — penalties.

Compiler's Comments

Effective Date: Section 9, Ch. 591, L. 2005, provided that this section is effective July 1, 2005.

CHAPTER 2
LIQUOR STORES

Chapter Compiler's Comments

Section Not Codified: Section 4-2-203, R.C.M. 1947, providing that "all acts and parts of acts in conflict herewith are hereby repealed", was not codified in the MCA. It is still valid law as it has not been repealed. It was enacted by sec. 2, Ch. 359, L. 1974 (sec. 4-114.2, R.C.M. 1947), and redesignated as sec. 4-2-203, R.C.M. 1947, by sec. 120, Ch. 387, L. 1975.

Chapter Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.

Title 42, chapter 12, ARM Licenses and permits.

Title 42, chapter 13, ARM Regulation of licensees.

Chapter Collateral References

Intoxicating Liquors *key* 7, 127, 128.

48 C.J.S. Intoxicating Liquors §§51, 289.

Liability of state or municipality for damages arising from sales by its store. 95 ALR 3d 1243.

What constitutes a "sale" in violation of law. 89 ALR 3d 551.

Federal law as affecting state law. 10 ALR 1587, supplemented by 11 ALR 1320 and 26 ALR 661, 70 ALR 132.

"Montana's Retail Liquor Monopoly", Montana's Liquor License Quota System, Montana Legislative Council (1980).

Politicians in Business: A History of the Liquor Control System in Montana, Quinn, U. of Mont. Press (1970).

Administration of the State Liquor Monopoly, Montana Legislative Council (1964).

Part 1
Operation of Stores

Part Administrative Rules

ARM 42.11.104 Retail selling price.

Part Law Review Articles

Statutes Prohibiting Liquor Store Price Advertising Violate the First Amendment, Isom, 23 J. Contemp. L. 223 (1997).

Part Collateral References

Validity of statute or regulation fixing minimum prices at which alcoholic beverages may be sold at retail. 96 ALR 3d 639.

Liability of state or municipality in tort for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment. 95 ALR 3d 1243.

Constitutionality of statutes providing for sales by state. 121 ALR 300.

16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor.

Compiler's Comments

2001 Amendment: Chapter 508 in (2)(b)(ii)(B) near middle of first sentence after "commission rate" deleted "in the state agency franchise agreement"; in (4)(a)(i) at end substituted "subsection (6)" for "subsection (6) or (8)"; in (4)(a)(ii) near middle substituted "subsection (6)" for "subsection (6) or (8)" and at end inserted "plus"; inserted (4)(b) increasing commission rates for state agency liquor stores based on annual sales volumes of stores; in (5)(a) substituted "and must be renewed at the existing commission rate for additional 10-year periods" for "and may be renewed every 10 years"; in (6)(a) substituted "under subsection (4)(a)" for "under an agency franchise agreement"; deleted former (8) that read: "(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate"; and made minor changes in style. Amendment effective May 1, 2001.

Applicability: Section 3, Ch. 508, L. 2001, provided: "[This act] applies to commissions beginning in calendar year 2002."

1997 Amendment: Chapter 42 in (4), in introductory clause, and (9)(c), in third sentence, substituted references to agency liquor stores for references to agency stores; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment: Chapter 530 deleted (1)(a) that read: "(a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules adopted under this code"; in (1), after "franchise", substituted "agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor" for "agreement or employ the necessary help to operate the stores and shall designate the duties to be performed by the agent or employees"; deleted (1)(c) that read: "(c) Once established, a store may not be closed, converted to an agency store, or sold by the department unless:

(i) the store is returning less than a 10% profit to the state; or

(ii) the closure or sale is approved by the legislature"; in (2)(a), after "fix the", inserted "posted", after "liquor" deleted "and table wine", after "sold, and" inserted "the posted", and after "all" substituted "agency liquor" for "state"; inserted (2)(b) regarding the supply of liquor by the state liquor warehouse; inserted (2)(c) allowing the sale of table wine; deleted (3)(a) that read: "(a) State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i). In computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores"; in (3), at beginning after "Agency", inserted "liquor" and deleted second sentence that read: "This provision is applicable only to agency agreements entered into after May 11, 1987"; in (4), in introductory clause after "commissions", substituted "payable" for "based on adjusted gross sales"; in (4)(a), at end, inserted "unless adjusted pursuant to subsection (6) or (8)"; in (4)(b), after "bidding", inserted "unless adjusted pursuant to subsection (6) or (8)"; substituted (5)(c) regarding liability for invoices for former language that read: "require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value"; in (6)(a), in first sentence after "reviewed", substituted "on July 1, 1998, and every 3 years thereafter" for "every 5 years" and in second sentence, after "agreement", inserted "or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement"; inserted (6)(b) allowing a greater than average commission percentage under certain circumstances; in (7), in first sentence after "insurance", substituted "requirement" for "and performance security requirements" and after "every" substituted "3 years after July 1, 1995" for "5 years", in second sentence, after "associated with the", deleted "loss of state assets or from the", and in third sentence, after "amount of", inserted "liability"; inserted (9)(a)(i) through (9)(a)(v) setting out conditions for termination of a franchise agreement; inserted (9)(b) regarding notice and hearing requirements when termination is intended; in (9)(c), in first sentence after "case of", substituted "failure to make timely payments to the department for liquor purchased" for "suspected theft or unauthorized use of state assets, the department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the agency franchise agreement termination and request a hearing within 30 days. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(b) If an agent is suspected of theft or unauthorized use of state assets", after "agreement and" deleted "retrieve its assets", and after "immediately" inserted "repossess any liquor purchased and in the possession of the agent" and in second sentence, after "contest the", deleted "agency franchise agreement" and after "department's" substituted "repossession of the liquor" for "retrieval of assets"; substituted (12) disallowing an ownership interest by a person in more than one agency store for former language that read: "An agency agreement in effect on March 30, 1993, must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals"; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendment: Chapter 228 in (1)(b), after "agency", inserted "franchise"; inserted (5) relating to required provisions in agency franchise agreements; inserted (6) relating to commission percentage; inserted (7) relating to liability insurance and performance security requirements; inserted (8) relating to renewal agreement terms and procedure; inserted (9) relating to termination of the agreement by the Department; inserted (10) relating to termination by mutual agreement; inserted (11) relating to assignment of an agreement; inserted (12) relating to conversion of agreements in effect on March 30, 1993; and made minor changes in style. Amendment effective March 30, 1993.

Continuity of Agreements Existing on Effective Date: Section 4, Ch. 228, L. 1993, provided: "An existing agency agreement that terminates after [the effective date of this act] [March 30, 1993] but before it is converted to an agency franchise agreement is automatically extended until an agency franchise agreement is signed or for 6 months from [the effective date of this act], whichever occurs first."

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

1987 Amendments: Chapter 68 in (1)(a) and (2) inserted reference to table wine.

Chapter 648 inserted (1)(c) and (3) relating to closure, conversion to an agency store, or sale of a state liquor store; inserted (4) relating to required commissions; and inserted (5) relating to minimum inventory requirements.

1986 Amendment: Chapter 2, Sp. L. March 1986, inserted provision prohibiting closure of a liquor store unless store is not profitable and legislative approval is obtained. Chapter 2 was effective April 4, 1986, applied retroactively to occurrences after December 31, 1985, and terminated July 1, 1986.

Freeze on Commissions — Recovery Plan: Sections 2 and 4 of Ch. 2, Sp. L. March 1986, froze liquor store commissions until July 1, 1986, and provided for development of a Liquor Division recovery plan for presentment to the June 1986 Special Session. The sections were not codified because of their temporary nature.

Administrative Rules

Title 42, chapter 11, subchapter 3, ARM Operating state liquor stores.

Case Notes

Vested Interest Not Gained by Mere Submission of Beer and Wine Application — Retroactive Application of General Rule on Denial of Building Permit: Town Pump, Inc. (Town Pump), was required to obtain subdivision approval in order to complete a property conveyance for the building of a convenience store, gas station, and casino wherein beer and wine would be sold. After Town Pump had submitted an application for a beer and wine license, the property was rezoned as a commercial highway, and the city subsequently adopted a development code requiring a conditional use permit for the property in order for beer and wine to be sold on premises. Town Pump's application was denied based on the provisions of the new development code. Applying the rationale in Femling v. Mont. St. Univ., 220 M 133, 713 P2d 996 (1986), and Wallace v. Dept. of Fish, Wildlife, and Parks, 269 M 364, 889 P2d 817 (1995), the Supreme Court held that Town Pump did not gain a vested interest in the beer and wine application merely because the application was submitted before the adoption of the development plan. The general rule is that the denial of an application for a building permit may be based on a zoning regulation enacted or becoming effective after the application was made; therefore, a zoning regulation may be retroactively applied to deny an application for a building permit, even though the permit could have been lawfully issued at the time of application. The court concluded that the development code was neither arbitrary nor unreasonable in its effects, that it did not impair or burden any vested interest or passed transaction held by Town Pump, and that retroactive application of the development code did not deny Town Pump's constitutional right to due process. Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Collateral References

Intoxicating Liquors *key* 110, 111, 122.1, 122.2, 124.

48 C.J.S. Intoxicating Liquors §295.

Liability of state or municipality in tort for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment. 95 ALR 3d 1243.

16-2-103. Duplicate invoices of sales required.

Compiler's Comments

1997 Amendment: Chapter 42 in (1) and (3) substituted references to an agency liquor store for references to the state liquor store; and made minor changes in style. Amendment effective March 12, 1997.

1987 Amendment: In (1), in two places, and in (2) inserted reference to table wine.

16-2-104. Hours.

Compiler's Comments

1995 Amendment: Chapter 530 in (1), at beginning of first sentence, substituted "Agency" for "State", after "stores" substituted "may" for "shall be and", and after "during" substituted "the period between 8 a.m. and 2 a.m." for "such period of the day as the department shall deem advisable" and at end of second sentence deleted "as set by department rule"; substituted (2) regarding limited opening on Mondays for former language that read: "(2) No sale or delivery of liquor or table wine shall be made on or from the premises of any state liquor store nor shall any store be open for the sale of liquor or table wine:

(a) on any holiday recognized by state law;

(b) during such other period and on such other days as the department may direct"; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: In (2), in two places in introductory clause, inserted reference to table wine.

Law Review Articles

Special Occasion (Extending Licensing Hours for Special Occasions), Samuels, 126 Solic. J. 559 (1982).

Collateral References

Intoxicating Liquors *key* 121, 145, 163.

48 C.J.S. Intoxicating Liquors §§308, 355.

Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays. 27 ALR 4th 1155.

16-2-105. Place and time of selling liquor.

Compiler's Comments

1995 Amendment: Chapter 530 in two places substituted reference to agent for reference to manager, substituted reference to employee for reference to clerk or servant, and at end inserted "implementing this code"; and made minor changes in style. Amendment effective April 25, 1995.

16-2-106. Purchase price in advance.

Compiler's Comments

1995 Amendment: Chapter 530 at beginning of first sentence substituted "liquor store agent" for "store manager" and at end substituted "implementing this code" for "made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price" and inserted second sentence allowing delivery of liquor and table wine; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: Near beginning inserted reference to table wine.

Case Notes

Partial Payment Before and Final Payment on Delivery Not Prohibited: In a declaratory judgment action by the State Treasurer to determine his duties with regard to a $150,000 draft drawn upon him by the Montana Liquor Control Board (now Department of Revenue) on funds deposited with him and raised by the Board through participation of state retail dealers to cover a downpayment on cases of liquor to meet a war emergency shortage, the state to take its markup and sell the liquor to the dealers, held that this section was not violated by dealers making partial payment prior to, and final payment upon, delivery. Carey v. McFatridge, 115 M 278, 142 P2d 229 (1943).

Collateral References

Intoxicating Liquors *key* 146(1).

48 C.J.S. Intoxicating Liquors §331.

Construction and effect of regulation forbidding or restricting sales on credit or for other than cash. 17 ALR 3d 396.

16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of agency store.

Compiler's Comments

1995 Amendment: Chapter 530 at beginning substituted "An agent and the agent's employees in an agency store may not" for "No officer, clerk, or agent of the department employed in a state store shall" and in two places, after "premises of", substituted "an agency liquor store" for "a state store"; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: Throughout section substituted references to alcoholic beverage for references to liquor.

1983 Amendment: Substituted "agent" for "servant"; inserted "allow any liquor container to be opened on the premises of a state store or" after "a state store shall"; inserted "open a liquor container or" before "consume any liquor".

Collateral References

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place. 39 ALR 4th 668.

16-2-108. Disposition of money received.

Compiler's Comments

2001 Amendment: Chapter 448 in (1) near middle of second sentence after "expenses" inserted "associated with the sale of liquor", in fourth sentence near end after "taxes" deleted "and license and permit fees", and in fifth sentence near beginning after "Taxes" deleted "license and permit fees"; inserted (2) requiring liquor license and permit fees to be deposited in department's liquor enterprise fund; inserted (3) requiring department to pay certain expenses from its account in the liquor enterprise fund; inserted (4) requiring net proceeds of the liquor enterprise fund to be transferred to the general fund; and made minor changes in style. Amendment effective April 30, 2001.

Applicability: Section 6, Ch. 448, L. 2001, provided: "[Sections 1 and 2] [15-1-501 and 16-2-108] apply to fees collected after June 30, 2001."

1995 Amendment: Chapter 530 deleted former first sentence that read: "All money received from the sale of liquor and table wine at the state liquor stores must be deposited in the enterprise fund in the state treasury to the credit of the department", in first sentence, after "liquor", deleted "and table wine", at end of third sentence substituted "sales" for "stores", in fourth sentence, after "receipts from", inserted "the sale of liquor and", and in fifth sentence, after "liquor", substituted "sales" for "stores"; and made minor changes in style. Amendment effective April 25, 1995.

1989 Amendment: Near beginning of second sentence substituted "may" for "is hereby authorized to"; in fourth sentence, after "department", substituted "may be" for "may ever be or become"; in fifth sentence substituted "enterprise fund" for "general fund" and substituted "license and permit fees" for "licenses"; in last sentence, at beginning, inserted "Taxes, license and permit fees" and at end inserted "must be transferred to the general fund"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendment: In first and second sentences inserted reference to table wine.

1983 Amendment: Substituted references to enterprise fund for references to revolving fund.

16-2-109. Number and location of agency liquor stores.

Compiler's Comments

2001 Amendment: Chapter 7 in (1)(a) at end of third sentence substituted "16-4-201" for "16-4-501". Amendment effective October 1, 2001.

Effective Date: Section 43(1), Ch. 530, L. 1995, provided that this part is effective on passage and approval. Approved April 25, 1995.

16-2-110. State lien on liquor in agency liquor stores.

Compiler's Comments

Effective Date: Section 43(1), Ch. 530, L. 1995, provided that this part is effective on passage and approval. Approved April 25, 1995.

Part 2
Price of Liquor

Part Administrative Rules

ARM 42.11.104 Retail selling price.

16-2-201. Reduction for quantity sales of liquor.

Compiler's Comments

1995 Amendment: Chapter 530 in (1), in first sentence, changed reduction from 5% of retail price of liquor sold at the state liquor store to any person to 8% of the posted price at the agency liquor store to any licensee and in second sentence, after "made", inserted "to any other person"; inserted (2) allowing purchase discounts but disallowing sales at less than the posted price; and made minor changes in style. Amendment effective July 1, 1995.

Attorney General's Opinions

Case Lot Liquor Discount Applicable to Retail Price Rather Than Posted Price — Taxes Based on Discounted Retail Price: The terms of this section, authorizing the Department of Revenue to apply a 5% discount to the price of liquor sold in unbroken case lots, require that the discount apply to the retail price, which does not include liquor excise or license taxes. However, taxes are based on the discounted retail price of the liquor, which results in the same amount of excise and license tax revenues as if the discount had been applied to the retail price with the taxes included. (See 1995 amendment.) 43 A.G. Op. 52 (1990).

16-2-203. Department sales to licensees.

Compiler's Comments

1987 Amendment: In first sentence substituted "and table wine" for "wine containing more than 14% alcohol by volume, and cordials kept in stock" and near end substituted "and table wine are" for "is".

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Collateral References

Construction and effect of liquor regulation forbidding or restricting sales on credit or other than for cash. 17 ALR 3d 396.

Part 3
Sale of Table Wine

16-2-301. Retail selling price on table wine — tax on certain table wine.

Compiler's Comments

1997 Amendment: Chapter 399 inserted (3) excluding hard cider from definition of table wine. Amendment effective July 1, 1997.

1995 Amendment: Chapter 530 deleted former (1) that read: "(1) The retail selling price at which table wine is sold either by the department, through a state employee-operated store, or by a commission agent who was appointed before April 30, 1987, including subsequent renewals of such appointment, and who elects to order table wine from the department is computed by adding to the statewide weighted average cost of table wine the tax and state markup as designated by the department"; in (1), after "sold", substituted "at an agency liquor store" for "by a commission agent appointed by the department after May 1, 1987"; and adjusted subsection references. Amendment effective April 25, 1995.

1987 Amendment: In (1), after "sold", inserted "either" and after first "department" inserted language relating to state employee-operated store, commission agent, and renewals; inserted (2) relating to retail price of table wine sold by a commission agent; inserted (3) imposing a 1 cent per liter tax; and made minor change in phraseology.

1987 Statement of Intent: The statement of intent attached to Ch. 629, L. 1987, read: "A statement of intent is required for HB 586 [Ch. 629, L. 1987] because it contemplates a modification of the department of revenue's existing rule establishing a markup on table wine. This bill is intended to equalize the status of agency liquor stores established in the future between stores which hold wine retailing licenses (e.g., pharmacies) and agency stores which do not hold wine licenses. The latter class of agents may purchase table wine from local wine distributors with their own funds, should they choose to do so, as the agents with wine licenses will be doing."

Administrative Rules

ARM 42.11.104 Retail selling price.

Collateral References
Intoxicating Liquors *key* 110, 111, 122.1, 122.2, 124.
48 C.J.S. Intoxicating Liquors §295.
Price regulation. 14 ALR 2d 699.

CHAPTER 3
CONTROL OF LIQUOR, BEER, AND WINE

Chapter Administrative Rules
Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Chapter Law Review Articles
City Has Right to Ban Alcohol, Tobacco Billboards: Court, Manson, 145 Chi. Daily L. Bull. 1 (1999).

Chapter Collateral References
Intoxicating Liquor *key* 1, 6, 7, 10, 15, 45, 110 through 112, 129, 129.5, 130.
48 C.J.S. Intoxicating Liquors §§69 through 75, 282, et seq.
Products liability: alcoholic beverages. 42 ALR 4th 253.
What constitutes a "sale" in violation of law. 89 ALR 3d 551.
Construction of law taxing or regulating sale for off-premises consumption. 167 ALR 206.
Federal law as affecting state law. 10 ALR 1587, supplemented by 11 ALR 1320, 26 ALR 661, and 70 ALR 132.
"Montana's Retail Liquor Monopoly", Montana's Liquor License Quota System, Montana Legislative Council (1980).
Alcoholic Beverage Control Statutes, Montana Legislative Council (1974).
Politicians in Business: A History of the Liquor Control System in Montana, Quinn, U. of Mont. Press (1970).
Administration of the State Liquor Monopoly, Montana Legislative Council (1964).

Part 1
Official Controls

Part Administrative Rules
ARM 42.13.201 Labeling requirements.
ARM 42.13.202 Draught beer and wine taps.
ARM 42.13.221 Regulations.
ARM 42.13.301, 42.13.304, and 42.13.305 Storage requirements — exchange or return.

Part Collateral References
Regulations prohibiting employees or entertainers from drinking or mingling with patrons, or soliciting drinks from patrons. 99 ALR 2d 1216.
Enforcing foreign contract for sale of liquor. 49 ALR 1002.

16-3-101. Alcoholic beverage transactions — only in accordance with code.

Compiler's Comments
2001 Amendment: Chapter 543 in (1) at beginning substituted "A person who manufactures, imports, distributes, or sells alcoholic beverages or the person's agent may not give or sell" for "No brewer, beer importer, distiller, or manufacturer of alcoholic beverages shall, within the state, by himself, his clerk, servant, or agent, give", after "person" inserted "within the state", and at end substituted "provisions of this code" for "rules made under this code"; inserted (2) concerning restrictions on shipping, transportation, and consignment; inserted (3) concerning requirement of distribution by licensed wholesaler or retailer; and made minor changes in style. Amendment effective May 1, 2001.
1987 Amendment: In two places substituted "alcoholic beverages" for "liquor".
1985 Amendment: Inserted "beer importer".

Administrative Rules
Title 42, chapter 11, subchapter 2, ARM Vendors selling liquor to Department of Revenue.

Collateral References
Intoxicating Liquors *key* 131 through 176.
48 C.J.S. Intoxicating Liquors §311, et seq.

16-3-103. Unlawful sales solicitation or advertising — exceptions.

Compiler's Comments
1995 Amendment: Chapter 530 in (2)(a) substituted reference to agency liquor store for reference to state liquor store; and made minor changes in style. Amendment effective April 25, 1995.
1993 Amendment: Chapter 599 at end of (2)(c) inserted reference to 16-4-111; and made minor changes in style. Amendment effective May 4, 1993.
1987 Amendment: Inserted (2)(c) relating to sale of beer at county fairground or public sports arena.
1985 Amendment: In (1)(b) after "beer licensees", deleted "or club licensees".

Administrative Rules
ARM 42.11.205 Vendors' employment of representatives.
ARM 42.12.128 Catering endorsement.
ARM 42.12.323 Permissible and prohibited activities.
ARM 42.13.211 Advertising restrictions.
ARM 42.13.221 Regulations.

Case Notes
Advertising of Liquor or Beer: Prohibition of liquor or beer advertising as a reasonable regulation has been uniformly sustained. Fletcher v. Paige, 124 M 114, 220 P2d 484, 19 ALR 2d 1108 (1950).

Collateral References
Intoxicating Liquors *key* 110, 116, 122.3, 146(2).
48 C.J.S. Intoxicating Liquors §§296, 339.
Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR 4th 600.
Validity and construction of advertising prohibitions and regulations. 19 ALR 2d 1114.

16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler.

Compiler's Comments
1985 Amendment: Inserted "beer importer".

16-3-105. Restrictions on alcoholic beverages in hotels.

Compiler's Comments
1987 Amendment: In introductory clause substituted "alcoholic beverages" for "liquor or beer"; and in (1) and (2) substituted "alcoholic beverage(s)" for "liquor".

16-3-106. Conveyance of liquors, table wines, and beer — opening alcoholic beverages during transit forbidden.

Compiler's Comments
1995 Amendment: Chapter 530 in (1), near beginning after "any", substituted "agency liquor" for "state", after "from" substituted "the state liquor" for "any", after "warehouse or" inserted "any", and near middle, after "vendor from", substituted "an agency liquor" for "a state"; and made minor changes in style. Amendment effective April 25, 1995.
1987 Amendment: In (1), in two places, inserted "or table wine"; and in (2), in two places, substituted reference to alcoholic beverage for "liquor".

Administrative Rules
Title 42, chapter 11, subchapter 2, ARM Vendors selling liquor to Department of Revenue.

Collateral References
Intoxicating Liquors *key* 112 ½, 138.
48 C.J.S. Intoxicating Liquors §§309, 369, et seq.
Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle. 57 ALR 3d 1071.

16-3-107. Resident representatives required.

Compiler's Comments

2003 Amendment: Chapter 372 in (2) in first sentence substituted "two additional representatives" for "an additional representative"; in (3) substituted "the one required position" for "a representative position"; and made minor changes in style. Amendment effective October 1, 2003.

Part 2
Regulation of Brewers, Beer Importers, and Beer Wholesalers

Part Collateral References

Construction and constitutionality of statutes preventing or limiting control of retailers by manufacturers, wholesalers, and importers. 136 ALR 1238.

Enforcing foreign contract for sale of liquor. 49 ALR 1002.

16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful — personal brewing.

Compiler's Comments

1997 Amendment: Chapter 546 inserted (2) providing that Montana law does not prohibit brewing beer for personal use that meets the exemptions provided by federal law; and made minor changes in style.

1985 Amendment: After "unlawful to manufacture" inserted "import".

Administrative Rules

ARM 42.13.305 Exchange or return of beer or table wine product.

Collateral References

Intoxicating Liquors *key* 137.

48 C.J.S. Intoxicating Liquors §§358, 359.

16-3-211. Monthly report of brewer or beer importer — inspection of books and premises.

Compiler's Comments

1985 Amendment: Inserted "and every beer importer", "or beer importer's", and, in two places, "or imported".

Administrative Rules

ARM 42.13.103 Department examinations.

16-3-212. Brewers' or beer importers' sales to wholesalers lawful.

Compiler's Comments

1985 Amendment: In first sentence substituted "licensed brewer" for "brewer" and substituted "deliver" for "dispose of"; and inserted second sentence relating to sale by importer to wholesaler.

16-3-213. Brewers or beer importers not to retail beer — small brewery exceptions.

Compiler's Comments

1999 Amendment: Chapter 116 in (1) at beginning of first sentence inserted exception clause and at end of third sentence after "retail" deleted "or from providing, without charge, their products for consumption on their licensed premises"; inserted (2) defining small brewery and allowing sale or providing of beer samples in certain amounts and at certain times; and made minor changes in style. Amendment effective March 19, 1999.

1985 Amendments: Chapter 19 inserted "beer importer(s)" in two places.

Chapter 149 at end of section added provision allowing on-premises consumption without charge.

Collateral References

ARM 42.13.601 Small brewery restrictions.

16-3-214. Beer sales by brewers — sample room exception.

Compiler's Comments

2001 Amendment: Chapter 543 at end of (1)(c) inserted "as provided in this code"; inserted (2) concerning prohibition on using common carrier; and made minor changes in style. Amendment effective May 1, 2001.

1999 Amendment: Chapter 116 in (1)(b) at beginning after "provide" deleted "without charge" and at end inserted "without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213"; and in (2) after "providing" deleted "without charge". Amendment effective March 19, 1999.

1993 Amendment: Chapter 122 near beginning of (1), after "brewer", deleted "duly licensed as such by the United States of America"; and made minor changes in style. Amendment effective March 18, 1993.

1991 Amendment: In (1), after "manufactures", substituted "less than 60,000 barrels of beer a year" for "beer in the state of Montana"; in (1)(a), at end, inserted "from its storage depot or brewery located in Montana"; in (1)(a)(i) substituted "wholesaler" for "vendor"; in (1)(a)(ii), before "licensees", inserted "retail"; and inserted (3) allowing direct sales and shipment to a wholesaler.

1985 Amendment: Inserted (1)(b) and (2) relating to brewery providing its own products for consumption on its premises.

16-3-220. Wholesalers' service obligations — applicability.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in first sentence, substituted "16-3-222" for "16-3-221(3)". Amendment effective March 12, 1997.

1995 Amendment: Chapter 139 in (1) inserted second sentence allowing wholesaler to offer brands produced in limited quantities to as many retailers as is reasonably possible; in (2), in first sentence before "brand of beer", inserted "generally available"; inserted (3) describing products that are not generally available; and made minor changes in style.

16-3-221. Illegal acts by brewers or beer importers.

Compiler's Comments

1997 Amendment: Chapter 130 near end of (4)(b) substituted "the increase in the resale price" for "the resale price"; inserted (4)(c) prohibiting the linking or tying of a brewer's or beer importer's participation in promotional discounts to the wholesaler's compliance with any recommended resale price; and made minor changes in style. Amendment effective March 24, 1997.

1995 Amendment: Chapter 409 inserted (4) making it unlawful for a brewer or beer importer or its officer, agent, or representative to fix or maintain the price at which a wholesale distributor resells and specifically making it a violation for a brewer or importer, after the distributor has exceeded a resale price increase recommended by the brewer or importer, to raise the price charged the distributor within 60 days or to raise the price charged the distributor in an amount proportionately larger than the amount that it raised the distributor's prices initially when compared to the resale price that it recommended to the distributor; and made minor changes in style.

1985 Amendment: Inserted "or beer importer" in 11 places with minor variations in phraseology.

Case Notes

Notice and Cause: Brewer's distributorship contract with wholesaler could not be reconciled with the provisions of 16-3-221 and 16-3-222 providing for termination only for just cause and on 60 days' notice where the contract provided for termination on 30 days' notice without cause. That provision of the contract was therefore invalid. Maykuth v. Adolph Coors Co., 690 F2d 689 (9th Cir. 1982).

Termination for Dishonesty: Distributorship contract's provision allowing for immediate termination by brewer for certain serious acts by wholesaler, including a felony and "dishonesty", clearly contemplated extremely serious dishonesty. It did not cover wholesaler's out-of-state sales, failure to explain increased sales to supermarket participating in out-of-state sales, and refusal to retrieve beer involved in out-of-state sales. At most, wholesaler breached other provisions of the contract. Maykuth v. Adolph Coors Co., 690 F2d 689 (9th Cir. 1982).

Impairment of Contracts: The Montana Alcoholic Beverage Code, ch. 1 through 6 of this title, appears to be a valid exercise of the state police power and is not repugnant to the federal

constitutional provisions prohibiting impairment of contracts or similar language in the Montana Constitution. Libbey II v. Jos. Schlitz Brewing Co., 34 St. Rep. 1254 (D.C. Mont. 1977) (apparently not reported in Federal Supplement).

16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises.

Compiler's Comments

1999 Amendment: Chapter 194 inserted (6) requiring contracts, agreements, or franchises to contain provision that agreements are interpreted and governed by Montana law; inserted (7) requiring that litigation resulting from a dispute occur in Montana unless unreasonable burden created; inserted (8) requiring that agreements must recognize constitutional right to jury trial; and made minor changes in style. Amendment effective October 1, 1999.

1985 Amendment: Inserted several references to "beer importer" and to "wholesaler and beer importer" after "brewer" and "wholesaler and brewer".

Case Notes

Notice and Cause: Brewer's distributorship contract with wholesaler could not be reconciled with the provisions of 16-3-221 and 16-3-222 providing for termination only for just cause and on 60 days' notice where the contract provided for termination on 30 days' notice without cause. That provision of the contract was therefore invalid. Maykuth v. Adolph Coors Co., 690 F2d 689 (9th Cir. 1982).

Waiver of Notice: Wholesaler's failure to seek an injunction against brewer's termination of distributorship contract was not a waiver of his right under this section to 60 days' notice of termination. Notice offered after termination was no notice at all and without practical value or effect. Brewer breached the contract and was liable for damages. Maykuth v. Adolph Coors Co., 690 F2d 689 (9th Cir. 1982).

16-3-223. Transfer of wholesaler's interest in business.

Compiler's Comments

1985 Amendment: Inserted "or beer importer" in two places.

16-3-224. Contractual or franchise relationship — existence by actions.

Compiler's Comments

1985 Amendment: Inserted "or beer importer" in three places.

16-3-225. Injunction to prevent franchise cancellation.

Compiler's Comments

1985 Amendment: In first sentence inserted "or between a wholesaler and a beer importer"; and in second sentence inserted "or beer importer".

16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department.

Compiler's Comments

1985 Amendment: In first sentence inserted "or beer importer".

16-3-230. Beer required to be shipped to wholesaler.

Compiler's Comments

1999 Amendment: Chapter 192 at beginning of first sentence inserted exception clause, after "beer" inserted "that is to be distributed in Montana, whether", after "outside of" inserted "or within", and after "state of Montana" deleted "and shipped into Montana"; and made minor changes in style. Amendment effective October 1, 1999.

1985 Amendment: In second sentence inserted "or beer importer".

1983 Amendment: In first sentence, inserted requirement that beer be consigned and shipped "either directly or via a licensed storage depot"; and inserted second sentence requiring brewer to sell only from a storage depot in Montana and to keep records.

Similar Provision Not Codified: Subsection (1)(c) of section 4-4-401, R.C.M. 1947, was not codified in the MCA, as it stated that this code may not be construed to repeal or change any provision of this code requiring what, in effect, this section requires and is thus unnecessary. The subsection was enacted by sec. 1, Ch. 122, L. 1963 (sec. 4-341, R.C.M. 1947). Section 4-341 was amended and redesignated 4-4-401 by sec. 68, Ch. 387, L. 1975. The provision has not been repealed and is still valid law.

Administrative Rules

ARM 42.13.301, 42.13.304, and 42.13.305 Storage requirements — exchange or return.

16-3-235. Carriers' reports of beer transported.

Compiler's Comments

1991 Amendment: Near middle of first sentence, after "state shall", inserted "if requested by the department" and inserted second sentence requiring 30-month retention of records by the carrier.

16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions.

Compiler's Comments

2005 Amendment: Chapter 247 in (1)(a) after "equipment" deleted "signs", after "interior" deleted "or exterior", and after "painting" deleted "or decorating"; in (1)(b) after "trays" inserted language regarding tap handles, menus, apparel, or other advertising matter not exceeding $300 in value in any calendar year to one retail establishment for display use within interior of establishment; deleted former (1)(b) and (1)(c) that read: "(b) advertising matter or novelties, of a value of not to exceed $50 per brewery or beer importer in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;

(c) not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display"; inserted (1)(b)(ii) and (1)(b)(iii) providing that it is lawful for brewer, beer importer, or wholesaler to furnish, give, or loan retail licensee up to six illuminated or electrical signs, lamps, or lighted clocks for each beer brand in any 1 year for display within interior of retail business and to furnish, give, or loan licensee permanent or temporary decorative advertising matter, excluding signs and clocks for each beer brand, but including nonelectric clocks, mirrors, banners, flags, and pennants; in (2) before "beer" deleted "draft"; inserted (2)(b) authorizing wholesaler to furnish portable equipment used for dispensing of beer to special permittee or retailer for use up to three times a year on retailer's regular premises for period not to exceed 72 hours; and made minor changes in style. Amendment effective October 1, 2005.

1985 Amendments: Chapter 19 inserted "beer importer" in three places.

Chapter 229 inserted (2) allowing wholesaler to furnish portable equipment for temporary cooling, handling, and dispensing of draft beer under certain circumstances.

1981 Amendment: Increased the value of advertising matter or novelties that a brewer or wholesaler is allowed to furnish from $15 per year to $50 per brewery per year in (2).

Administrative Rules

ARM 42.12.323 Permissible and prohibited activities.

Collateral References

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR 4th 600.

16-3-242. Financial interest in retailers prohibited.

Compiler's Comments

1985 Amendment: Inserted "beer importer" in five places.

Collateral References

Security interests in liquor licenses. 56 ALR 4th 1131.

Liquor license as subject to execution or attachment. 40 ALR 4th 927.

16-3-243. Seven-day credit limitation.

Compiler's Comments

1985 Amendment: Inserted "beer importer(s)" in two places.

Collateral References

Intoxicating Liquors *key* 146(1).

48 C.J.S. Intoxicating Liquors §331.

Construction and effect of liquor regulation forbidding or restricting sales on credit or other than for cash. 17 ALR 3d 396.

16-3-244. Beer advertising limitations.

Compiler's Comments

1985 Amendments: Chapter 19 in first sentence inserted "and beer importers"; and in last sentence inserted "beer importer".

Chapter 223 at end inserted exception clause relating to temporary advertisements.

Administrative Rules

ARM 42.13.201 Labeling requirements.
ARM 42.13.202 Draught beer and wine taps.
ARM 42.13.211 Advertising restrictions.
ARM 42.13.221 Regulations.

Collateral References

Intoxicating Liquors *key* 110, 116, 122.3, 146(2).

48 C.J.S. Intoxicating Liquors §§296, 339.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR 4th 600.

Part 3
Retail Sales Restrictions

Part Administrative Rules

ARM 42.13.111 Definitions (regulation of licensees).

Part Attorney General's Opinions

Regulation of Live Dance Performance in Licensed Liquor Establishment — Abridgment of Free Expression: The validity of a city ordinance regulating live dance performances in establishments licensed to serve liquor must be measured against free expression standards imposed by Art. II, sec. 7, Mont. Const., and the first amendment to the U.S. Constitution. Therefore, a proposed city ordinance prohibiting any live performance involving dance or the removal of clothing in licensed liquor establishments is an unconstitutional abridgment of the constitutional standards because: (1) it fails to distinguish carefully between protected and unprotected conduct; and (2) the requisite governmental interest in regulating such conduct has not been sufficiently established. 41 A.G. Op. 75 (1986).

Part Collateral References

Intoxicating Liquors *key* 140 through 165.

48 C.J.S. Intoxicating Liquors §325, et seq.

Construction of law prohibiting retailer from giving free food or drink. 66 ALR 2d 758.

Entrapment: Availability of defense when all participation in offense is denied. 61 ALR 2d 677.

Entrapment to commit illegal sale. 55 ALR 2d 1322.

Sale of liquor to women. 9 ALR 2d 541.

16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age.

Compiler's Comments

2001 Amendment: Chapter 498 in (3)(b) at beginning deleted "any intoxicated person or"; and made minor changes in style. Amendment effective October 1, 2001.

1987 Amendments: Chapter 61 throughout section substituted "is" for "shall be"; inserted (2) making it unlawful for a licensed retailer to transport beer from one licensed premises to another owned by the licensee; and made minor changes in phraseology.

Chapter 217 throughout section changed 19 to 21.

Applicability: Section 8, Ch. 217, L. 1987, provided: "The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968."

Effective Date: Section 9(1), Ch. 217, L. 1987, provided: "This act is effective April 1, 1987."

Severability: Section 7, Ch. 217, L. 1987, was a severability section.

Construction With Other Law: Under 27-1-710(2), no provision of Title 16 may be used to find civil liability for furnishing alcohol to a person who causes damage or an injury. Liability may only be grounded in a violation of 27-1-710.

Case Notes

CASE NOTES

Liability for Alcohol-Related Injuries — Statute Not Retroactively Applied: After consuming alcohol at a bar for 3 hours, a truck driver died from injuries received in an accident. His widow sued the bar, claiming that its action in allowing the driver to drink and then drive was the proximate cause of his death. The District Court granted the bar's motion for a judgment on the pleadings for a failure to state a claim for relief, ruling that Montana did not recognize common-law dram shop liability against the bar owner. Upon appeal, the Supreme Court held that the 1986 law (27-1-710) defining civil liability for injuries involving alcohol consumption cannot be applied retroactively. The court also ruled that the District Court erred in granting the motion for judgment on the pleadings as the widow's complaint alleging negligence by the bar properly stated a claim for relief. Jevning v. Skyline Bar, 223 M 422, 726 P2d 326, 43 St. Rep. 1845 (1986).

Guilt of Minor Misrepresenting His Age: While this part holds that a minor is "equally guilty" with a licensee selling to him, it does not mean that he is held as a matter of law to be an accomplice of the person charged with selling intoxicating liquor to an underage person. The minor's crime would be the misdemeanor of knowingly misrepresenting his qualifications for the purpose of obtaining liquor. St. v. Paskvan, 131 M 316, 309 P2d 1019 (1957).

Entrapment: Defense of entrapment would not be available to a bar owner in a prosecution for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. St. v. Parr, 129 M 175, 283 P2d 1086, 55 ALR 2d 1313 (1955), distinguished in Henderson v. U.S., 237 F2d 169 (5th Cir. 1956). (Dissenting opinion, 129 M 183, 283 P2d 1086 (1955).)

Ostensible Agency: A conviction of the owner of a tavern for a violation of this section was upheld where a barmaid at the tavern sold beer to minors, although the barmaid was not on the defendant's payroll. There was ample evidence tending to show, at the very least, an ostensible agency. St. v. Erlandson, 126 M 316, 249 P2d 794 (1952).

CASE NOTES UNDER FORMER LAW (SEE 27-1-710, MCA)

Bar Selling to Intoxicated Minor — Liability to Minor: A bar or tavern operator who serves an intoxicated minor may be liable in damages for injuries subsequently sustained by the minor. The imbiber's acts of drinking alcoholic beverages served by the bar or tavern operator and then becoming involved in an injury-producing accident may be reasonably foreseeable events which may no longer protect a defendant from liability for negligence. Under the state's system of comparative negligence, it is for the jury to determine the degree of negligence attributable to the plaintiff and defendant. Neither a plaintiff's nor a defendant's acts have to be the sole proximate cause of the injuries. To the extent that Swartzenberger v. Billings Labor Temple Ass'n, 179 M 145, 586 P2d 712, 35 St. Rep. 1625 (1978), and Folda v. Bozeman, 177 M 537, 582 P2d 767, 35 St. Rep. 1019 (1978), imply that the imbiber's act of drinking is the sole proximate cause of a resulting injury, they are overruled. Folda was also overruled, as to the standard that a property owner is absolved of liability because a dangerous condition upon the premises is open and obvious, in Richardson v. Corvallis Pub. School District No. 1, 286 M 309, 950 P2d 748, 54 St. Rep. 1422 (1997). Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986).

Violation of Alcoholic Beverage Control Statutes — Evidence of Negligence: Although not negligence per se, violation of the alcoholic beverage control statutes is judicially recognized as evidence of negligence with regard to a tavern operator's liability for off-premises injuries to a third party injured by a patron of the tavern. As for causation, consumption of the alcoholic beverages served, subsequent driving, and the likelihood of an injury-producing accident are foreseeable intervening acts that do not relieve the tavern operator of liability for negligence. Nehring v. LaCounte, 219 M 462, 712 P2d 1329, 43 St. Rep. 93 (1986), followed in Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986).

Violation of Alcoholic Beverage Control Statutes Not Negligence as Matter of Law: With regard to a tavern operator's liability for off-premises injuries to a third party injured by a patron of the tavern, the Supreme Court held that a violation of the alcoholic beverage control statutes was not negligence as a matter of law. It is not negligence per se because the two statutes in question were enacted to regulate the business of selling liquor and beer in order to protect the people of the state generally and the interests of the state rather than to protect against any particular kind of injury or provide a civil remedy. Nehring v. LaCounte, 219 M 462, 712 P2d 1329, 43 St. Rep. 93 (1986), followed in Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986).

Bar Selling to Intoxicated Adult — Liability to Injured Third Person: Air Force NCO Club personnel's giving of alcoholic beverage to intoxicated adult after the legal closing time for a retail liquor establishment in violation of this section and 16-3-305 was negligence per se and a proximate cause of injury to passenger in intoxicated person's auto, which went off the road and hit a tree. Intoxicated person was also negligent and his intoxication was also a proximate cause of the injury, and passenger assumed the risk of injuries when he rode with person he thought was intoxicated and an unsafe driver. Defendant U.S. was liable to passenger to the degree of defendant's negligence. Johnson v. U.S., 496 F. Supp. 597, 37 St. Rep. 1581 (D.C. Mont. 1980).

Nature of Purveyor of Alcohol: Whether alcoholic beverages were commercially served or socially served will be taken into consideration in considering liability of server to a third party injured in an auto accident involving servee. Runge v. Watts, 180 M 91, 589 P2d 145, 36 St. Rep. 85 (1979).

Section's Application to Social Purveyors of Alcohol: This section's provision that no licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any alcoholic beverage to . . . any person under the age of 18 (changed to 19 by 1979 amendment and changed to 21 by 1987 amendment) does not apply to a social purveyor of alcoholic beverages. Runge v. Watts, 180 M 91, 589 P2d 145, 36 St. Rep. 85 (1979).

Serving Minor at Private Party — Liability to Injured Third Person: Minor drank beer furnished by host of private party and had an auto accident while driving from host's home. Plaintiff passenger in minor's auto was injured. Minor's drinking, not host's serving of beer to him, was the proximate cause of the accident, and host was not liable to passenger under common-law negligence principles. Runge v. Watts, 180 M 91, 589 P2d 145, 36 St. Rep. 85 (1979), overruled, as to statement that the drinking, not the serving, was the proximate cause of the injury, by Nehring v. LaCounte, 219 M 462, 712 P2d 1329, 43 St. Rep. 93 (1986).

Bars Selling to Intoxicated Adult — Liability to Survivors: Adult drank excessively at two bars from late morning into the evening, fell down the stairs at one of them, and died of injuries sustained. His wife sued on behalf of herself and her two children. The bars may have been negligent per se, but the bartenders knew decedent was an experienced heavy drinker, and could not reasonably know he would fall and die as a result of the drinking. Decedent's contributory negligence intervened between any negligence of the bartenders and his death, and was the proximate cause of his death. His contributory negligence was a complete bar to recovery. Swartzenberger v. Billings Labor Temple Ass'n, 179 M 145, 586 P2d 712, 35 St. Rep. 1625 (1978). To the extent that Swartzenberger implies that the imbiber's act of drinking is the sole proximate cause of any resulting injury to the imbiber, the case is overruled by Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986).

Bar Selling to Intoxicated Minor — Liability to Estate: Minor was served liquor and beer by V.F.W. Club, in violation of former law, when she was obviously extremely intoxicated. She was unable to leave the club on her own, had to be helped out, and drowned in a stream near the club after apparently having entered the stream of her own accord. Evidence supported the conclusion that she became voluntarily intoxicated and disregarded her duty to use due care for her own safety, and this was the proximate cause of her death. The rule that contributory negligence precludes any recovery against a defendant was in effect at the time of the death, and the club was not liable to the estate of a decedent minor. Folda v. Bozeman, 177 M 537, 582 P2d 767, 35 St. Rep. 1019 (1978). To the extent that Folda implies that the imbiber's act of drinking is the sole proximate cause of any resulting injury to the imbiber, the case is overruled by Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986). Folda was also overruled, as to the standard that a property owner is absolved of liability because a dangerous condition upon the premises is open and obvious, in Richardson v. Corvallis Pub. School District No. 1, 286 M 309, 950 P2d 748, 54 St. Rep. 1422 (1997).

Bar Selling to Intoxicated Minor — Liability to Injured Third Party: Air Force NCO Club personnel served minor airman liquor in violation of this section. They knew he was drinking excessively, and knew that airmen at the club would be driving their dates home. Minor left the club while intoxicated and had an accident in which plaintiff passenger was injured. The serving of liquor to the minor was a proximate cause of the plaintiff's injuries. The plaintiff was not guilty of contributory negligence where she was 17, had been drinking, and relied on airman for a ride home. The United States was liable to plaintiff. Deeds v. U.S., 306 F. Supp. 348 (D.C. Mont. 1969).

Bar Selling to Patron — Liability to Injured Third Party: Bar patron was shoved by girl on stool next to his when he attempted to kiss her. He fell off the stool and knocked nearby plaintiff to the floor, injuring her. There was no proof that bar had served patron, that he was ill-behaved,

or that bar violated statute prohibiting a person from giving liquor to any person apparently under the influence of liquor. Plaintiff could not recover from bar as she proved no duty created by the facts and violated by the bar; her injury was proximately caused by the patron, not the bar. Nevin v. Carlasco, 139 M 512, 365 P2d 637 (1961).

Law Review Articles

Alcohol Abuse: The New Legal Challenge (a symposium), 46 Mont. L. Rev. 307 (1985).

Common Law Liability of Liquor Vendors, Franks, 31 Mont. L. Rev. 241 (1970).

Alcohol Regulation and Auto Fatalities, Young & Likens, 20 Int'l Rev. L. & Econ. 107 (2000).

From Cigarettes to Alcohol: The Next Step in Hedonic Product Liability, Cochran, 27 Pepperdine L. Rev. 701 (2000).

Ono v. Applegate: Common Law Dram Shop Liability, 3 U. Hawaii L. Rev. 149 (1981).

Liability of Social Host for Off Premises Negligence of Inebriated Guest, Stanner, 68 Ill. B.J. 396 (1980).

Liability of the Social Host for Injuries Caused by the Negligent Acts of Intoxicated Guests, Graham, 16 Willamette L.J. 561 (1980).

Tort Liability: Liability of Liquor Vendors for Injuries to Intoxicated Persons, 14 Akron L. Rev. 350 (1980).

Vicarious Liability: A Private Right of Action Based on Liquor Licensing Statute, 9 UCLA-Alaska L. Rev. 229 (1980).

Evolution of Third Party Liability and Alcoholic Beverages, 3 Glendale L. Rev. 219 (1979).

One More for the Road: Civil Liability of Licensees and Social Hosts for Furnishing Alcoholic Beverages to Minors, 59 B.U.L. Rev. 725 (1979).

Collateral References

Intoxicating Liquors *key* 157 through 161, 282 through 324.

48 C.J.S. Intoxicating Liquors §341, et seq.; 48A C.J.S. Intoxicating Liquors §634, et seq.

32 Am. Jur. POF2d Tavernkeeper's liability under Dram Shop Act, pp. 357 through 388.

12 Am. Jur. Trials, Dram Shop Litigation, pp. 733 through 795.

Liquor license as subject to execution or attachment. 40 ALR 4th 927.

Evidence of automobile passenger's blood alcohol level as admissible in support of defense that passenger was contributorily negligent or assumed risk of automobile accident. 5 ALR 4th 1194.

Choice (conflict) of law as to liability of liquor seller for injuries caused by intoxicated person. 2 ALR 4th 952.

Liability of person furnishing liquor for injury to or death of consumer, outside coverage of civil damage acts. 98 ALR 3d 1230.

Common law action for damage arising from sale or gift of liquor or drug to another. 97 ALR 3d 528.

Liability of state or municipality for damages arising from sales from its store. 95 ALR 3d 1243.

What constitutes violation of prohibition of sale to minors. 89 ALR 3d 1256.

What constitutes "sale" of liquor in violation of law. 89 ALR 3d 551.

Carrier's liability based on serving intoxicants to passengers. 76 ALR 3d 1218.

Criminal liability for death resulting from unlawful sale of liquor to another. 32 ALR 3d 589.

Who is, as "owner" of premises, liable under civil damage or Dram Shop Act. 18 ALR 3d 1323.

Child's common law action for loss of support by parent due to sale to parent. 75 ALR 2d 842.

Employee's common law action for damage arising from sale or gift of liquor. 75 ALR 2d 833, superseded by 97 ALR 3d 528.

Seller's liability to patron injured on the premises by a third person. 70 ALR 2d 628.

Admissibility of other sales in prosecution for illegal sale. 40 ALR 2d 817.

Common law action for damages arising from sale to another. 130 ALR 352, supplemented by 75 ALR 2d 833, superseded by 97 ALR 3d 528.

Ignorance of or mistake as to age as a defense to prosecution for sale to minor. 115 ALR 1230, superseded by 12 ALR 3d 991.

Delivery to minor purchasing or professing to purchase for another as illegal sale to minor. 114 ALR 121, superseded by 89 ALR 3d 1256.

Criminal responsibility of one illegally furnishing liquor for death resulting from its consumption. 15 ALR 244, supplemented by 35 ALR 744, superseded by 32 ALR 3d 589.

Right to be informed, before trial, of identity of purchaser. 5 ALR 409.

16-3-302. Sale by retailer for consumption on premises.

Compiler's Comments

1987 Amendment: Inserted (2) and (3) relating to sale of alcoholic beverages on the facilities of a golf course; and made minor changes in phraseology.

Administrative Rules

ARM 42.13.105 Applicability of licenses; premises defined; golf course exception; portable satellite vehicle; movable devices.

16-3-304. Closing hours for licensed retail establishments.

Compiler's Comments

1985 Amendment: Inserted exception clause at beginning, and in last sentence substituted "alcoholic beverage licensee and employees of such licensed establishment shall be excluded from the licensed premises" for "owner and employees of such licensed establishments shall be excluded therefrom except as provided in 16-3-305".

Case Notes

Negligence Per Se: Violation of this section, enacted for the health, welfare, and safety of the people of Montana, is negligence per se. Plaintiff was injured in accident involving vehicle driven by person defendant allegedly served in violation of this section. Johnson v. U.S., 496 F. Supp. 597, 37 St. Rep. 1581 (D.C. Mont. 1980).

Exclusive Jurisdiction: When there was alleged violation of city ordinance restricting hours of sale but same was not violation of former state law, police court (now City Court) in city had exclusive jurisdiction over matter. State ex rel. Goodwin v. District Court, 167 M 179, 536 P2d 766 (1975).

"Closed" Defined: The word "closed" means absolutely closed, to close off the front, sides, and rear of that part of a room which is used for the purpose of selling liquor. It makes no difference whether any liquor is sold or not; the offense consists in its being open. St. v. Perez, 126 M 15, 243 P2d 309 (1952).

Complaint — Sufficiency: A complaint that alleges "on or about" a certain day of a certain month is sufficient since the precise day is not of the essence of the offense; and it is sufficient if the evidence discloses the unlawful sale of liquor on a day other than the date disclosed in the complaint. State ex rel. Borberg v. District Court, 125 M 481, 240 P2d 854 (1952).

Attorney General's Opinions

Band Members as Bar Employees — Restriction From Premises After Closing Not Required: Members of a band hired to perform at a bar are considered employees within the meaning of this section and may remain on the premises after closing time. 44 A.G. Op. 2 (1991).

Closure of Poker Room After Hours Not Required — Alcoholic Beverages Prohibited: Absent local regulations to the contrary, a licensee may operate a poker game on premises licensed for sale of alcoholic beverages during hours of closure enumerated in 16-3-304; however, persons on the licensed premises, including the poker room, may not consume alcoholic beverages during the hours of closure even if the beverages were purchased prior to closing time. 42 A.G. Op. 10 (1987).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

Collateral References

Validity of closing hours statute as affected by use of premises for other business also. 139 ALR 756.

16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed.

Compiler's Comments

1985 Amendment: Substituted entire text (see 1985 Session Law) for "During the hours when the licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale, or give away any such alcoholic beverages, and during such hours all persons, save employees of such licensed establishments, shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other

than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold."

Case Notes

Negligence Per Se: Violation of this section, enacted for the health, welfare, and safety of the people of Montana, is negligence per se. Plaintiff was injured in accident involving vehicle driven by person defendant allegedly served in violation of this section. Johnson v. U.S., 496 F. Supp. 597, 37 St. Rep. 1581 (D.C. Mont. 1980).

Restaurant Business: When the dining room is entirely separate from the barroom with a connecting door, this section is violated by keeping the barroom open after hours and allowing people to remain therein. The restaurant business may be conducted without using the barroom. St. v. Perez, 126 M 15, 243 P2d 309 (1952).

Attorney General's Opinions

When Nonemployees Allowed on Bar Premises After Closing — Consumption of Alcohol Not Allowed: Under this section, nonemployees may remain on the premises of a bar after closing time as long as the owner of the licensed premises is engaged in a lawful business; however, nonemployees may not consume alcoholic beverages on the premises after closing time, even if the beverages were purchased prior to closing. 44 A.G. Op. 2 (1991).

Closure of Poker Room After Hours Not Required — Alcoholic Beverages Prohibited: Absent local regulations to the contrary, a licensee may operate a poker game on premises licensed for sale of alcoholic beverages during hours of closure enumerated in 16-3-304; however, persons on the licensed premises, including the poker room, may not consume alcoholic beverages during the hours of closure even if the beverages were purchased prior to closing time. 42 A.G. Op. 10 (1987).

Collateral References

Intoxicating Liquors *key* 121, 145, 163.

48 C.J.S. Intoxicating Liquors §§308, 355.

16-3-306. Proximity to churches and schools restricted.

Compiler's Comments

1983 Amendment: In (1) substituted reference to subsections (2) through (4) for reference to subsections (2) and (3); and inserted (4) relating to nonapplication of subsection (1) when supplanted as provided in 16-3-309.

1981 Amendment: Substituted "(1) Except as provided in subsections (2) and (3), no retail license may be issued pursuant to this code to any business or enterprise whose premises are within 600 feet" for "A retail licensee may not extend or relocate his premises within 600 feet" at the beginning of the section; inserted the subsection (2) designations; inserted "the licensee does not relocate his entrances any closer than the existing entrances and if" in the introductory phrase of (2); added (3) relating to nonapplication of subsection (1) in case of off-premises consumption; and made minor changes in phraseology.

Administrative Rules

ARM 42.12.129 Determination of proximity.

Case Notes

Administrative Rule Void When Contrary to Longstanding Administrative Interpretation: The Department of Revenue's longstanding administrative interpretation of the meaning of "on the same street" as used in 16-3-306 has the force and effect of law due to the repeated reenactment of that section by the Legislature without change in the operative language that no license be issued to a business "on the same street" and within 600 feet of a church or school. Thus, the interpretation could not be changed, and an administrative rule making a change is invalid. Hovey v. Dept. of Revenue, 203 M 27, 659 P2d 280, 40 St. Rep. 272 (1983).

Entrances "On the Same Street": When the phrase "on the same street", as used in this section, is read in conjunction with the section's requirement that the distance between the premises of the business and a church or school be measured in a straight line from entrance to entrance, it is evident that the Legislature intended the provision to apply only when the entrance to the business and the entrance to the church or school are on the same street. Hovey v. Dept. of Revenue, 203 M 27, 659 P2d 280, 40 St. Rep. 272 (1983).

Law Review Articles

Invalidity of Church Veto of Liquor Licenses, 6 Zoning and Planning L. Rep. 103 (Feb. 1983); 69 A.B.A.J. 346 (March 1983).

Collateral References

Measurement of distances re: prohibiting sales near churches, schools, or other property. 4 ALR 3d 1250, superseding 96 ALR 778.

"Church", or the like, within statute prohibiting sales within specified distance thereof. 59 ALR 2d 1439.

"School", "schoolhouse", or the like, within statute prohibiting sales within specified distance thereof. 49 ALR 2d 1103.

Reasonableness of prohibiting sales within certain distance of certain institutions. 119 ALR 643.

16-3-307. Sale of liquor at less than posted price unlawful.

Compiler's Comments

1995 Amendment: Chapter 530 near middle, after "from", substituted "an agency" for "a state" and after "established by the" substituted "department" for "store"; and made minor changes in style. Amendment effective April 25, 1995.

Collateral References

Intoxicating Liquors *key* 15, 110, 111, 122.1, 122.2, 124.

48 C.J.S. Intoxicating Liquors §§75, 295.

Validity of state statute or regulation fixing minimum prices at which alcoholic beverages may be sold at retail. 96 ALR 3d 639.

16-3-309. Sales prohibited by ordinance.

Compiler's Comments

1983 Amendment: Substituted entire text (see 1983 Session Law) for "(1) The cities and incorporated towns may enact ordinances defining certain areas in the cities and towns where alcoholic beverages may or may not be sold.

(2) No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue."

Case Notes

Preemption: Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor; the state has exclusive authority in that matter. State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966), overruled in Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Power of City Council to Limit Number of Beer Parlors: A city council could (prior to 1947 amendment of the Montana Beer Act taking this power away from cities) properly limit the number of places in the city where beer and liquor at retail might be sold and then refuse to issue a license to the assignee of a Montana Liquor Control Board (now Department of Revenue) license, and in doing so was not depriving him of property without due process of law. State ex rel. McIntire v. Libby, 107 M 216, 82 P2d 587 (1938), explained in Stephens v. Great Falls, 119 M 368, 175 P2d 408 (1938).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

Local Governments Preempted From Controlling Beer Sales: In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

City License — Effect on State License: A city may license a beer distributor under 16-4-503 but may not thereby limit or make ineffective a state license. 37 A.G. Op. 100 (1977).

Collateral References
Intoxicating Liquors *key* 9, 10(1), (2), 11, 12, 14, 15.
48 C.J.S. Intoxicating Liquors §§52 through 57.
Zoning regulations re: liquor. 9 ALR 2d 877.

16-3-310. Lapse of license for nonuse.

Compiler's Comments
1987 Amendment: In middle of first sentence, after "beer", inserted "and table wine".

Administrative Rules
ARM 42.13.107 Time extensions.
ARM 42.13.108 Lapse of license for nonuse.

Case Notes
Commencement of Nonuse Period: Plaintiffs ignored reality by contending that the 90-day period of nonuse commenced upon conditional approval, and that the right to transfer vested on that date, subject to divestment only upon failure to meet health requirements and inspection. The fair and logical answer is that the license continues in the old place of business (as long as it is actively being used) until the ultimate transfer is approved by the licensing authority. State ex rel. Corette v. Dept. of Revenue, 176 M 276, 577 P2d 1214 (1978).

Limitation of Actions: Licensee, whose license was revoked for nonuse, was barred from relief by his failure to take action within 15 days after receipt of notice from the Montana Liquor Control Board (now Department of Revenue). State ex rel. Gillespie v. Mont. Liquor Control Bd., 150 M 26, 430 P2d 112 (1967).

Short, Temporary Opening to Avoid Statute: Licenses lapse automatically if not used for 90 days, and the statutory nonuse period could not be avoided by opening bar to the public for a few hours of 1 day. State ex rel. Gillespie v. Mont. Liquor Control Bd., 150 M 26, 430 P2d 112 (1967).

16-3-311. Suitable premises for licensed retail establishments.

Administrative Rules
ARM 42.12.122 Determination of suitability of premises.

16-3-321. Keg registration.

Compiler's Comments
Effective Date: This section is effective October 1, 2005.

16-3-322. Recordkeeping.

Compiler's Comments
2005 Code Commissioner Correction: Subsection (1)(d) is bracketed and is erroneous because the requirement for a keg identification number was deleted from 16-3-321 during the course of enactment.
Effective Date: This section is effective October 1, 2005.

16-3-323. Enforcement.

Compiler's Comments
Effective Date: This section is effective October 1, 2005.

16-3-324. Violations.

Compiler's Comments
Effective Date: This section is effective October 1, 2005.

Part 4
Sale of Table Wine

Part Administrative Rules
ARM 42.12.313 Wine tastings.
ARM 42.13.211 Advertising restrictions.
ARM 42.13.221 Regulations.

16-3-401. Short title — public policy — purpose.

Compiler's Comments
1995 Amendment: Chapter 530 in (2), near middle after "system", substituted "to" for "for the importation and sale of table wine by the state through state liquor facilities and"; and made minor changes in style. Amendment effective April 25, 1995.

1991 Amendment: Inserted (1) providing a citation for the part; and inserted (3) stating the intention of the part to govern relationships between suppliers and table wine distributors.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

1987 Amendment: Before "wine by the state" and before "wine distributors" inserted "table" and near end, before "by licensed", deleted "containing not more than 14% alcohol by volume".

Alcohol Percentage Changed: Chapter 16, L. 1985, amended the definition of table wine in 16-1-106 by increasing the maximum alcohol percentage from 14% to 16%. Evidently this section was inadvertently not amended.

Commissioner Correction: The Code Commissioner, 1979, deleted the sentence: "When the words 'table wine' are used in this act in either the singular or plural they refer only to wine containing not more than 14% alcohol by volume." as redundant with the definition of "table wine" given in 16-1-106.

Construction: Section 13, Initiative 81, provided in part: "This code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of this code which require beer and table wine manufactured outside of Montana to be consigned to and shipped to a licensed beer wholesaler or licensed table wine distributor and by him unloaded into his warehouse or subwarehouse in Montana."

16-3-402. Importation of wine — records.

Compiler's Comments

1995 Amendment: Chapter 530 in (1), at beginning, deleted "With the exception of table wine purchased by the department and shipped to its warehouse"; in (2), in second sentence after "inspected by", deleted "any member or representative of" and after "department" deleted "of revenue"; in (3), near middle after "distributor", deleted "or the department"; and made minor changes in style. Amendment effective April 25, 1995.

Collateral References

Intoxicating Liquors *key* 112 ½, 138.

48 C.J.S. Intoxicating Liquors §§309, 369, et seq.

16-3-403. To whom table wine distributor may sell.

Compiler's Comments

1995 Amendment: Chapter 530 in (1)(b) substituted "an agency liquor store" for "the department"; deleted (1)(c) that read: "(c) a commission agent of the department"; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: Inserted (1)(c) authorizing sale of table wine by a distributor to a commission agent of the Department; and made minor changes in style.

16-3-404. Monthly report of table wine distributor.

Administrative Rules

ARM 42.13.222 Records.

ARM 42.13.402 Filing monthly report and tax due.

16-3-405. Carriers' reports of table wine transported.

Compiler's Comments

1991 Amendment: Near middle of first sentence, after "state shall", inserted "if requested by the department" and inserted second sentence requiring 30-month retention of records by the carrier.

16-3-406. Financial interest in retailers prohibited.

Administrative Rules

ARM 42.13.222 Records.

16-3-411. Domestic winery.

Compiler's Comments

2001 Amendment: Chapter 163 in (1) in introductory clause substituted "licensed" for "registered"; inserted (1)(g) allowing a winery to perform operations and cellar treatments permitted for bonded winery premises under applicable regulations of the U.S. treasury department; inserted (2) allowing a licensed Montana winery with an annual production of 25,000 gallons or less of wine to sell wine to retail licensees, providing that a winery doing so is considered a table wine distributor for purposes of table wine tax collecting, allowing the winery to use a common carrier to ship wine to a licensed wine distributor or retailer, providing that the shipment is subject to 16-3-106 and must be in boxes marked with certain words, made to the premises of a Montana-licensed wine distributor or retailer, and signed for by the distributor or retailer, and requiring certain recordkeeping and reporting; and made minor changes in style. Amendment effective March 28, 2001.

1995 Amendment: Chapter 530 in (2), after "wholesale", deleted "to the department or". Amendment effective April 25, 1995.

Source: This section is derived from Oregon Revised Statutes, 471.223.

16-3-415. Definitions.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-416. Table wine distributor provisions.

Compiler's Comments

1999 Amendment: Chapter 194 inserted (7) requiring that litigation resulting from a dispute occur in Montana unless unreasonable burden created; inserted (8) requiring that agreements between supplier and distributor must recognize constitutional right to jury trial; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 226 inserted (6) concerning interpretation of distributorship agreements; inserted (7) concerning void provisions; and made minor changes in style.

Applicability: Section 3, Ch. 226, L. 1995, provided that this section applies to all contracts entered into or renewed after October 1, 1995.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-417. Supplier provisions.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-418. Dual appointments — equal support — alternate supplier — dock sales.

Compiler's Comments

2001 Amendment: Chapter 163 inserted (2)(b) allowing an on-premises consumption licensee under 16-4-401(2) to buy table wine from a winery described in 16-3-411(2)(a); and made minor changes in style. Amendment effective March 28, 2001.

1997 Amendment: Chapter 399 inserted (1)(b) prohibiting supplier from appointing more than one table wine distributor to distribute hard cider; inserted (1)(c) providing that table wine has the meaning provided in 16-1-106 but excluding hard cider; and made minor changes in style. Amendment effective July 1, 1997.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-419. Suppliers' prohibitions.

Compiler's Comments

1995 Amendment: Chapter 226 inserted (3) concerning price for resale of table wine.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-420. Applicability.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-421. Injunction.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

CHAPTER 4
LICENSE ADMINISTRATION

Chapter Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Chapter Collateral References

Intoxicating Liquors *key* 10(4), 11, 15, 16, 44 through 46, 61 through 61(2), 69, 71, 98, 99.

48 C.J.S. Intoxicating Liquors §§62 through 65, 126, et seq.

Propriety of using census data as basis for governmental regulations or activities—state cases. 56 ALR 5th 171.

What constitutes a "sale" in violation of law. 89 ALR 3d 551.

Construction of law taxing or regulating sales for off-premises consumption. 167 ALR 206.

Federal law as affecting state law. 10 ALR 1587, supplemented by 11 ALR 1320, 26 ALR 661, and 70 ALR 132.

Liability for procuring license for another's benefit. 2 ALR 1516.

Alcoholic Beverage Control Statutes, Montana Legislative Council (1974).

Politicians in Business: A History of the Liquor Control System in Montana, Quinn, U. of Mont. Press (1970).

Administration of the State Liquor Monopoly, Montana Legislative Council (1964).

Part 1
Beer and Wine Licenses

Part Administrative Rules

ARM 42.12.313 Wine tastings.

ARM 42.13.201 Labeling requirements.

ARM 42.13.202 Draught beer and wine taps.

ARM 42.13.211 Advertising restrictions.

ARM 42.13.221 Regulations.

ARM 42.13.301, 42.13.304, and 42.13.305 Storage requirements — exchange or return.

Part Collateral References

Intoxicating Liquors *key* 78 through 81, 99 through 101, 104, 145.

48 C.J.S. Intoxicating Liquors §191, et seq.

16-4-101. Applications for sale, import, or manufacture of beer — qualifications of applicant.

Compiler's Comments

1985 Amendment: In first sentence of (1) substituted "license" for "permit".

Administrative Rules

Title 42, chapter 11, subchapter 2, ARM Vendors selling liquor to Department of Revenue.

Collateral References

Intoxicating Liquors *key* 49, 52, 57, 58.

48 C.J.S. Intoxicating Liquors §§136, 142.

Equal protection and statute regarding personal qualifications for a license. 145 ALR 509.

16-4-102. Right of brewers to maintain and operate storage depots — annual licenses.

Compiler's Comments

1983 Amendment: After "to manufacture beer" deleted "in the state of Montana".

Administrative Rules

ARM 42.13.301, 42.13.304, and 42.13.305 Storage requirements — exchange or return.

16-4-103. Wholesalers' licenses — application and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse — wine storage.

Compiler's Comments

2005 Amendment: Chapter 143 in (2) in third sentence substituted language authorizing a beer wholesaler to have more than one subwarehouse for former sentence that read: "A duplicate license may be issued for one subwarehouse only, in Montana, for each wholesale licensee" and in last sentence substituted "licenses" for "license"; inserted (4) authorizing a wholesaler licensed as a table wine distributor to store wine in any warehouse or subwarehouse of the beer wholesaler; and made minor changes in style. Amendment effective March 30, 2005.

1987 Amendment: Inserted (4) relating to the definition of distribute.

1981 Amendment: Deleted "To qualify for a wholesaler's license, the applicant shall be a resident of Montana; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held

by said individual or the members of said partnership. If applicant is a foreign corporation, said corporation shall be authorized to do business in Montana." from the beginning of (2); added (3) relating to foreign corporations; and made minor changes in phraseology.

Administrative Rules

ARM 42.13.301, 42.13.304, and 42.13.305 Storage requirements — exchange or return.

Collateral References

Intoxicating Liquors *key* 49, 52.
48 C.J.S. Intoxicating Liquors §142.

16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department.

Administrative Rules

ARM 42.12.101 and 42.12.103 Applications and supporting documentation.
ARM 42.12.207 Approval of application.
ARM 42.13.105 and 42.13.106 Two or more bars on same premises — alteration of premises.

Case Notes

Issuance of License — Off-the-Record Site Visit Improper: After an administrative hearing, the Director of the Department of Revenue awarded a beer and wine license to one of two parties after unannounced site visits to the premises of each party. On appeal, the District Court overruled the Director's decision and reinstated the order of the hearing examiner, which proposed award of the license to the other party. The Supreme Court affirmed the District Court's order vacating the Director's order because it was founded on an unlawful procedure that violated the appellant's due process interests. Whether the conduct prejudiced both contenders' rights equally is irrelevant. Lack of prior notice, coupled with lack of any documentation, is fatal to an ordinarily permissible inspection. This type of conduct under a Montana Administrative Procedure Act proceeding violates certain other safeguards built in by statute: the right to respond and present evidence and argument on all relevant issues and the right to conduct a cross-examination sufficient for full and true disclosure of facts. However, the trial judge erred in ordering the adoption of the hearing examiner's proposal. This was not an alternative authorized by statute. The case was remanded to the Department for final determination. Frascell, Inc. v. St., 235 M 152, 766 P2d 850, 45 St. Rep. 2267 (1988).

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a retail beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

Qualifications for License: Montana Liquor Control Board (now Department of Revenue) was not empowered by the terms of the Montana Beer Act (Ch. 106, L. 1933) to establish the policy that grocery stores are the only "fit and proper person, firm or corporation to sell beer". Skaggs Drug Centers v. Mont. Liquor Control Bd., 146 M 115, 404 P2d 511 (1965).

16-4-105. Limit on retail beer licenses — wine license amendments — limitation on use of license — exceptions.

Compiler's Comments

2005 Amendment: Chapter 267 inserted (4) concerning license becoming located within 5 miles of an incorporated city or town because of annexation. Amendment effective April 15, 2005.

2001 Amendment: Chapter 7 in (2) at beginning of second sentence substituted "department" for "division". Amendment effective October 1, 2001.

1997 Amendments: Chapter 465 in (1)(e) inserted second and third sentences concerning subsection (3) and offering of gambling; in (2), at beginning of third sentence, inserted exception clause; and inserted (3) concerning licenses issued for applications received before October 1, 1997.

Chapter 528 in (1), in introductory clause after "department as a", deleted "fit and proper" and after "corporation" inserted "qualified"; in (1)(a)(i), at end, deleted "which may not be used in conjunction with a retail all-beverages license"; in (1)(a)(ii) and (1)(a)(iii), at end, deleted "which may not be used in conjunction with retail all-beverages licenses"; and in (1)(e), at end of first sentence, inserted "pursuant to 16-4-203". Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1995 Amendments — Composite Section: Chapter 228 deleted (3) that read: "(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause"; and made minor changes in style. Amendment effective March 24, 1995.

Chapter 530 in (1)(e), after "unincorporated", substituted "area" for "town"; and made minor changes in style. Amendment effective April 25, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1985 Amendments — Effective Date and Applicability: In (1)(c) after "March 7, 1947", inserted "and retail beer licenses issued under 16-4-110"; and in (1)(d) after "retail beer license to", inserted "an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to".

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

1983 Amendments: Chapter 50, in (1)(a)(ii), inserted "retail" before "beer license"; in (1)(a)(iii), inserted "four retail beer licenses for the first 2,000 inhabitants" after "corporate limits of such cities" and substituted "next" for "first" before "2,000 inhabitants or major fraction thereof".

Chapter 595, in (1)(b), after "shall be measured" substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 25 substituted "prescribed in 16-4-502" for "as shown by the most recent official United States census authorized by congress" in (1)(a).

Chapter 86 substituted "on or off the premises" for "on the premises" near the end of (2).

Chapter 519 changed the method of measuring the 5-mile limitation in the last sentence of (1)(b) from a straight line to the shortest public road or highway.

Revenue Oversight Committee (now Revenue and Transportation Interim Committee) Bill: House Bill 21 (Ch. 25, L. 1981) was introduced at the request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See committee report, "Montana's Liquor License Quota System", Legislative Council (1980).

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Administrative Rules

ARM 42.12.104 Use of census data for quota determinations.

ARM 42.12.124 and 42.12.125 Quota determinations.

ARM 42.12.126 License to sell beer or wine off-premises.

ARM 42.12.131 Applications for available license(s) in quota area.

Case Notes

Issuance of License — Off-the-Record Site Visit Improper: After an administrative hearing, the Director of the Department of Revenue awarded a beer and wine license to one of two parties after unannounced site visits to the premises of each party. On appeal, the District Court overruled the Director's decision and reinstated the order of the hearing examiner, which proposed award of the license to the other party. The Supreme Court affirmed the District Court's order vacating the Director's order because it was founded on an unlawful procedure that violated the appellant's due process interests. Whether the conduct prejudiced both contenders' rights equally is irrelevant. Lack of prior notice, coupled with lack of any documentation, is fatal to an ordinarily permissible inspection. This type of conduct under a Montana Administrative Procedure Act proceeding violates certain other safeguards built in by statute: the right to

respond and present evidence and argument on all relevant issues and the right to conduct a cross-examination sufficient for full and true disclosure of facts. However, the trial judge erred in ordering the adoption of the hearing examiner's proposal. This was not an alternative authorized by statute. The case was remanded to the Department for final determination. Frascell, Inc. v. St., 235 M 152, 766 P2d 850, 45 St. Rep. 2267 (1988).

Statute Clear on Face: Petitioner applied for a beer license in Miles City and was denied. The State Tax Appeal Board and the District Court affirmed the decision. At the time of petitioner's application, Miles City had eight beer licenses and a population of 9,602 people. Under this section, a city must reach a population of 10,000 before a ninth license can be issued. Petitioner was therefore properly denied a license. Colvin v. Dept. of Revenue, 203 M 360, 661 P2d 462, 40 St. Rep. 504 (1983).

Collateral References

Intoxicating Liquors *key* 46 ½, 59 through 59(2).

48 C.J.S. Intoxicating Liquors §§131, 132.

Validity of statutory classifications based on population—liquor statutes. 100 ALR 3d 850.

Construction of provision precluding sale within specified distance of another seller. 7 ALR 3d 809.

Montana's Liquor License Quota System, Montana Legislative Council (1980).

16-4-106. Beer and table wine license transfers.

Compiler's Comments

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Administrative Rules

ARM 42.12.207 Approval of application.

Case Notes

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a retail beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

Law Review Articles

Montana Liquor Licenses: Should They Be Leasable?, Sumner, 39 Mont. L. Rev. 331 (1978).

Collateral References

Intoxicating Liquors *key* 103 through 103(5), 104.

48 C.J.S. Intoxicating Liquors §209, et seq.

Transfer of license from one location to another. 98 ALR 2d 1123.

16-4-107. Domestic winery license — winery and importer registration.

Compiler's Comments

2001 Amendment: Chapter 163 inserted (1) allowing manufacture of wine in the state only by a licensed domestic winery, other than wine for personal consumption under federal exemptions, setting the initial and annual license fees, requiring the winery to hold the permit required by the U.S. treasury department, requiring quarterly reports to the department of revenue, and allowing the department of revenue to examine the winery's books at any time; in (2) near beginning of first sentence inserted "that is not located in the state"; and made minor changes in style. Amendment effective March 28, 2001.

1981 Amendment: In the third sentence, inserted "that" before "importation" and substituted "this title" for "[this act]".

Administrative Rules

ARM 42.13.401 Importation of wine.

16-4-108. Table wine distributor's license.

Compiler's Comments

1987 Amendments: Chapter 61 inserted (7) relating to the definition of distribute.

Chapter 68, in (5), near end before "wine", inserted "table".

1981 Amendment: Deleted "shall" before "expire" in (2); deleted "To qualify for a table wine distributor's license the applicant shall be a resident of Montana; provided, however, any individual or partnership which has been licensed as a table wine distributor may, upon incorporation in accordance with the laws of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall be authorized to do business in Montana; and said" and inserted "An" at the beginning of (5); added (6) relating to foreign corporations; and made minor changes in phraseology.

16-4-109. Golf course beer and wine license.

Compiler's Comments

2003 Amendment: Chapter 605 in (1)(a)(i) substituted "9 holes and 2,500 lineal yards" for "18 holes and 6,000 lineal yards"; in (1)(a)(ii) substituted "5 miles" for "1 mile"; inserted (1)(a)(iv) establishing initial application fee; inserted (1)(b) providing alternative requirements for golf course beer and wine license; and made minor changes in style. Amendment effective May 9, 2003.

Applicability: Section 3, Ch. 605, L. 2003, provided: "[This act] applies to license applications filed on or after [the effective date of this act]." Effective May 9, 2003.

2001 Amendment: Chapter 458 in (1) near middle of first sentence before "golf course" deleted "publicly owned" and at end after "golf course" deleted "owned by the state, a unit of the university system, or a local government" and inserted second sentence and (1)(a) through (1)(c) establishing license qualifications for privately owned golf course; in (2) in first sentence near middle substituted "person or entity" for "state agency, unit of the university system, or local government" and at end before "golf course" deleted "public" and substituted second sentence concerning department approval of owner for former sentence that read: "The owner may lease the license for use at the golf course to an individual or entity approved by the department"; at beginning of (3)(a) substituted exception clause for "A publicly owned"; inserted (3)(b) concerning restrictions at privately owned golf course; inserted (3)(c) concerning lease of publicly owned golf course beer and wine license; in (4) in first sentence near beginning before "golf course" deleted "publicly owned"; and made minor changes in style. Amendment effective April 30, 2001.

1985 Amendment: At end of (1) substituted "golf course owned by the state, a unit of the university system, or a local government" for "publicly owned golf course"; and in (2) in first sentence, substituted "state agency, unit of the university system, or local government that owns and operates" for "local government owning and operating" and at beginning of second sentence, substituted "owner" for "local government".

16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club.

Compiler's Comments

Preamble: The preamble to Ch. 731, L. 1985, provided: "WHEREAS, on July 1, 1983, the United States Supreme Court rendered its opinion in the case entitled Rice, Director, Department of Alcoholic Beverage Control of California v. Rehner, and held that Congress had delegated authority to the states, as well as to Indian tribes, to regulate the use and distribution of alcoholic beverages in Indian country; and

WHEREAS, the Montana Alcoholic Beverage Code limits the number of all-beverages licenses available in corporate city and county quota areas and the number of on-premises consumption retail beer licenses available in corporate city quota areas; and

WHEREAS, the enforcement of Montana's alcoholic beverages license quota creates a hardship on tribal alcoholic beverages licensees in quota areas where no state licenses are available; and

WHEREAS, the enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations in Montana have operated for many years as federal enclaves beyond the jurisdiction of state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, effective December 1, 1984, Air National Guard Regulation 215-2 requires enlisted men's, noncommissioned officers', and officers' clubs to comply with state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, the enforcement of Montana's alcoholic beverage license quota creates a hardship for enlisted men's, noncommissioned officers', and officers' clubs, which have

historically operated as social clubs without profit motive and which do not have the economic capacity to compete for licenses.

THEREFORE, the Legislature of the State of Montana determines it appropriate to make available retail alcoholic beverages licenses in excess of state quota limitations to be issued to persons holding tribal alcoholic beverages licenses and doing business on Montana Indian reservations and to enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations."

16-4-111. Catering endorsement for beer and wine licensees.

Compiler's Comments

2003 Amendment: Chapter 369 inserted (8) prohibiting licensee from sharing revenue from alcoholic beverage sale with catered event sponsor unless sponsor is state, political subdivision, or qualified federal 501(c) entity. Amendment effective April 16, 2003.

2001 Amendment: Chapter 7 in (1)(a) near middle of first sentence and in (1)(b) near middle of first sentence after "approval of the" substituted "department" for "liquor division". Amendment effective October 1, 2001.

1999 Amendment: Chapter 324 in (1)(b) near end of first sentence decreased from 75% to 65% the amount of total gross revenue attributable to sales of food required when granted a catering endorsement. Amendment effective April 16, 1999.

Applicability: Section 4, Ch. 324, L. 1999, provided: "[This act] applies only to new applications received after [the effective date of this act]." Effective April 16, 1999.

1997 Amendment: Chapter 465 inserted (1)(b) concerning license issued under 16-1-420; and made minor changes in style.

Effective Date: Section 6, Ch. 599, L. 1993, provided: "[This act] is effective on passage and approval." Approved May 4, 1993.

Administrative Rules

ARM 42.12.128 Catering endorsement.

16-4-115. Beer and wine licenses for off-premises consumption.

Compiler's Comments

1999 Amendment: Chapter 54 in (2) substituted "background investigation" for "thorough investigation". Amendment effective March 15, 1999.

1997 Amendment: Chapter 528 in (1), in first sentence after "department as a", deleted "fit and proper" and after "corporation" inserted "qualified"; in (3), in introductory clause after "investigation", inserted "or in exercising its sound discretion as provided in subsection (1)"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

Effective Date: Section 5, Ch. 228, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 24, 1995.

Administrative Rules

ARM 42.12.122 Determination of suitability of premises.

ARM 42.12.126 Off-premise sale of beer.

Part 2
All-Beverages Licenses

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

Part Collateral References

Intoxicating Liquors *key* 78 through 81, 99 through 101, 104.

48 C.J.S. Intoxicating Liquors §191, et seq.

Liquor license as subject to execution or attachment. 40 ALR 4th 927.

16-4-201. All-beverages license quota.

Compiler's Comments

2005 Amendment: Chapter 267 inserted (6) concerning all-beverages license becoming located within 5 miles of an incorporated city or town because of annexation; and made minor changes in style. Amendment effective April 15, 2005.

1987 Amendment: In (1), near beginning before "wine", inserted "table".

1985 Amendments — Effective Date and Applicability: In (3) after "March 7, 1947", inserted "and all-beverages licenses issued under 16-4-209"; and in (4) after "retail license to", inserted "an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to".

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

1983 Amendment: Near end of (2), after "shall be measured" substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 25 substituted "prescribed in 16-4-502" for "as shown by the most recent official United States census authorized by congress" in (1); deleted language concerning including population within 5 miles of city when that population exceeded city population in (2).

Chapter 519 changed the method of measuring the 5-mile limitation in the last sentence of (2) from a straight line to the shortest public road or highway.

Revenue Oversight Committee (now Revenue and Transportation Interim Committee) Bill: House Bill 21 (Ch. 25, L. 1981) was introduced at the request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See committee report, "Montana's Liquor License Quota System", Legislative Council (1980).

Administrative Rules

ARM 42.12.101 and 42.12.103 Applications and supporting documentation.
ARM 42.12.104 Use of census data in quota determinations.
ARM 42.12.114 License fees.
ARM 42.12.124 and 42.12.125 Quota determinations.
ARM 42.12.131 Applications for available license(s) in quota area.
ARM 42.12.207 Approval of application.

Case Notes

Lapsed Pre-1947 All-Beverages License Not Reinstated: The Billings VFW ceased operations in 1974 and allowed its pre-1947 liquor license to lapse based on the belief that the license was nontransferable. In 1979, the VFW reopened and was issued a new nontransferable all-beverages license. In 1991, the Supreme Court held that pre-1947 liquor licenses held by fraternal and veterans' organizations were not subject to quota restrictions passed in 1949 and therefore were freely transferable. (See Helena Aerie No. 16 v. Dept. of Revenue, 251 M 77, 822 P2d 1057 (1991).) After the 1991 court decision, the VFW received an offer to purchase its pre-1947 license for $165,000. The Department of Revenue refused to reissue the lapsed license or to declare that the current license held by the VFW was freely transferable. The VFW sought a declaratory judgment that its license be characterized as freely transferable on the basis that the Department was estopped from arguing that the license was nontransferable because the VFW had let the pre-1947 license expire based on the Department's misrepresentation that under the 1949 law, the license was nontransferable. The Supreme Court held that the doctrine of equitable estoppel did not apply because the misrepresentation had to be of fact and not a misrepresentation of law. Billings Post No. 1634 v. Dept. of Revenue, 284 M 84, 943 P2d 517, 54 St. Rep. 786 (1997).

Fraternal Organization's License to Remain Transferable and Assignable: The Eagles Club, holder of a liquor license since 1934, appealed a District Court ruling that the Department of Revenue had properly classified its license as nontransferable and nonassignable. The Supreme Court reversed, holding that there had been no evidence that the license held by the Eagles Club, renewed under the 1947 quota law, had lost its original characteristics of being transferable and assignable. Helena Aerie No. 16, F.O.E. v. Dept. of Revenue, 251 M 77, 822 P2d 1057, 48 St. Rep. 1050 (1991).

Denial of License — Lack of Public Convenience and Necessity — Adjudicative Process Warranted: Appellants contended that the Department of Revenue's denial of the issuance of all-beverages licenses based on a lack of evidence of public convenience and necessity was

improper. In affirming the denial, the Supreme Court noted that the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. Therefore, the Department's use of the adjudicatory process to determine whether the licenses were warranted was not an invalid exercise of rulemaking authority. Because the determination of public convenience and necessity involves a fact-intensive inquiry, it is not necessary that the Department adopt rigid rules defining the term. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989), followed in Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

Lease Expiring After Enactment of Quota System: Where hotel and bar were leased for a period of 5 years at time when there was no quota on liquor licenses, and contract provided for return of the property to lessor upon expiration of lease but made no mention of transfer of liquor license, lease could not be reformed in equity to include provision for transfer of liquor license where quota law had been enacted prior to expiration of lease. Sullivan v. Marsh, 124 M 415, 225 P2d 868 (1950), distinguished in Beard v. McCormick, 147 M 361, 411 P2d 964 (1966).

Power of Council to Limit Number of Places: A City Council could properly limit the number of places in the city where beer and liquor at retail might be sold and then refuse to issue a license to the assignee of a Montana Liquor Control Board (now Department of Revenue) license, and in doing so was not depriving him of property without due process of law. State ex rel. McIntire v. Libby, 107 M 216, 82 P2d 587 (1938), explained in Stephens v. Great Falls, 119 M 368, 175 P2d 408 (1938).

Collateral References

48 C.J.S. Intoxicating Liquors §§131, 132.

Construction of provision precluding sale within specified distance of another seller. 7 ALR 3d 809.

Power to limit number of licenses. 124 ALR 825, supplemented by 163 ALR 581.

Montana's Liquor License Quota System, Montana Legislative Council (1980).

16-4-202. Resort retail all-beverages licenses.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 51 in (12) near beginning after "license is" substituted "not" for "[not]". Amendment effective March 15, 1999.

Chapter 325 in (1) near end of second sentence after "issue" inserted "one" and after "all-beverages" substituted "license for the first 100 accommodation units and an additional license for each additional 50 accommodation units" for "licenses" and inserted third sentence limiting gambling machine permits to 20; in (2)(b) at end substituted "a quota area as described in 16-4-201(1)" for "an incorporated city or town"; inserted (4)(a)(iv) requiring a resort area to contain a minimum of 100 overnight guest accommodations; inserted (4)(a)(v) requiring resort areas to provide recreational facilities on the grounds of the resort; and made minor changes in style. Amendment effective October 1, 1999.

Retroactive Applicability: Section 2, Ch. 325, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to new resort determination applications received on or after January 1, 1999."

1997 Amendments — Composite Section: Chapter 371 in (1), at end of first sentence, substituted "of this section" for "and as more particularly prescribed below"; inserted (2)(b) clarifying that land or improvements within an incorporated city or town are not considered a resort area; in (3), after "resort area", deleted "such determination to be made under and" and after "rules" deleted "to be first promulgated on or before December 31, 1975"; inserted (4)(a)(iii) requiring that a resort area contain at least 50 acres; in (4)(b), after ""control"", substituted "means land or improvements that are owned or that are" for "shall mean lands" and after "under" inserted "contract"; in (5), in six places, substituted reference to resort area for reference to area or resort, in second sentence, after "applications", substituted "for resort all-beverages licenses" for "by individuals for licenses", and in third sentence, after "improvements", inserted "existing" and at end deleted "in which resort retail all-beverages licenses are to or may be located"; in (6), at beginning of first sentence, substituted "Within 7 days after the plat is filed" for "Upon such filing", after "resort" inserted "area", and at end deleted "within the meaning of the rules of the department", in second sentence, after "notice", substituted "of the hearing" for "thereof, with a description of the location of the proposed resort area" and after "resort" inserted "area", inserted third sentence requiring a description of the proposed resort area in the notice, and in fourth sentence, after "resort", inserted "area"; in (9), after "resort", inserted "area" and after "without" deleted "full"; in (9)(a), after "hearing", inserted "noticed and conducted in the

same manner" and after "provided" inserted "in subsections (6) and (7)"; in (10)(b), before "license", inserted "resort retail all-beverages"; in (10)(c), near beginning after "resort", inserted "retail all-beverages" and near end, after "forth", substituted "specific" for "such"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 487 at end of (3), after "rules", deleted "to be first promulgated on or before December 31, 1975"; in first sentence in (6), after "held", substituted "in the proposed area" for "in Helena, Montana"; and made minor changes in style.

Style changes were slightly different in the chapters. In each case, the codifier chose the more appropriate.

Code Commissioner Correction: In (12) the Code Commissioner has retained the bracketed word "not" to preserve the intent of Ch. 371 and Ch. 487, L. 1997.

1987 Amendment: In (1) and (12), in two places each, and in one place in (4), (5), (10)(a), and (11) substituted "all-beverages" for "liquor"; and made minor change in phraseology.

Part of Section Not Codified: Temporary provisions of section 4-4-204, R.C.M. 1947, were not codified in the MCA because of their temporary nature. They have not been repealed and are still valid law.

Administrative Rules

ARM 42.12.301 Resort licenses.
ARM 42.12.302 Definitions.
ARM 42.12.303 Valuation certificate.
ARM 42.12.306 Financial responsibility.
ARM 42.12.307 Resort area determination application process.

16-4-203. Determination of public convenience and necessity.

Compiler's Comments

1997 Amendment: Chapter 528 in (1), near beginning after "16-4-202", inserted "or 16-4-208", after "location of" substituted "an on-premises retail" for "a", and after "approved" substituted "if the department does not receive the minimum number of protests required for a public convenience and necessity determination pursuant to 16-4-207, in which case the application must be regarded as a prima facie showing of public convenience and necessity and no further determination of public convenience and necessity is allowed" for "only if the department has determined, upon a hearing held pursuant to the Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public convenience and necessity. If there is no opposition to the application for issuance or transfer of the license, a hearing is not required"; inserted (2) through (4) regarding criteria for approval of an application and defining applicable terms; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1991 Amendment: Near beginning of first sentence inserted reference to 16-4-104, near middle, after "16-4-202", substituted "or the transfer of location of a license may be approved" for "subsequent to April 30, 1974, shall be issued", near end, after "issuance", inserted "or transfer", and inserted second sentence providing that no hearing is required absent opposition to an application; and made minor changes in style.

Case Notes

Local Development Code Regulating Sale of Alcoholic Beverages Not Preempted by State: Montana's statutory framework for the regulation of alcohol clearly contemplates that cities will impose local zoning that regulates the sale of alcohol. The development code of the city of Red Lodge, a self-governing city, being consistent with and stricter than the state's regulations, was not preempted by state law. Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998), overruling State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966).

Criteria Applicable in Determination of Public Convenience and Necessity — Lack of Protest: Guidelines used by the Department of Revenue in determining whether issuance of an all-beverages license is warranted by public convenience include: (1) whether issuance of the license will materially promote the public's ability to engage in the licensed activity; and (2) evaluation of a variety of criteria including, inter alia: (a) the business abilities and character of the applicant; (b) the demand for services in the area to be served; (c) the impact on existing purveyors; and (d) any adverse impact on the area to be served. In order to make this determination, the Department must independently weigh the evidence submitted by the

applicants. The lack of public protest does not extinguish this duty. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989), followed in Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

Denial of License — Lack of Public Convenience and Necessity — Adjudicative Process Warranted: Appellants contended that the Department of Revenue's denial of the issuance of all-beverages licenses based on a lack of evidence of public convenience and necessity was improper. In affirming the denial, the Supreme Court noted that the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. Therefore, the Department's use of the adjudicatory process to determine whether the licenses were warranted was not an invalid exercise of rulemaking authority. Because the determination of public convenience and necessity involves a fact-intensive inquiry, it is not necessary that the Department adopt rigid rules defining the term. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989), followed in Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

16-4-204. Transfer — catering endorsement.

Compiler's Comments

2003 Amendment: Chapter 369 inserted (2)(h) prohibiting licensee from sharing revenue from alcoholic beverage sale with catered event sponsor unless sponsor is state, political subdivision, or qualified federal 501(c) entity. Amendment effective April 16, 2003.

2001 Amendments — Composite Section: Chapter 7 in (2)(a) near beginning of first sentence after "discretion of the" substituted "department" for "liquor division"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 85 at beginning of (1)(c) substituted "3 years" for "5 years"; and made minor changes in style. Amendment effective March 19, 2001.

1993 Amendment: Chapter 599 in (2)(a), at end of first sentence, inserted "for on-premise consumption"; deleted former first sentence of (2)(c) that read: "A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $35 must be filed with the department at least 3 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held" and deleted fourth sentence that read: "If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection"; at beginning of (2)(d), after "The licensee shall", substituted "notify" for "file with each application for an event to be catered a written statement of approval of the premises where the event is to be held, issued by", before "event" inserted "catered", and inserted second sentence requiring a $35 fee; and made minor changes in style. Amendment effective May 4, 1993.

1987 Amendments: Chapter 34 in (2)(d) deleted requirement that Department of Health and Environmental Sciences approve premises for catered event.

Chapter 180 inserted (2)(g) relating to the authority of a holder of a catering endorsement to sell beer at a county fairground or public sports arena.

1985 Amendments — Effective Date and Applicability: In (1)(a)(ii) and (1)(b) inserted "exclusive of those issued under 16-4-209(1)(a) and (1)(b)"; and inserted (1)(e) prohibiting transfer of a license issued under 16-4-209(1)(a) to area outside quota area or reservation boundary.

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

1983 Amendments: Chapter 29 deleted former (9) that read: "All licenses shall expire at midnight of June 30 of each year."

Chapter 37, in (2)(c), reduced the fee from $40 to $35 and reduced the time for filing the application from 10 days to 3 days prior to the event; at end of (2)(d) inserted the requirement of approval by the local law enforcement agency.

Chapter 59, in (1)(c), deleted last two sentences, which read: "A license transferred between quota areas under this section may be held only by natural persons for 5 years following the transfer. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license."

Chapter 636, in (1)(a)(ii), deleted "by more than 33%" after "that area's quota" and inserted (A) and (B) establishing two percentage limitations rather than one.

1983 Code Commissioner Change: Former (1) through (5) and (8) were redesignated 16-4-404(2) through (7).

1981 Amendments — Composite: Chapter 25 added "prescribed in 16-4-502" at the end of (1)(a)(i) and (1)(a)(ii).

Chapter 59 inserted (1)(b) relating to when a license within an incorporated quota area may be transferred to a new ownership and a new unincorporated location in the same county and inserted "Except as provided in subsection (1)(b)" at the beginning of (1)(a).

Chapter 512 changed 25% to 33% in (1)(a)(ii); changed the provisions of (1)(c), relating to mortgage, pledge, or retransfer of a license, to apply only for the 5 years following the transfer; and added (1)(d) prohibiting retransfer of license to different quota area.

In preparing the composite of the Ch. 59 and Ch. 512 amendments, the code commissioner did not include the language "Except as provided in subsection (b) above," added to (1)(c) by Ch. 59 in order to avoid apparently redundant language indicating the subsection to which (1)(c) applies.

Revenue Oversight Committee (now Revenue and Transportation Interim Committee) Bill: House Bill 21 (Ch. 25, L. 1981) was introduced at the request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See committee report, "Montana's Liquor License Quota System", Legislative Council (1980).

Administrative Rules

ARM 42.12.128 Catering endorsement.

ARM 42.12.144 Procedure for transfer between quota areas.

Title 42, chapter 12, subchapter 2, ARM License transfers — liens, leases, and decedents.

ARM 42.13.105 Two or more bars on same premises.

ARM 42.13.106 Alteration of premises.

Case Notes

Security Interest Retained in Beer and Wine License — Assignment Contingent on Fulfillment of Premises Lease: Groshelle leased a bar to Bertschs. The lease provided that Groshelle would assign the beer and wine license to Bertschs and retain a security interest in the license and that Bertschs would reassign the license to Groshelle upon termination of the lease. The transfer of license was approved by the Department of Revenue. After deciding to sell the business to Reids, Bertschs applied for transfer of the license to Reids, subject to Groshelle's security interest and a reassignment to Groshelle upon termination of the lease. That transfer was also approved. After a lease period of several years, Reids and Groshelle could not come to terms regarding a new lease. Groshelle filed a complaint seeking a judgment declaring the reassignment provisions of the lease valid and enforceable. The District Court properly granted partial summary judgment to Groshelle after holding the reassignment enforceable, subject to Department approval. The Supreme Court affirmed on appeal, finding nothing in the language of the various leases of the bar premises, fixtures, and furniture that created a lease in the beer and wine license and nothing in the record indicating Groshelle's intent to relinquish the license. Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995), distinguishing Feurherm v. Schmaing, 181 M 136, 592 P2d 924 (1979).

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

Transfer at End of Lease: When plaintiffs rented premises and allowed defendant to use their liquor license under a homemade lease, liquor license was not transferred to defendant at the expiration of the lease. Beard v. McCormick, 147 M 361, 411 P2d 964 (1966).

License Transferred With Lease: A court decree adjudged that the liquor licenses be transferred to the defendants. Because they were unable under Montana law to hold such licenses, an arrangement was made between the plaintiff and the defendants to transfer the licenses to the plaintiff along with a lease of the premises. Such lease and transfer were upheld as there was consideration. Sears v. Barker, 126 M 101, 244 P2d 516 (1952).

Transfer of Location:

Montana Liquor Control Board (now Department of Revenue) conformed to legislative directive in refusing to authorize removal of license from premises for which it was granted to another location. State ex rel. Boulds v. Paige, 124 M 353, 224 P2d 141 (1950).

Purchaser of a license from a licensee cannot compel Montana Liquor Control Board (now Department of Revenue) to consent to transfer of license when he intends to carry on business at a location different from that authorized in the original license. State ex rel. Jester v. Paige, 123 M 301, 213 P2d 441 (1949).

Assignment of License: An "involuntary" assignment and coerced surrender, enforced by court decree, after making for the parties a contract to which they did not and could not agree, are not authorized. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Evidence: Complaint in suit for reformation of contract on ground that words "stock and fixtures" in contract for sale of beer and liquor establishment, containing provision for surrender of property in case of default, were intended by the parties to include the beer and liquor licenses. Plaintiffs had no right in the original licenses which were transferred to purchasers where the several plaintiffs were alleged to have been joint owners, but the original liquor and beer licenses were in the name of only one of them. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Disqualified Person Interested in Premises: License issued in name of one person who failed to state in application that two others who were ineligible for license had an interest in the premises was invalid and subject to cancellation. Perry v. Luding, 123 M 570, 217 P2d 207 (1950).

Attachment of License: A retail liquor license is subject to attachment. Stallinger v. Goss, 121 M 437, 193 P2d 810 (1948).

Transfer After Sheriff's Sale: A retail liquor dealer's license could be purchased by a qualified person at a Sheriff's sale, and such purchaser could insist that the license so purchased be transferred to him. Stallinger v. Goss, 121 M 437, 193 P2d 810 (1948).

Attorney General's Opinions

Computation of All-Beverages License Quota: This section requires that all "floater" all-beverages licenses transferred between quota areas be counted in the all-alcoholic beverages license quota 5 years after the date of transfer. (See 1983 amendment.) 39 A.G. Op. 66 (1982).

Law Review Articles

Montana Liquor Licenses: Should They Be Leasable?, Sumner, 39 Mont. L. Rev. 331 (1978).

Collateral References

Intoxicating Liquors *key* 103 through 103(5), 104.

48 C.J.S. Intoxicating Liquors §209, et seq.

Liquor license as subject to execution or attachment. 40 ALR 4th 927.

Transfer of license from one location to another. 98 ALR 2d 1123.

16-4-205. Limit one license to person — business in name of licensee.

Compiler's Comments

1999 Amendment: Chapter 251 inserted (2) exempting licenses held by heritage preservation and development commission from provisions of section; and made minor changes in style. Amendment effective April 5, 1999.

1985 Amendment: In first sentence, after "shall be", changed "granted" to "issued", and at end of sentence inserted exception clause; and inserted second sentence providing that a secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance.

16-4-207. Notice of application — investigation — publication — protest.

Compiler's Comments

2003 Amendment: Chapter 110 in (1) deleted fourth, fifth, and sixth sentences that read: "If the applicant does not provide the additional application information within 30 days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application are not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application" and in fourth sentence after "department" deleted "shall request that the department" and after "justice" inserted "shall"; and made minor changes in style. Amendment effective March 24, 2003.

2001 Amendment: Chapter 448 in (1) in fourth sentence near middle after "information within" decreased time for applicant to provide additional application information from 60 to 30

days and at beginning of eighth sentence substituted "When the department determines that an application for a license under this code is complete" for "If the department does not discover a basis to deny the application within 30 days after the department requests the investigation by the department of justice". Amendment effective April 30, 2001.

1999 Amendment: Chapter 51 in (1) near beginning of petition form and near end of petition form after "day of ...." substituted "20..." for "19..."; and made minor changes in style. Amendment effective January 1, 2000.

1997 Amendment: Chapter 528 in (1), in first sentence after "transfer", inserted "the location of" and after "completeness and" substituted "based upon review of the application and any other information supplied to the department" for "to", inserted second through sixth sentences regarding additional information and terminated applications, at beginning of seventh sentence inserted "When the application is complete", at beginning of eighth sentence, after "If", deleted "after the investigation", after "application" inserted "within 30 days after the department requests the investigation by the department of justice", after "shall" deleted "promptly", after "retail" inserted "on-premises", after "license" inserted "or a transfer of location", and after "protests" substituted "may be made against the approval of the application" for "against the issuance of a license to the applicant", at beginning of ninth sentence inserted "Protests", near middle of eleventh sentence, after "transfer", inserted "of ownership or location", and in notice form, at end of second sentence, substituted "approval of the application" for "issuance of the license", and inserted third through fifth sentences regarding protest petitions; in (3)(a), after "may", substituted "approve the application" for "issue or transfer the license"; inserted (3)(b) regarding response to a notice of opportunity to protest; substituted (3)(c) concerning protests against application approval for former language that read: "If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing"; inserted (4) regarding Department actions when protests are filed; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1993 Amendment: Chapter 414 in (1), at end of first sentence, inserted provision for review of the application and for a determination whether licensing criteria are met and at beginning of second sentence substituted provision that the Department of Revenue request a Department of Justice investigation for a provision that the Department of Revenue investigate; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), near end of first sentence after "retail license", inserted "the department shall investigate the application as provided in 16-4-402" and at beginning of second sentence inserted "If after the investigation the department does not discover a basis to deny the application"; at end of (3) deleted "at its office in Helena"; and made minor changes in style.

1989 Amendment: In (1), near middle of first sentence, in notice form, and in (3), near beginning of second sentence, inserted language providing protests may be made only by creditors and residents of county of application or adjoining counties; and made minor changes in phraseology. Amendment effective July 1, 1989.

1983 Amendment: In (3), after "receives no" inserted "written"; near beginning of second sentence of (3) after "If" deleted ", however, any" and inserted "written"; after "against the" substituted "issuance" for "issue"; and after "hold a" inserted "public".

Administrative Rules

Title 42, chapter 12, subchapter 1, ARM License applications.

16-4-208. Airport all-beverages license.

Compiler's Comments

1987 Amendment: In (3) substituted "alcoholic beverage" for "liquor".

16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club.

Compiler's Comments

Preamble: The preamble to Ch. 731, L. 1985, provided: "WHEREAS, on July 1, 1983, the United States Supreme Court rendered its opinion in the case entitled Rice, Director, Department of Alcoholic Beverage Control of California v. Rehner, and held that Congress had delegated authority to the states, as well as to Indian tribes, to regulate the use and distribution of alcoholic beverages in Indian country; and

WHEREAS, the Montana Alcoholic Beverage Code limits the number of all-beverages licenses available in corporate city and county quota areas and the number of on-premises consumption retail beer licenses available in corporate city quota areas; and

WHEREAS, the enforcement of Montana's alcoholic beverages license quota creates a hardship on tribal alcoholic beverages licensees in quota areas where no state licenses are available; and

WHEREAS, the enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations in Montana have operated for many years as federal enclaves beyond the jurisdiction of state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, effective December 1, 1984, Air National Guard Regulation 215-2 requires enlisted men's, noncommissioned officers', and officers' clubs to comply with state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, the enforcement of Montana's alcoholic beverage license quota creates a hardship for enlisted men's, noncommissioned officers', and officers' clubs, which have historically operated as social clubs without profit motive and which do not have the economic capacity to compete for licenses.

THEREFORE, the Legislature of the State of Montana determines it appropriate to make available retail alcoholic beverages licenses in excess of state quota limitations to be issued to persons holding tribal alcoholic beverages licenses and doing business on Montana Indian reservations and to enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations."

16-4-210. Resort license — tour boat endorsement.

Compiler's Comments

Effective Date: Section 4, Ch. 149, L. 1989, provided that this section is effective March 18, 1989.

Part 3
Special Licenses

Part Administrative Rules

ARM 42.12.313 Wine tastings.

Part Collateral References

Intoxicating Liquors *key* 78 through 81, 99 through 101, 104.

48 C.J.S. Intoxicating Liquors §191, et seq.

16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance.

Compiler's Comments

2003 Amendment: Chapter 369 at beginning of first sentence of (1)(a) substituted reference to tax-exempt federal 501(c)(3) organization or institution raising funds for needy person or accredited Montana postsecondary school for "Any association or corporation", in middle substituted "that conducts a special event may receive a special permit" for "conducting a picnic, convention, fair, civic or community enterprise, or sporting event is, in the discretion of the department, entitled to a special permit", before "event" inserted "special", and at end after "event" deleted "and except as provided in subsection (1)(c), the beer and wine must be consumed within the enclosure in which the event is held" and inserted second sentence allowing organization to receive up to three special permits a year; inserted (1)(b) through (1)(d) regarding special permits; inserted (1)(e) requiring beer and wine sold to be consumed at time when and in place where special event or contest is held; in (1)(f) in first sentence substituted "An application for a special permit" for "The application of the association or corporation" and at end after "advance" inserted "but the department may, for good cause, waive the 3-day requirement", in second sentence in three places and in fourth sentence substituted "special event, activity, or sporting contest" for "event", inserted third sentence requiring application for permit for professional sporting contests or junior hockey to provide inclusive dates of season of play, and at end of fourth sentence after "premises" deleted "where the event is to be held"; deleted former (1)(c) that read: "(c) The permit issued to the association or corporation is a special permit but does not authorize the sale of beer and table wine except starting 1 day before the regular period when events are being held upon the grounds, during the period described in the application, and for 1 day after the period described in the application"; in (1)(g) substituted "special event,

activity, or sporting contest" for "event"; in (1)(h) near middle substituted "an organization that may receive" for "an association entitled to" and after "three" inserted "special"; in (2)(a) near middle after "code" substituted "may receive" for "is, in the discretion of the department" and after "16-4-207" deleted "entitled to"; and made minor changes in style. Amendment effective April 16, 2003.

2001 Amendments — Composite Section: Chapter 7 near middle of (1)(a) substituted "department" for "liquor division"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 89 in (1)(a) near end after "event" inserted "and except as provided in subsection (1)(c), the beer and wine must" and after "held" deleted "except as provided in subsection (1)(d)"; inserted (1)(e) authorizing special permits under certain circumstances to be issued to certain organizations to sell beer and wine at three events a year; and made minor changes in style. Amendment effective March 20, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1987 Amendments: Chapter 34 in second sentence of (1)(b), referring to issuance of statement of approval, deleted reference to Department of Health and Environmental Sciences.

Chapter 180 at end of (1)(a) inserted "except as provided in subsection (1)(d)"; and inserted (1)(d) relating to the sale of beer at a county fairground or public sports arena.

1983 Amendment: In (1)(b), reduced the time for filing the application from 10 days to 3 days prior to the event; and added the approval requirement at the end of (1)(b).

1981 Amendment: Changed "or wine" to "and table wine" after "beer" throughout the section.

Administrative Rules

ARM 42.12.323 Permissible and prohibited special permit activities.

Collateral References

Intoxicating Liquors *key* 46 ½, 47 through 53.

48 C.J.S. Intoxicating Liquors §134.

Sale and use at public dance as nuisance. 44 ALR 2d 1401.

16-4-302. Passenger carrier licenses.

Compiler's Comments

1987 Amendment: After "may serve" substituted "alcoholic beverages" for "beer and liquor" and after "issuance of a retail" substituted "all-beverages" for "beer and liquor".

Part of Section Not Codified: The last sentence of section 4-4-109, R.C.M. 1947, was not codified in the MCA, as part of it provided for a license fee already set out in 16-4-501 and is thus redundant, and part of it was a temporary provision setting out the fee for 1968. The sentence has not been repealed and is still valid law. It was enacted by sec. 114, Ch. 387, L. 1975.

Collateral References

Carrier's liability based on serving intoxicants to passenger. 76 ALR 3d 1218.

16-4-304. Beer and wine license for Yellowstone airport.

Compiler's Comments

2005 Amendment: Chapter 293 in (3) at end deleted "from June 1 to October 1 of each year"; substituted (4) concerning annual license fee for former text that read: "There is no annual fee for the license"; and made minor changes in style. Amendment effective April 20, 2005.

Effective Date: Section 3, Ch. 529, L. 1993, provided that this section is effective May 31, 1993.

16-4-305. Montana heritage retail alcoholic beverage licenses — use — quota.

Compiler's Comments

License Transfer: Section 2, Ch. 251, L. 1999, provided: "**Transfer of certain liquor licenses to Montana heritage preservation and development commission.** Notwithstanding the provisions of Title 16, chapter 4, the department shall transfer the ownership of the following alcoholic beverage licenses to the Montana heritage preservation and development commission:

(1) the all-beverages licenses owned by the Montana historical society foundation and by the Daly mansion trust; and

(2) the retail beer license for on-premises consumption owned by the Montana historical society foundation."

Effective Date: Section 5, Ch. 251, L. 1999, provided that this section is effective April 5, 1999.

16-4-310. Definitions.

Compiler's Comments

Effective Date: Section 9, Ch. 591, L. 2005, provided that this section is effective July 1, 2005.

16-4-311. Distillery license.

Compiler's Comments

Effective Date: Section 9, Ch. 591, L. 2005, provided that this section is effective July 1, 2005.

16-4-312. Domestic distillery.

Compiler's Comments

Effective Date: Section 9, Ch. 591, L. 2005, provided that this section is effective July 1, 2005.

Part 4
Licensing Criteria

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

Part Collateral References

Intoxicating Liquors *key* 61 through 70.

48 C.J.S. Intoxicating Liquors §149, et seq.

16-4-401. License as privilege — criteria for decision on application.

Compiler's Comments

2005 Amendment: Chapter 591 in (2) near beginning in exception clause inserted reference to 16-4-311; in (4) at beginning inserted reference to 16-4-311; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 448 in (2)(b)(iii) after "license" deleted "or shares in the profits or liabilities of the license"; inserted (2)(b)(iv) requiring each person who shares in the profits or liabilities of a license, other than a shareholder owning less than 10% of a corporation's stock, to meet certain requirements for individual license applicants; and made minor changes in style. Amendment effective April 30, 2001.

1999 Amendment: Chapter 148 inserted (2)(b)(iii) concerning each person with control over operation or sharing in profits; and made minor changes in style. Amendment effective March 23, 1999.

1995 Amendment: Chapter 530 inserted (2)(a)(ii), (3)(a)(ii), and (4)(a)(ii) regarding an applicant's ownership interest; in (2)(b)(iv) inserted reference to subsection (2)(a)(ii); adjusted subsection references; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: In (2)(a)(ii) and (3)(a)(ii) substituted "alcoholic beverages" for "beer, wine, or liquor".

1985 Amendments: Chapter 19 in (2)(a)(ii) and (3)(a)(ii) inserted "importer"; and near beginning of (4) inserted "importing".

Chapter 133 inserted (2)(c), (3)(c), and (4)(c) relating to other business entities.

1983 Amendment: In (2)(a)(i) and (3)(a)(i), substituted "the applicant will not possess an ownership interest in more than one establishment" for "neither the applicant nor any member of his immediate family has an ownership interest in any other establishment"; near beginning of (3), after "off-premises consumption" deleted "or that is for the manufacture or wholesaling of an alcoholic beverage"; inserted (4) establishing requirements for issuance or transfer of a license to manufacture or wholesale alcoholic beverages; in (5), inserted "and (4)(b)"; and made minor changes in phraseology.

1981 Amendment: Inserted "Except as provided in subsection (5), in the case of a license that permits on-premises consumption" at the beginning of (2); inserted (2)(a) (introductory clause), (2)(b), (3), (4), and (5) (see 1981 Session Law).

Administrative Rules

ARM 42.12.141 and 42.12.143 Corporate license restrictions.

ARM 42.12.205 Requirements when license subject to lien.
ARM 42.12.212 Loan standards.

Case Notes

Successful Applicant for Liquor License Required to Be Citizen When License Issued — Deference to Agency Interpretation of Statute: Tokumoto, Merhi, and others applied for several new liquor licenses to be issued for Missoula. At the time of his application, Merhi was not a U.S. citizen. The Department of Revenue determined, in accordance with its longstanding interpretation of the statutes, that Merhi did not have to be a citizen at the time that the relative merits of Merhi's application for a license were determined, as long as he was a citizen at the time of issuance of a license. Citing Norfolk Holdings, Inc. v. Dept. of Revenue, 249 M 40, 813 P2d 460 (1991), the Supreme Court affirmed the Department's decision, noting that the Supreme Court gives great deference to an interpretation of a statute by the agency charged with its administration. Tokumoto v. Dept. of Revenue, 264 M 56, 869 P2d 782, 51 St. Rep. 144 (1994).

"All Applicable Laws" — Meaning: In this section, which provides that a license permitting on-premises consumption of alcoholic beverages cannot be renewed unless the Department of Revenue finds that the licensee's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments, "all applicable laws" is not limited to the alcoholic beverages laws and the zoning and nuisance laws. Broers v. Dept. of Revenue, 237 M 367, 773 P2d 320, 46 St. Rep. 873 (1989).

License Renewal Denied for Assaults and Other Misdemeanors Relating to Fighting, Guns, and Alcoholic Beverage Misuse: Evidence was sufficient to deny renewal of a license to sell alcoholic beverages for on-premises consumption. Misdemeanor convictions for DUI, reckless driving, barroom brawling, and discharging a firearm in the direction of a passing motorist may not alone have been sufficient to refuse to renew the license. However when viewed in connection with licensee's misdemeanor criminal mischief conviction for plowing snow from his lodge's parking lot onto a highway, resulting in a two-car collision, and four misdemeanor assault convictions arising when he chased two children from his lodge for wishing to use the bathroom without making a purchase, pointed a rifle at the family's vehicle as they left, and chased the family in his truck, becoming involved in an accident with the family vehicle, there was ample evidence to refuse to renew. Licensee's actions indicated that he had a disregard for the safety of others, a violent temperament, and a tendency toward alcohol abuse. Broers v. Dept. of Revenue, 237 M 367, 773 P2d 320, 46 St. Rep. 873 (1989).

Requirement That Individual Person Licensee Comply With Applicable Laws — No Unconstitutional Vagueness or Overbreadth: This section provides that a license permitting on-premises consumption of alcoholic beverages cannot be renewed unless the Department of Revenue finds that the licensee's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments. The statute is capable of reasonable interpretation and construction. It is set forth in terms an ordinary person exercising ordinary common sense can understand and comply with. "All applicable laws" means those designed to protect the welfare, health, peace, morals, and safety of the citizens of the state as they relate to the manufacture, sale, and distribution of alcoholic beverages. The statute is not unconstitutionally vague or overbroad. Broers v. Dept. of Revenue, 237 M 367, 773 P2d 320, 46 St. Rep. 873 (1989).

Attorney General's Opinions

Citizenship and Residency Required of Gambling License Applicant: Sections 23-5-322 and 23-5-422 require that an applicant for a gambling license meet both United States citizenship and Montana residency requirements. Therefore, an alien who resided in the state for 18 years did not meet both requirements and was not entitled to a license. 42 A.G. Op. 105 (1988).

Collateral References

Intoxicating Liquors *key* 57, 58.
48 C.J.S. Intoxicating Liquors §149, et seq.
Equal protection and statute regarding personal qualifications of license applicant. 145 ALR 509.

16-4-402. Application — investigation.

Compiler's Comments

2003 Amendment: Chapter 110 in (2)(a) near middle of sentence after "department" deleted "shall request that the department" and after "justice" inserted "shall"; and in (2)(c) in first

sentence after "days of the" deleted "request from the department to the department of justice" and inserted "receipt of a completed application" and inserted third sentence concerning tolling of time period for altered or newly constructed premises. Amendment effective March 24, 2003.

1999 Amendment: Chapter 54 in (1) after "application" deleted "in writing, signed by the applicant and" and deleted former second sentence that read: "The application must be verified by the affidavit of the person making it before a person authorized to administer oaths." Amendment effective March 15, 1999.

1997 Amendment: Chapter 528 in (2)(a), in second sentence of introductory clause after "investigation", inserted "or on other information"; inserted (2)(c) requiring completion of department activity within 90 days of a request and setting out criteria for tolling the deadline; and substituted (4) and (5) regarding issuance of a conditional approval letter for former (4) that read: "If, within 30 days of receiving the completed application, the department finds no basis for denying the application, the department shall proceed to publish the notice of the application as required by 16-4-207." Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1995 Amendment: Chapter 228 in (2)(b) inserted "a retail beer and wine license for off-premises consumption as provided in 16-4-115". Amendment effective March 24, 1995.

1993 Amendments: Chapter 414 in (2)(a), in first sentence, substituted "request that the department of justice" for "within 30 days" and at beginning of second sentence inserted "Based on the results of the investigation"; inserted (4) requiring the Department of Revenue to publish notice of the application if no basis for denying the application is found within 30 days; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 599 near middle of (2)(b) inserted reference to 16-4-111; and made minor changes in style. Amendment effective May 4, 1993.

1991 Amendment: In (3), near beginning before "application", inserted "original" and after "application" inserted "in any part of an annual renewal application, or in any hearing conducted pursuant to an application"; and made minor changes in style.

1983 Amendments: Chapter 37 inserted last sentence of (2) exempting catering endorsements under 16-4-204(2) and special permits under 16-4-301.

Chapter 51, in (2), after "accompanied by the necessary license fee" inserted "or letter of credit as provided in 16-4-501(7)(f)".

Administrative Rules

ARM 42.12.122 Suitability of premises.

ARM 42.12.207 Approval of application.

Case Notes

Location Requirement Not Unreasonable: Kiser submitted an application for a liquor license but failed to specify a location for his proposed establishment. Kiser was allowed to participate in the licensing process anyway, and the application was considered on its merits, but denied. Kiser contended that the licensing requirement was unreasonable, discriminatory, and unconstitutional. The Supreme Court disagreed, finding that identification of the location where the license will be used is an element to be weighed when balancing applicants' qualifications and the relative degrees to which their proposals serve public convenience and necessity. Further, the distinction made between enforcement of the location requirement and enforcement of the citizenship requirement was not clearly erroneous. Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

Determination of Applicants' Qualifications — Running of Statutory Period: Applicants argued that the Department of Revenue (now Department of Justice) abused its discretion and exceeded its statutory authority by failing to make an investigation and determination of qualifications within 30 days of receipt of the completed application (see 1997 amendment), despite the fact that the establishment was not yet constructed. However, this section also requires a Department inspection of the premises of the proposed establishment, and the inspection of the building cannot take place before construction is completed. Therefore, the 30-day investigative period does not begin to run until an applicant has submitted all required paperwork and the proposed establishment is constructed. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989).

State Preemption of Local Control:

The Montana Liquor Control Board (now Department of Revenue) has complete control of the liquor traffic within the state, and cities and towns are without power to interfere with such control. State ex rel. McCarten v. Corwin, 119 M 520, 177 P2d 189 (1947).

Under the maxim expressio unius est exclusio alterius the Legislature has made manifest its intent to inhibit all powers of cities and towns over the matter of intoxicating liquors, except as to those powers specifically enumerated. Stephens v. Great Falls, 119 M 368, 175 P2d 408 (1946).

City Fee: Holder of retail liquor license issued by Montana Liquor Control Board (now Department of Revenue) was entitled to engage in retail liquor business without interference by city authorities subject only to payment of a license fee, which city might exact. State ex rel. Wily v. District Court, 118 M 50, 164 P2d 358 (1945).

Opposition by Inhabitants of Locality or Neighborhood:

Opposition by inhabitants of the particular locality or neighborhood was not provided for by the law as a basis for refusal. If applicant met the legal requirements, rules, and regulations of the Liquor Control Board (now Department of Revenue), he was entitled to a license. McFatridge v. District Court, 113 M 81, 122 P2d 834 (1942).

That a majority of the inhabitants of a town and vicinity may be opposed to granting of a license does not constitute grounds for refusal of the license by the Board. State ex rel. McCarten v. Harris, 112 M 344, 115 P2d 292 (1941).

"Premises" Defined: The word "premises" as used in subsection (2) means the building in which the liquor business is to be carried on, and its meaning cannot be extended to include the locality or neighborhood in which the building is located. McFatridge v. District Court, 113 M 81, 122 P2d 834 (1942).

Suitability of Premises: Among other things, the test of suitability of premises should be established by rule made, promulgated and published, and not left to the caprice and whim of the board. In making the investigation of an application the board has discretion to determine if all qualifications exist, but if it finds that they do exist, it has no discretion to refuse a license for extraneous reasons. State ex rel. McCarten v. Harris, 112 M 344, 115 P2d 292 (1941).

Collateral References

Withdrawal of liquor license application. 72 ALR 2d 1223.

16-4-404. Protest period — contents of license — posting — privilege — transfer.

Compiler's Comments

1997 Amendment: Chapter 528 in (5)(a), in introductory clause after "premises", inserted "within the quota area"; in (5)(b), at end of first sentence, inserted "pursuant to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1993 Amendments: Chapter 311 inserted third sentence of (7) regarding a subsequent licensee's obligation to pay for beer or wine sold on credit even though a lien on the license is not created; and made minor changes in style.

Chapter 414 in (2), in last sentence after "of the department", inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (5)(b), near beginning of first sentence, substituted "after notice and opportunity for protest" for "in its discretion", after "cases" inserted "specified in subsection (5)(a)", at end inserted "and is justified by public convenience and necessity", and near beginning of second sentence, after "department", substituted "may not allow" for "shall in no event nor for any cause permit"; near end of (6), after "approval", substituted "if there has not been a change in location and" for "providing"; and made minor changes in style.

1987 Amendment: In (4) and (5) substituted "alcoholic beverages" for "liquor".

Administrative Rules

ARM 42.12.132 Management agreements.
ARM 42.12.205 Requirements when license subject to lien.
ARM 42.12.207 Approval of application.
ARM 42.12.208 Temporary authority.

Case Notes

Security Interest Retained in Beer and Wine License — Assignment Contingent on Fulfillment of Premises Lease: Groshelle leased a bar to Bertschs. The lease provided that Groshelle would assign the beer and wine license to Bertschs and retain a security interest in the license and that Bertschs would reassign the license to Groshelle upon termination of the lease. The transfer of license was approved by the Department of Revenue. After deciding to sell the business to Reids, Bertschs applied for transfer of the license to Reids, subject to Groshelle's security interest and a

reassignment to Groshelle upon termination of the lease. That transfer was also approved. After a lease period of several years, Reids and Groshelle could not come to terms regarding a new lease. Groshelle filed a complaint seeking a judgment declaring the reassignment provisions of the lease valid and enforceable. The District Court properly granted partial summary judgment to Groshelle after holding the reassignment enforceable, subject to Department approval. The Supreme Court affirmed on appeal, finding nothing in the language of the various leases of the bar premises, fixtures, and furniture that created a lease in the beer and wine license and nothing in the record indicating Groshelle's intent to relinquish the license. Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995), distinguishing Feurherm v. Schmaing, 181 M 136, 592 P2d 924 (1979).

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue (now Department of Justice) throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

Transfer at End of Lease: When plaintiffs rented premises and allowed defendant to use their liquor license under a homemade lease, liquor license was not transferred to defendant at the expiration of the lease. Beard v. McCormick, 147 M 361, 411 P2d 964 (1966).

License Transferred With Lease: A court decree adjudged that the liquor licenses be transferred to the defendants. Because they were unable under Montana law to hold such licenses, an arrangement was made between the plaintiff and the defendants to transfer the licenses to the plaintiff along with a lease of the premises. Such lease and transfer were upheld as there was consideration. Sears v. Barker, 126 M 101, 244 P2d 516 (1952).

Transfer of Location:

Montana Liquor Control Board (now Department of Revenue) conformed to legislative directive in refusing to authorize removal of license from premises for which it was granted to another location. State ex rel. Boulds v. Paige, 124 M 353, 224 P2d 141 (1950).

Purchaser of a license from a licensee cannot compel Montana Liquor Control Board (now Department of Revenue) to consent to transfer of license when he intends to carry on business at a location different from that authorized in the original license. State ex rel. Jester v. Paige, 123 M 301, 213 P2d 441 (1949).

Assignment of License: An "involuntary" assignment and coerced surrender, enforced by court decree, after making for the parties a contract to which they did not and could not agree, are not authorized. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Disqualification of Partner: The disqualification of a single partner works a disqualification of all the partners. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Evidence: Complaint in suit for reformation of contract on ground that words "stock and fixtures" in contract for sale of beer and liquor establishment, containing provision for surrender of property in case of default, were intended by the parties to include the beer and liquor licenses. Plaintiffs had no right in the original licenses which were transferred to purchasers where the several plaintiffs were alleged to have been joint owners, but the original liquor and beer licenses were in the name of only one of them. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Disqualified Person Interested in Premises: License issued in name of one person who failed to state in application that two others who were ineligible for license had an interest in the premises was invalid and subject to cancellation. Perry v. Luding, 123 M 570, 217 P2d 207 (1950).

Attachment of License: A retail liquor license is subject to attachment. Stallinger v. Goss, 121 M 437, 193 P2d 810 (1948).

Transfer After Sheriff's Sale: A retail liquor dealer's license could be purchased by a qualified person at a Sheriff's sale, and, under a previous version of this section, the purchaser could insist that the license so purchased be transferred to him. Stallinger v. Goss, 121 M 437, 193 P2d 810 (1948).

16-4-405. Denial of license.

Compiler's Comments

1997 Amendment: Chapter 528 in (2), after "town", inserted "or county"; in (3)(a), after "residing", inserted "or of retail licensees located"; in (3)(b), at beginning, inserted "if required"

and at end inserted "pursuant to 16-4-203"; inserted (3)(d) regarding verification of a possible reason for denial; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1991 Amendment: In (3), at end of introductory clause, inserted reference to 16-4-207(3); inserted (3)(b) regarding public convenience and necessity; inserted (3)(c) regarding failure to meet licensing criteria; and made minor changes in style.

1987 Amendment: In (1) and (2) substituted "alcoholic beverages" for "beer or all-beverages" in (1) and for "beer or liquor" in (2).

Case Notes

Successful Applicant for Liquor License Required to Be Citizen When License Issued — Deference to Agency Interpretation of Statute: Tokumoto, Merhi, and others applied for several new liquor licenses to be issued for Missoula. At the time of his application, Merhi was not a U.S. citizen. The Department of Revenue determined, in accordance with its longstanding interpretation of the statutes, that Merhi did not have to be a citizen at the time that the relative merits of Merhi's application for a license were determined, as long as he was a citizen at the time of issuance of a license. Citing Norfolk Holdings, Inc. v. Dept. of Revenue, 249 M 40, 813 P2d 460 (1991), the Supreme Court affirmed the Department's decision, noting that the Supreme Court gives great deference to an interpretation of a statute by the agency charged with its administration. Tokumoto v. Dept. of Revenue, 264 M 56, 869 P2d 782, 51 St. Rep. 144 (1994).

Collateral References

Saloons or taverns as nuisance. 5 ALR 3d 989.

16-4-406. Renewal — suspension or revocation — penalty.

Compiler's Comments

2003 Amendment: Chapter 110 in (1) after "department" deleted "may upon its own motion and"; in (2) after "after" inserted "reviewing admissions of the licensee or" and after "justice's" inserted "or a local law enforcement agency's"; and deleted former (3) that read: "(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act." Amendment effective March 24, 2003.

2001 Amendment: Chapter 163 in (1) added "winery" to the list of entities that may be investigated. Amendment effective March 28, 2001.

1993 Amendment: Chapter 414 in (1), after "person", inserted "request that the department of justice"; and near beginning of (2) and (3), after "after", inserted "receiving the results of the department of justice's". Amendment effective July 1, 1993.

1991 Amendment: Inserted (3) regarding license revocation upon a finding of reasonable cause and subject to the opportunity for a contested case hearing; and made minor changes in style.

Administrative Rules

ARM 42.12.222 Revocation and suspension of licenses.

ARM 42.13.101 Compliance with laws and rules.

Case Notes

"Liquor" to Include Table Wine — Fine for Possession of Untaxed Table Wine Affirmed: A $1,500 fine was properly assessed against an all-beverages licensee found in possession for sale of table wine upon which no Montana tax had been paid, because the wine came within the definition of "liquor" as the term was used in 16-6-301 prior to 1987 amendment. The District Court was constrained by 2-4-704 to affirm the penalty, absent a showing of abuse of discretion by the Department of Revenue. Swan Corp. v. Dept. of Revenue, 232 M 210, 755 P2d 1388, 45 St. Rep. 998 (1988).

Limitation of Actions: Under this section's procedural provisions, which were deleted in 1975, a licensee whose license was revoked for nonuse was barred from relief by his failure to take action within 15 days after receipt of notice from the Montana Liquor Control Board (now Department of Revenue). State ex rel. Gillespie v. Mont. Liquor Control Bd., 150 M 26, 430 P2d 112 (1967).

Review of Agency Action: The principal reason for the enactment of this section was to afford to any person, original applicant or otherwise, appearing before the Montana Liquor Control Board (now Department of Revenue), the right to have the agency's actions reviewed judicially for abuse of discretion. Skaggs Drug Centers v. Mont. Liquor Control Bd., 146 M 115, 404 P2d 511 (1965).

Jurisdiction: On application for Writ of Prohibition by the ex officio beer board to restrain the District Court proceeding instituted by beer licensees to annul an order suspending their licenses, it was held that Board did not exceed its jurisdiction in suspending licenses, but trial court in issuing order to show cause exceeded its jurisdiction. State ex rel. Stewart v. District Court, 103 M 487, 63 P2d 141 (1936).

Attorney General's Opinions

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

Law Review Articles

Issuing or Revoking Liquor Licenses: State and Local Authority Under Recent Federal Decisions, Weeks, 15 Urb. Law. 379 (Spring 1983).

Collateral References

Intoxicating Liquors *key* 102 through 109.

48 C.J.S. Intoxicating Liquors §201, et seq.

Sale or use of drugs on premises as grounds for revocation or suspension of license. 51 ALR 3d 1130.

Revocation or suspension of license for drinking or drunkenness of licensee or his associates. 36 ALR 3d 1301.

Sale to homosexuals or allowing them to congregate on premises as grounds for suspension or revocation of license. 27 ALR 3d 1254.

Hearing before revocation or suspension. 35 ALR 2d 1067.

Cancellation or suspension of license without personal fault. 3 ALR 2d 107.

Revocation of one person's license as grounds for refusing another a license. 153 ALR 836.

Contributory negligence as defense to action for violation of statute relating to condition of premises. 144 ALR 827.

Showing of misconduct which will support revocation. 76 ALR 1245.

16-4-407. Suspension or revocation of licenses.

Compiler's Comments

2001 Amendment: Chapter 163 in first sentence added "wineries" to listed entities and near end substituted "upon payment of the fees" for "and with the fees"; and made minor changes in style. Amendment effective March 28, 2001.

1999 Amendment: Chapter 54 at beginning of first sentence, after "July 1", inserted "or, when applicable, on the licensee's anniversary date" and near end after "year" inserted "or 1 year after the anniversary"; and made minor changes in style. Amendment effective March 15, 1999.

1985 Amendment: Near beginning of section, inserted "beer importers".

1983 Amendment: Before "midnight", substituted "are subject to suspension or revocation under 16-4-406 after" for "shall expire at"; and inserted the "if" clause at the end of the first sentence.

16-4-411. Appeals concerning alcoholic beverages laws.

Compiler's Comments

1987 Amendment: In (1) substituted "alcoholic beverages" for "beer or liquor".

1985 Amendment: At end of (1) after "liquor licenses to the" substituted remainder of (1) (see 1985 Session Law) for "state tax appeal board. The appeal shall be heard in conformity with the provisions of the Montana Administrative Procedure Act, and the decision of the state tax appeal board shall be final unless reversed or modified upon judicial review"; and inserted (2) requiring appeal to be in conformity with Title 2, chapter 4, part 7.

Case Notes

Interested Party May Intervene in Mandamus Action: Party opposed to transfer of a liquor license is an interested party under 16-4-411 and therefore has standing to intervene in mandamus action. A person having an interest in the subject matter of a mandamus action may

be permitted to intervene for the purpose of resisting the granting of the writ. Christopherson v. St., 226 M 350, 735 P2d 524, 44 St. Rep. 712 (1987).

Mandamus Denied — Adequate Remedy Under This Statute: Applicant who was denied transfer of a liquor license had plain, adequate, and speedy remedy in law under 16-4-411; therefore, the court properly denied his application for alternative Writ of Mandamus or Prohibition. Applicant failed to exhaust his administrative remedies and did not show that the Department of Revenue or State Tax Appeal Board was acting contrary to law. Christopherson v. St., 226 M 350, 735 P2d 524, 44 St. Rep. 712 (1987).

Collateral References

Intoxicating Liquors *key* 62 through 77, 103(5), 104, 108.10, 112.2, 129, 129.5, 130.5.

48 C.J.S. Intoxicating Liquors §§171 through 190, 207, 208, 219 through 221.

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

16-4-413. Denial of application — five-year moratorium.

Case Notes

Reapplication Within Five Years — Return of Application Only Option: When an applicant for a liquor license reapplied within 5 years of the first denial, the plain language of the statute precluded the Department of Revenue from denying the subsequent application. The only action available to the Department was to return the application without further consideration. In re E-Z Supply, Inc., 267 M 298, 883 P2d 833, 51 St. Rep. 1029 (1994).

16-4-414. Fingerprints required of applicants — exceptions.

Compiler's Comments

2005 Amendment: Chapter 495 in (1) in first sentence at beginning inserted exception clause; inserted (2) and (3) regarding fingerprint and background checks for off-premises consumption license; and made minor changes in style. Amendment effective April 28, 2005.

Effective Date: Section 13, Ch. 110, L. 2003, provided: "[This act] is effective on passage and approval." Approved March 24, 2003.

16-4-415. Changes in business entity ownership — department approval required.

Compiler's Comments

Effective Date: Section 4, Ch. 148, L. 1999, provided: "[This act] is effective on passage and approval." Approved March 23, 1999.

16-4-416. Ownership of liquor license by United States

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

16-4-420. Restaurant beer and wine license.

Compiler's Comments

2003 Amendment: Chapter 110 in (3) in second sentence near middle substituted "investigate" for "request that the department of justice make an investigation of all"; deleted former (3)(b) that read: "(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications"; in (11) in fourth sentence after "denies" substituted "an application" for "issuing a license to an applicant" and after "less a" substituted "processing fee established by rule" for "$100 processing fee"; and made minor changes in style. Amendment effective March 24, 2003.

2001 Amendment: Chapter 7 in second sentence of (11) substituted "rate of 1% a month" for "rate set in 16-1-409(4)"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 324 in (1)(d)(i) decreased from 75% to 65% the amount of a restaurant's gross income expected to be from the sale of food; inserted (2)(b) prohibiting a restaurant that sells its retail license from applying for a restaurant beer and wine license for 1 year after license transfer; in (6) in second and third sentences decreased from 75% to 65% the amount of annual gross revenue attributable to the sale of food and at end of fifth sentence after "dinner" substituted "meal" for "menu"; in (8)(a)(i) near end after "less than" substituted "80%" for "60%"; inserted (8)(c) allowing a one-time quota adjustment of one additional license; in (9)(b) at end of first sentence inserted "and any unsuccessful lottery applicants from previous selections must also be given a preference" and inserted second sentence regarding award preference to an applicant with both preferences; in (9)(c) at end of second sentence substituted

"a one-time required fee" for "the required fee"; in (11) near beginning after "fee" inserted "equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate set in 16-1-409(4) until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies issuing a license to an applicant, the application fee, plus any interest, less a $100 processing fee, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined"; in (13) near beginning after "restaurant" inserted "licensed under this part", in two places substituted references to licensee for references to applicant, in two places substituted references to fees for references to application fee, and near end after "original application" inserted "and issuance of a license"; and made minor changes in style. Amendment effective April 16, 1999.

Applicability: Section 4, Ch. 324, L. 1999, provided: "[This act] applies only to new applications received after [the effective date of this act]." Effective April 16, 1999.

Administrative Rules

Title 42, chapter 12, subchapter 4, ARM Restaurant beer/wine license lottery process.

Part 5
Licensing Fees

16-4-501. License and permit fees.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 293 inserted (9) establishing fee for license at Yellowstone airport; and made minor changes in style. Amendment effective April 20, 2005.

Chapter 591 inserted (11) related to distillery fee; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 369 in (2) before "rate" inserted "following"; in (2)(a) substituted "events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c)" for "those events lasting 2 or more days, but the fee may not exceed $300 for a series of scheduled sporting events"; inserted (2)(b) setting permit fee rate at $1,000 a season for professional sporting contests or junior hockey contests; and made minor changes in style. Amendment effective April 16, 2003.

2001 Amendments — Composite Section: Chapter 163 in (1)(b) inserted "each domestic winery producing more than 25,000 gallons of wine, $400; each domestic winery producing 25,000 gallons or less of wine, $200". Amendment effective March 28, 2001.

Chapter 405 in (1) in first sentence before "license fee" deleted "annual" and in second sentence inserted "Unless otherwise specified in this section, the fee is an annual fee and is imposed"; inserted (6)(a) regarding brewer producing 20,000 or fewer barrels of beer; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 405, L. 2001, provided: "[This act] applies to beer sold by a wholesaler on or after July 1, 2001."

1999 Amendment: Chapter 54 in (11) after "July 1 of the renewal year" inserted "or 1 year after the licensee's anniversary date", after "August 1 of the renewal year" inserted "or 1 year and 1 month after the licensee's anniversary date", and after "September 1 of the renewal year" inserted "or 1 year and 2 months after the licensee's anniversary date"; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendments: Chapter 371 in (6), after "annual", inserted "renewal"; in (7)(f), near beginning of first sentence after "described in", substituted "subsections (6) and (7)(d)" for "subsection (7)(d)" and in fourth sentence, after "subject to the", inserted "specified" and after "renewal" substituted "fees" for "fee"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 528 in (2), after "rate of", substituted "$10" for "$15" and at end, after "but", substituted "the fee may not exceed $300 for a series of scheduled sporting events" for "in no case shall the fee be less than $30"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1989 Amendments: Chapter 83 in (2), before "be less than", inserted "shall the fee".

Chapter 225 inserted (12) relating to deposit of license and permit fees; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendments: Chapter 68 in (1)(c) deleted from end "with a wine license amendment, an additional $200"; in (5) inserted "pursuant to 16-4-105"; and in (6) substituted "all-beverages" for "liquor".

Chapter 380 inserted (9) establishing the fee for a beer or table wine license for a nonprofit arts organization.

1985 Amendments: Chapter 19 in (1)(a) inserted "and each beer importer".

Chapter 141 in (1)(b) inserted "each subwarehouse, $400".

1983 Amendments: Chapter 29 inserted (10) establishing late fees.

Chapter 51, in (7)(f), inserted the provision providing for an irrevocable letter of credit.

Chapter 595, in subsection (7)(b) through (7)(e), substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 181 inserted the provision for a $250 license in (7)(a), a $350 license in (7)(b), a $500 license in (7)(c), and a $650 license in (7)(d) for a unit of a nationally chartered veterans' organization; and deleted "of $800" after "renewal fee" at the end of (7)(f).

Chapter 401 added "and table wine" after "beer" in (2) and (3).

Chapter 519 changed the method of measuring the 5-mile limitation from a straight line to the shortest public road or highway in subsections (7)(b), (7)(c), (7)(d), and (7)(e).

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Administrative Rules

ARM 42.12.111, 42.12.114, and 42.12.115 Fees.

Case Notes

McCracken Not a Town: In a proceeding in mandamus to compel the Montana Liquor Control Board (now Department of Revenue) to refund to relator, a retail liquor dealer doing business at a place called "McCracken", situated within a distance of 5 miles of the city of Billings, the difference between $600 paid by him as a license fee and $200 properly chargeable in a "town" located as is McCracken, the Supreme Court held, under the facts presented, that McCracken was not a town, as claimed by relator under the decision in Pollard v. Mont. Liquor Control Bd., 114 M 44, 131 P2d 974 (1942), although mail so addressed reached its destination, and it appeared on the official map of the railroad commission. State ex rel. McCracken v. Mont. Liquor Control Bd., 115 M 347, 143 P2d 891 (1943).

Collateral References

Intoxicating Liquors *key* 89 through 97.

48 C.J.S. Intoxicating Liquors §267, et seq.

Setting license fee higher than cost of regulation, in order to limit the number and determine the character of licensees. 103 ALR 327.

16-4-502. Census.

Compiler's Comments

1981 Amendment: Substituted "counties and incorporated cities or towns" for "municipalities"; substituted the last sentence directing Department, between censuses, to use most recent population estimates published by Bureau of the Census as basis to determine populations of counties and incorporated cities or towns for language allowing a published direct enumeration by state or municipality.

Administrative Rules

ARM 42.12.104 Use of census data in quota determinations.

16-4-503. City and county licenses — fees.

Case Notes

Preemption: Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor because the state has reserved exclusive control of that function. State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966), overruled, pertaining to planning and zoning, in Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

Maximum Fee: A city which currently charges the maximum fee allowed under this section does not have the authority to enact an ordinance establishing a delinquent fee schedule for alcohol licenses. The statute expressly limits the maximum fee amount chargeable by local governments and provides no power to access a higher fee under any circumstances. 41 A.G. Op. 20 (1985).

Local Governments Preempted From Controlling Beer Sales: In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

City License — Effect on State License: A city may license a beer distributor but may not thereby limit or make ineffective a state license. 37 A.G. Op. 100 (1977).

Collateral References

Intoxicating Liquors *key* 9 through 11, 15, 44 through 46, 61 through 61(2), 69, 71, 89 through 99.

48 C.J.S. Intoxicating Liquors §§52, et seq., 126, et seq., 267, et seq.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR 3d 1061.

Effect of state regulation of sales on municipal power to tax or license. 6 ALR 2d 737.

Local power under statute requiring local approval of state license, or providing for local license to one holding state license. 132 ALR 1235.

Part 8
Liquor License Security Interest

Part Case Notes

Security Interest Retained in Beer and Wine License — Assignment Contingent on Fulfillment of Premises Lease: Groshelle leased a bar to Bertschs. The lease provided that Groshelle would assign the beer and wine license to Bertschs and retain a security interest in the license and that Bertschs would reassign the license to Groshelle upon termination of the lease. The transfer of license was approved by the Department of Revenue. After deciding to sell the business to Reids, Bertschs applied for transfer of the license to Reids, subject to Groshelle's security interest and a reassignment to Groshelle upon termination of the lease. That transfer was also approved. After a lease period of several years, Reids and Groshelle could not come to terms regarding a new lease. Groshelle filed a complaint seeking a judgment declaring the reassignment provisions of the lease valid and enforceable. The District Court properly granted partial summary judgment to Groshelle after holding the reassignment enforceable, subject to Department approval. The Supreme Court affirmed on appeal, finding nothing in the language of the various leases of the bar premises, fixtures, and furniture that created a lease in the beer and wine license and nothing in the record indicating Groshelle's intent to relinquish the license. Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995), distinguishing Feurherm v. Schmaing, 181 M 136, 592 P2d 924 (1979).

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a retail beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

16-4-801. Security interest in liquor license.

Compiler's Comments

2003 Amendment: Chapter 422 inserted (1)(b)(i)(C) providing that default means there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and made minor changes in style. Amendment effective April 18, 2003.

Effective Date: Section 3, Ch. 280, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 7, 1999.

Part 9
Connoisseur's Licenses

Part Compiler's Comments

Effective Date: Section 13(2), Ch. 543, L. 2001, provided that this part is effective October 1, 2001.

CHAPTER 6
ENFORCEMENT

Chapter Case Notes

State Jurisdiction to Punish Criminal Violations of State Liquor Laws by Indians in Indian Country: Under the holding in Rice v. Rehner, 463 US 713 (1983), and 18 U.S.C. 1161, the state has the power to enforce state criminal statutes against Indians for violations of state law relating to the sale or possession of liquor within Indian reservations. Brown v. District Court, 238 M 248, 777 P2d 877, 46 St. Rep. 1242 (1989).

Chapter Collateral References

Intoxicating Liquors *key* 10(5), 11, 18 through 21.

48 C.J.S. Intoxicating Liquors §76, et seq.

Power to enjoin officers from liquor law enforcement. 3 ALR 1484.

Alcoholic Beverage Control Statutes, Montana Legislative Council (1974).

Politicians in Business: A History of the Liquor Control System in Montana, Quinn, U. of Mont. Press (1970).

Administration of the State Liquor Monopoly, Montana Legislative Council (1964).

Part 1
Investigations

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

Part Collateral References

Intoxicating Liquors *key* 244 through 257.

48A C.J.S. Intoxicating Liquors §551, et seq.

16-6-101. Employment of investigators and prosecuting officers.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning of (1), after "department", inserted "of justice" and at end deleted "and who shall be paid such salaries, fees, and expenses as the department may fix"; inserted (2) requiring the Department of Justice, when requested by the Department of Revenue, to investigate when a license application is made, to investigate other matters relating to alcoholic beverages, and to serve as a liaison to local law enforcement; and made minor changes in style. Amendment effective July 1, 1993.

16-6-102. Search warrants.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning, before "investigator", inserted "department of justice" and in two places, before reference to premises, deleted reference to building; and made minor changes in style. Amendment effective July 1, 1993.

Case Notes

Warrant Proper for Seizure of Beer and Wine Served Without Valid License: Investigators complied with constitutional and statutory requirements for search and seizure when they: (1) knew a crime was being committed and were able to state of their own knowledge that defendant was serving beer without a valid license; (2) established reasonable cause; (3) were able to describe the place to be searched and articles to be seized; (4) showed the warrant to defendant while executing the search; and (5) provided defendant with a copy of the warrant and supporting paperwork. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

Collateral References

Intoxicating Liquors *key* 249.

48A C.J.S. Intoxicating Liquors §§563 through 572.

Validity of particular statutes providing for inspection or search of licensed premises. 116 ALR 1098.

Right to search or seize stationary vehicle. 61 ALR 1002.

Sufficiency of showing of probable cause for warrant to search for intoxicating liquor. 41 ALR 1539, superseded by 74 ALR 1418.

Injunction against search for liquor. 36 ALR 936.

Constitutional search and seizure guarantees re: liquor. 3 ALR 1514, supplemented by 13 ALR 1316, 27 ALR 209, 39 ALR 311, and 74 ALR 1418.

16-6-103. Examination of retailer's premises and carriers' cars and aircraft.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning, after "department", inserted "of justice", before "may at any time" substituted "a peace officer" for "the sheriff of any county", and near end, after "the department", inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 42.13.103 Department examinations.

Collateral References

Intoxicating Liquors *key* 246, 251.

48A C.J.S. Intoxicating Liquors §551, et seq.

16-6-104. Unlawful alcoholic beverage — seizure — forfeiture.

Compiler's Comments

1987 Amendment: In (2), at end, substituted "alcoholic beverages" for "intoxicating liquor".

1983 Amendment: In (1), deleted reference to a violation of 16-3-102.

Administrative Rules

ARM 42.13.105 Applicability of licenses; premises defined; golf course exception; portable satellite vehicle; movable devices.

16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance.

Collateral References

Rights of innocent persons when property they have an interest in is seized. 47 ALR 1055, supplemented by 61 ALR 551, 73 ALR 1087, 82 ALR 607, and 124 ALR 288.

Constitutionality of provision for confiscation or destruction, without notice. 8 ALR 888, supplemented by 45 ALR 93.

Pretrial for forfeiture. 3 ALR 2d 742.

16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), in two places, substituted "an agency liquor store" for "a state liquor store"; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment: Chapter 414 in (1), near beginning before "investigator", inserted "department of justice"; in (2), in two places, inserted "in a state liquor store"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendments: Chapter 20 deleted former (5) (see Ch. 83 amendment note for deleted language).

Chapter 83 deleted former (2) that read: "The department shall commence an action in the district court of the county in which the alcoholic beverage is found and seized against said alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The alcoholic beverage shall be named as one of the defendants to said action"; inserted (2) and (3) that read: "(2) The department shall determine if the seized alcoholic beverage is suitable for resale. When the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county"; in (4) at beginning of first sentence substituted "notice must show" for "complaint shall show", near middle of first sentence, after "control", substituted "of the alcoholic beverage" for "thereof", and near middle and end of second sentence substituted "hearing examiner" for "court"; deleted former (4) and (5) that read: "(4) A summons shall be issued, served, or published as in other civil actions provided by Title 25, except that the summons shall be published in the county where the alcoholic beverage was seized if a newspaper is published in said county.

(5) In all actions brought under this code, proof of the absence of the official seal of the department upon the bottle, jug, package, container, or containers of an alcoholic beverage on which a seal is required shall be prima facie evidence that the alcoholic beverage is contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in all other persons excepting the department. The court shall order all such alcoholic beverage contraband and forfeited to the state of Montana"; and made minor changes in style and phraseology.

Case Notes

"Liquor" to Include Table Wine — Fine for Possession of Untaxed Table Wine Affirmed: A $1,500 fine was properly assessed against an all-beverages licensee found in possession for sale of table wine upon which no Montana tax had been paid, because the wine came within the definition of "liquor" as the term was used in 16-6-301 prior to 1987 amendment. The District Court was constrained by 2-4-704 to affirm the penalty, absent a showing of abuse of discretion by the Department of Revenue. Swan Corp. v. Dept. of Revenue, 232 M 210, 755 P2d 1388, 45 St. Rep. 998 (1988).

Collateral References

Intoxicating Liquors *key* 250 through 257.

48A C.J.S. Intoxicating Liquors §580, et seq.

Lawfulness of seizure as prerequisite to forfeiture. 8 ALR 3d 473.

16-6-107. Disposal of forfeited alcoholic beverages — report.

Compiler's Comments

1995 Amendment: Chapter 530 in (1), in three places, substituted reference to agency liquor store for reference to state liquor store. Amendment effective April 25, 1995.

1993 Amendment: Chapter 414 in (1), in third sentence after "sale", inserted "in a state liquor store"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: In (1) near beginning of first sentence, after "court", inserted "or hearing examiner", near middle of first sentence, after "16-6-105" inserted "or 16-6-106", near end of first sentence after "kept" substituted "shall be delivered" for "shall forthwith be delivered", near beginning of second sentence, after "department", substituted "shall determine" for "shall thereupon determine", at beginning of fourth sentence substituted "All alcoholic beverages found" for "Each forfeited alcoholic beverage which is found", and near end of fourth sentence, after "destroyed", deleted "under competent supervision as may from time to time be directed"; and in (2) near middle of sentence, after "duty to", deleted "forthwith".

Collateral References

Intoxicating Liquors *key* 250, 251, 255, 256.

48A C.J.S. Intoxicating Liquors §§593 through 597.

16-6-108. Inspection of carriers' records.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning, after "the department", inserted "or the department of justice" and after "appointed by" substituted "either department" for "it". Amendment effective July 1, 1993.

16-6-109. Unlawful for carrier to refuse inspection of records.

Compiler's Comments

1993 Amendment: Chapter 414 near end, after "the department", inserted "or the department of justice" and after "appointed by" substituted "either department" for "it"; and made minor changes in style. Amendment effective July 1, 1993.

Part 2
Prosecutions

Part Collateral References

Intoxicating Liquors *key* 196 through 243.

48 C.J.S. Intoxicating Liquors §413, et seq.

Admissibility of other sales in prosecution for illegal sale. 40 ALR 2d 817.

Governmental liquor control agency's immunity from suit. 9 ALR 2d 1292.

Admissibility of general reputation of person defended and dealt with as tending to show violation. 83 ALR 1401.

Admissibility of attempt to conceal or dispose of liquor. 68 ALR 1191.

Criminal responsibility of one acting as a lookout during violation of liquor law. 64 ALR 427.

Constitutionality and construction of statute making possession of liquor evidence of violation. 31 ALR 1222.

16-6-201. Jurisdiction of courts.

Case Notes

Liquor Laws Controlling: The provisions of the Retail Liquor License Act (now ch. 1 through 6 of this title) control with respect to prosecution of licensee for making a sale to an interdicted person, and Justice's Court had jurisdiction to act upon a complaint charging defendant with sale of liquor to an interdicted person. State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P2d 906 (1959).

District Court Original Jurisdiction: This section expressly confers upon the District Courts concurrent original jurisdiction with Justices' Courts in prosecutions for violations. St. v. Winter, 129 M 207, 285 P2d 149 (1955).

16-6-202. Appeal.

Collateral References

Intoxicating Liquors *key* 241.

48 C.J.S. Intoxicating Liquors §§549, 550.

16-6-203. Description of offense.

Collateral References

Intoxicating Liquors *key* 199 through 223.

48 C.J.S. Intoxicating Liquors §418, et seq.

16-6-204. Defense need not be negatived.

Collateral References

Intoxicating Liquors *key* 221, 222.

48 C.J.S. Intoxicating Liquors §431.

16-6-205. Sufficiency of evidence.

Collateral References

Intoxicating Liquors *key* 236 through 236(22).

48 C.J.S. Intoxicating Liquors §489, et seq.

Judicial notice of intoxicating quality, and the like, of liquor, from its name. 49 ALR 2d 764.

Admissibility and weight of testimony based on taste, sight, and smell as to unlawful content of liquor. 78 ALR 439.

16-6-206. Proof of violation.

Collateral References

Intoxicating Liquors *key* 224 through 236, 236(1) through (22).
48 C.J.S. Intoxicating Liquors §475, et seq.

16-6-208. Inference of intoxicating beverage.

Collateral References

Intoxicating Liquors *key* 224.
48 C.J.S. Intoxicating Liquors §475, et seq.

16-6-209. Inferences of fact from evidence found.

Collateral References

Intoxicating Liquors *key* 224.
48 C.J.S. Intoxicating Liquors §475, et seq.

Part 3
Miscellaneous Prohibitions and Penalties

Part Collateral References

Products liability: alcoholic beverages. 42 ALR 4th 253.

16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful.

Compiler's Comments

2001 Amendment: Chapter 543 in (3) substituted "code" for "section"; in (3)(a) substituted "actual physical possession" for "possession"; inserted (3)(c) concerning possession by connoisseur licensee; and made minor changes in style. Amendment effective May 1, 2001.

1997 Amendment: Chapter 546 in (1), near beginning after "code", substituted "a person or the person's agents or employees may not" for "no person shall, within the state, by himself, his clerk, servant, or agent"; in (1)(a) and (1)(b) inserted "an alcoholic beverage"; in (3)(a), near middle after "3", deleted "wine" and at end, after "country", deleted "but no person claiming to have so entered the state shall at any time have in his possession more than 3 wine gallons of alcoholic beverage which shall not have been purchased within the state of Montana"; inserted (3)(b) providing that this section does not prohibit brewing beer for personal use that meets the exemptions provided by federal law; in (3)(c), at beginning before "alcoholic", substituted "possession" for "This section shall not apply to the department or to the keeping or having"; in (4), near beginning after "code", substituted "a person or the person's agents or employees may not" for "no person shall, within the state, by himself, his clerk, servant, or agent"; and made minor changes in style.

1987 Amendment: In (1), (2), and (3) substituted references to alcoholic beverages for references to liquor or liquor or beer; in (2), in first sentence, substituted "alcoholic beverage which has not been purchased within the state" for "liquor within the state which has not been purchased from the state" and at end of second sentence substituted "within the state of Montana" for "from a state liquor store"; and at end of (3) substituted "a licensee" for "in the case of beer, to a brewer, beer licensee, club licensee, or canteen licensee".

Case Notes

State Jurisdiction to Prosecute Indians for On-Reservation Liquor Law Violations Upheld: Montana filed charges against Indian grocery store owners for possessing and selling liquor without a state license within the boundaries of the Fort Peck Reservation. When the tribe filed suit in District Court, arguing that Montana could not criminally prosecute Indians for liquor violations, Montana filed a motion arguing that the 11th amendment barred the tribes action and that federal law permitted the state to prosecute Indians for criminal violations of state liquor laws. The District Court granted the states 11th amendment motion, but granted summary judgment for the tribe, ruling that the state had no jurisdiction to maintain the prosecutions. On appeal, the Ninth Circuit Court reversed, holding that pursuant to the interpretation of Rice v. Rehner, 463 US 713 (1983), Montana has jurisdiction to prosecute Indians who violate state liquor laws on an Indian reservation. Fort Belknap Indian Community of the Fort Belknap Indian Reservation v. Mazurek, 793 F. Supp. 949 (D.C. Mont. 1992), affirmed in part and reversed in part, 43 F3d 428 (9th Cir. 1994), certiorari denied, 516 US 806, 133 L Ed 2d 15, 116 S Ct 49 (1995).

State Jurisdiction to Punish Criminal Violations of State Liquor Laws by Indians in Indian Country: Under the holding in Rice v. Rehner, 463 US 713 (1983), and 18 U.S.C. 1161, the state

has the power to enforce state criminal statutes against Indians for violations of state law relating to the sale or possession of liquor within Indian reservations. Brown v. District Court, 238 M 248, 777 P2d 877, 46 St. Rep. 1242 (1989).

Common-Law Rights Giving Way to Liquor Licensing System: Defendant asserted that as a natural born white citizen she had a common-law right to sell beer and wine without a valid state license. Although both Art. IV, sec. 2, and the 14th amendment of the U.S. Constitution protect a citizen's federal rights from abridgment by another person or by the state, the protections afforded by these clauses are not absolute and yield to the reasonable exercise of state police powers, such as the liquor licensing system. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

Jurisdiction of Offense of Selling Alcohol Without a License: The District Court was the proper court to try the offense of sale of beer or wine without a valid state license. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

"Liquor" to Include Table Wine — Fine for Possession of Untaxed Table Wine Affirmed: A $1,500 fine was properly assessed against an all-beverages licensee found in possession for sale of table wine upon which no Montana tax had been paid, because the wine came within the definition of "liquor" as the term was used in this section prior to 1987 amendment. The District Court was constrained by 2-4-704 to affirm the penalty, absent a showing of abuse of discretion by the Department of Revenue. Swan Corp. v. Dept. of Revenue, 232 M 210, 755 P2d 1388, 45 St. Rep. 998 (1988).

Sale of Liquor and of Management Interest: The bulk sale of liquor on the shelves and not a retail sale and the transfer of a business conducted under a liquor license is permissible under this section. Johnstone v. Svejkovsky, 170 M 504, 554 P2d 1329 (1976).

Commerce Clause of Federal Constitution Not Violated: The State Liquor Control Act of Montana (Ch. 105, L. 1933), in effect regulating the importation of intoxicating liquor from other states, does not violate the Commerce Clause in view of the section in the 21st amendment prohibiting the transportation or importation into any state of intoxicating liquor in violation of the laws of a state. St. v. Andre, 101 M 366, 54 P2d 566 (1936).

Information in Language of Statute Sufficient: Information charging unlawful sale of intoxicating liquor was not demurrable as uncertain and ambiguous. If too general in character, defendant had a plain remedy by application for a bill of particulars. St. v. Driscoll, 101 M 348, 54 P2d 571 (1936).

Collateral References

Liquor license as subject to execution or attachment. 40 ALR 4th 927.

Regulation of liquor brought into state for consignee's or carrier's personal use. 155 ALR 816.

16-6-302. Sale of alcoholic beverage without license — sale or importation in violation of code — penalty.

Compiler's Comments

2001 Amendment: Chapter 543 inserted (1) defining person; in (2) near beginning after "sale" inserted "in Montana", after "beverage" substituted "commits a criminal offense" for "is guilty of a felony", and after "fine" substituted "not to exceed $5,000" for "of not less than $1,000 or more than $5,000"; inserted (3) concerning civil offense for importing or distributing alcoholic beverages; inserted (4) concerning civil penalties for progressive number of offenses; and made minor changes in style. Amendment effective May 1, 2001.

Case Notes

Common-Law Rights Giving Way to Liquor Licensing System: Defendant asserted that as a natural born white citizen she had a common-law right to sell beer and wine without a valid state license. Although both Art. IV, sec. 2, and the 14th amendment of the U.S. Constitution protect a citizen's federal rights from abridgment by another person or by the state, the protections afforded by these clauses are not absolute and yield to the reasonable exercise of state police powers, such as the liquor licensing system. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

Illegal Sale of Alcohol Not Requiring "Victim": The District Court properly ruled that the state did not have to produce a "victim" of an offense under this section if it could show that the defendant continued to sell alcoholic beverages without paying a fair share for the privilege. In this respect the entire state and every resident other than defendant was the "victim" of defendant's conduct. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

16-6-303. Sale of liquor not purchased from agency liquor store forbidden — penalty.

Compiler's Comments

1995 Amendment: Chapter 530 in two places substituted reference to agency liquor store for reference to state liquor store; and made minor changes in style. Amendment effective April 25, 1995.

Case Notes

Issuance of Revocation Notice Eight Months After Satisfaction of Violation Not Considered Timely — Immediate Revocation Required: Seaman was cited, and ultimately convicted, of selling liquor that was not purchased from a Montana agency liquor store. This section requires that the Department of Revenue immediately revoke the liquor license when satisfied that the license holder has violated the statute, but here, Seaman was not notified of the intent to revoke until at least 8 months after being convicted. The subsequent revocation of Seaman's license was improper because the Department did not act immediately as required by law. Seaman v. Dept. of Revenue, 2002 MT 34, 308 M 307, 42 P3d 790 (2002).

16-6-304. Providing alcoholic beverage to intoxicated person prohibited.

Compiler's Comments

Construction With Other Law: Under 27-1-710(2), no provision of Title 16 may be used to find civil liability for furnishing alcohol to a person who causes damage or an injury. Liability may only be grounded in a violation of 27-1-710.

Case Notes

See notes under 16-3-301.

Law Review Articles

See articles under 16-3-301.

Collateral References

Intoxicating Liquors *key* 157 through 161.

48 C.J.S. Intoxicating Liquors §§342, 343.

16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider.

Compiler's Comments

1989 Amendment: In (1)(a), after "beverage", substituted "provided in a nonintoxicating quantity to a person under 21 years of age by his parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist" for "given to a person under 21 years of age by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist", after "physician" inserted "or an ordained minister or priest in connection with a religious observance', substituted "sell or otherwise provide" for "sell, give, or otherwise supply", and at end deleted "or permit any person under that age to consume an alcoholic beverage"; inserted (1)(b) prohibiting a parent or guardian from providing a minor an intoxicating quantity of a beverage; inserted (1)(c) defining intoxicating quantity; inserted (4) relating to civil liability; and made minor changes in phraseology.

1987 Amendments: Chapter 68 in (2)(b) substituted "alcoholic beverages" for "liquor".

Chapter 217 throughout section changed 19 to 21.

Applicability: Section 8, Ch. 217, L. 1987, provided: "The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968."

Effective Date: Section 9(1), Ch. 217, L. 1987, provided: "This act is effective April 1, 1987."

Severability: Section 7, Ch. 217, L. 1987, was a severability section.

Construction With Other Law: Under 27-1-710(2), no provision of Title 16 may be used to find civil liability for furnishing alcohol to a person who causes damage or an injury. Liability may only be grounded in a violation of 27-1-710.

Case Notes

See notes under 16-3-301.

Attorney General's Opinions

Legal Age for Serving Alcoholic Beverages: A person who is 18 years old may be employed as a bartender, waiter, or waitress to serve customers purchasing alcoholic beverages at retail. 38 A.G. Op. 15 (1979). (Opinion rendered prior to 1979 and 1987 amendments raising minimum age.)

Collateral References
Intoxicating Liquors *key* 157 through 160.
48 C.J.S. Intoxicating Liquors §§341, 345 through 350.

16-6-306. Bottle clubs prohibited.

Compiler's Comments
1987 Amendment: Near beginning, before "alcoholic beverage", deleted "beer or liquor or", near middle substituted "alcoholic beverages" for "beer or liquor", and near end substituted "beverages" for "liquors".

16-6-307. Consumption of alcoholic beverage on druggists' premises prohibited.

Collateral References
Intoxicating Liquors *key* 166, 167.
48 C.J.S. Intoxicating Liquors §392.

16-6-309. Alcoholic beverages administered to institution inmates.

Compiler's Comments
1987 Amendment: In two places substituted "alcoholic beverage(s)" for "liquor".

16-6-310. Officer or agent of corporation deemed party to offense.

Collateral References
Intoxicating Liquors *key* 167 through 169.
48 C.J.S. Intoxicating Liquors §§381 through 383, 387 through 390.

16-6-311. Occupant of premises deemed party to offense.

Case Notes
Ostensible Agency: A conviction may be had of the owner of a tavern for a violation for sale of beer to minors by a barmaid, although the barmaid was not on the defendant's payroll. There was ample evidence tending to show, at the very least, an ostensible agency. St. v. Erlandson, 126 M 316, 249 P2d 794 (1952).

Application of Section: This section is part of the State Liquor Control Act (now ch. 1 through 6 of this title) and is applicable only to an offense against that Act. St. v. Holt, 121 M 459, 194 P2d 651 (1948).

Quasi-Presumption: This section does not provide punishment for any offense, but merely purports to state a rule of evidence, a quasi-presumption. St. v. Holt, 121 M 459, 194 P2d 651 (1948).

Collateral References
Intoxicating Liquors *key* 166 through 169.
48 C.J.S. Intoxicating Liquors §§376, 386 through 390.
Criminal responsibility of licensee for illegal sale by employee or agent. 139 ALR 306.
Responsibility of husband for wife's violation of liquor law. 19 ALR 136, supplemented by 27 ALR 312.

16-6-312. Premises where alcoholic beverages illegally sold public nuisance.

Collateral References
Intoxicating Liquors *key* 260, 261.
48A C.J.S. Intoxicating Liquors §§602, 603.
Admissibility of reputation in liquor nuisance prosecution. 68 ALR 2d 1300.

16-6-313. Injunction actions.

Compiler's Comments
1987 Amendment: In two places substituted "alcoholic beverages" for "liquor or beer".

Collateral References
Intoxicating Liquors *key* 258 through 281.
48A C.J.S. Intoxicating Liquors §598, et seq.
Constitutionality of statute relating to injunction against liquor law violation. 49 ALR 635.

16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person.

Compiler's Comments

1995 Amendment: Chapter 481 in (3), at end after "45-5-624(2)", inserted "or (3)"; and made minor changes in style.

1989 Amendment: In (3) changed "16-3-301(3)" to "16-3-301(4)".

1987 Amendment: In (3) changed 19 to 21.

Applicability: Section 8, Ch. 217, L. 1987, provided: "The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968."

Effective Date: Section 9(1), Ch. 217, L. 1987, provided: "This act is effective April 1, 1987."

Severability: Section 7, Ch. 217, L. 1987, was a severability section.

1985 Amendment: In (1) after "code", deleted "shall, upon conviction thereof, be deemed" and inserted "is" and after "punishable", deleted "by such fine or imprisonment, or both"; in (3) after "age", substituted "who violates 16-3-301(3) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2)" for "is convicted of an offense under this code he shall be subject to a $100 fine or 30 days in confinement"; and made other minor changes in phraseology and punctuation throughout section.

Administrative Rules

ARM 42.13.101 Compliance with law — revocation or suspension of license.

Case Notes

Jurisdiction: On application for Writ of Prohibition by the ex officio beer board to restrain the District Court proceeding instituted by beer licensees to annul an order suspending their licenses, it was held that board did not exceed its jurisdiction in suspending licenses, but trial court in issuing order to show cause exceeded its jurisdiction. State ex rel. Stewart v. District Court, 103 M 487, 63 P2d 141 (1936).

Law Review Articles

Issuing and Revoking Liquor Licenses: State and Local Authority Under Recent Federal Decisions, Weeks, 15 Urb. Law. 379 (Spring 1983).

Collateral References

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon. 98 ALR 3d 694.

CHAPTER 10
REGULATION OF CIGARETTE MARKETING

Chapter Collateral References

15 C.J.S. Commerce §68.

3 Am. Jur. 2d Advertising §§10, 14, 15; 15A Am. Jur. 2d Commerce §86.

Part 1
Policy and Definitions

Part Compiler's Comments

Student Cigarette Tobacco Referendum: Section 1, Ch. 438, L. 1991, provided: "A referendum entitled the "Montana school tobacco referendum 1991", open to all Montana students enrolled in grades 7 through 12, must be held in the second week of October 1991 in a ballot form provided by the superintendent of public instruction. The referendum must be conducted as prescribed in this section.

(1) Students enrolled on the date of the referendum in grades 7 through 12 in each accredited public school and in each accredited nonpublic school whose principal notifies the superintendent of public instruction by September 20, 1991, of intent to participate may vote in the referendum.

(2) Not later than October 1, 1991, the superintendent of public instruction shall provide instructions for the referendum, as provided in this section, to each participating school that includes grades 7 through 12. The referendum must be conducted by secret ballot and be presented to students in school in the following ballot form:

[ ] YES — I DO favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

[ ] NO — I DO NOT favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

(3) Votes must be tabulated by the student governing body and the principal of each participating school. The principal shall transmit in writing the vote count for his school to the superintendent of public instruction not later than November 1, 1991, together with a statement by the principal that the referendum was conducted fairly and the vote count is genuine to the best of his knowledge and belief.

(4) The superintendent of public instruction shall tabulate the total vote in the referendum from all participating schools not later than November 15, 1991. If the number of students voting in the referendum is at least 50% of the number of students enrolled in public school grades 7 through 12 on October 1, 1991, and if a majority of students voting voted for the referendum, the superintendent of public instruction shall certify to the director of the department of revenue that the referendum has been approved. Otherwise, the superintendent shall certify that the referendum has been rejected.

(5) Within 60 days of receiving certification from the superintendent of public instruction that the referendum has been approved, the department of revenue shall inform each retailer who sells cigarettes and tobacco that the referendum has been approved and ask retailers to post prominently a sign where cigarettes and tobacco are sold, stating: "Out of respect for the wishes of Montana junior and senior high school students as expressed in the Montana School Tobacco Referendum 1991, this store voluntarily agrees not to sell cigarettes and tobacco to persons under 18 years of age. Your cooperation with our Montana students' vote against tobacco sales to minors is appreciated."

16-10-102. Declaration of policy.

Compiler's Comments

1995 Amendment: Chapter 578 near beginning, after "trades", deleted "with the intent of injuring competitors or lessening competition". Amendment effective July 1, 1995.

16-10-103. Definitions.

Compiler's Comments

1995 Amendment: Chapter 578 deleted definition of administrative agency that read: ""Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such department"; in definition of basic cost of cigarettes, near beginning, substituted "list cost" for "invoice cost" and after "cigarettes" substituted "as reported to the department by the manufacturer without any deductions for discounts or taxes of any kind" for "to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower"; in definition of cigarettes, near end after "made of", inserted "nontobacco"; in definition of cost to the retailer, in (a) at beginning, substituted "cost to the wholesaler from whom the cigarettes were purchased by the retailer" for ""basic cost of cigarettes" to the retailer", in (xi) inserted "patronage dividends", inserted (xii) concerning expenses prior to opening business, inserted (xiii) concerning local, regional, and national administrative and operation costs, in (xiv) substituted "business" for "establishment", in (b), at beginning, inserted "The cost of doing business by the retailer must be" and at end substituted "cost to the wholesaler from whom the cigarettes were purchased" for ""basic costs of cigarettes"", in (d), at end, substituted "cost to the wholesaler" for ""basic cost of cigarettes" to the retailer", and deleted former (c) that read: "(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler""; in definition of cost to the wholesaler, in (a) near beginning of first sentence, substituted "purchased by the wholesaler from a manufacturer" for "to the wholesaler" and at end substituted "business" for "establishment", inserted (xi) concerning rebate, patronage dividends, or concessions, inserted (xii) concerning expenses prior to opening for business, inserted (xiii) concerning local, regional, and national administrative costs, inserted (xiv) concerning indirect or overhead costs, and in (b), after "wholesaler", deleted "shall also include any rebates, patronage dividends, or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the wholesaler"; inserted definitions of Department and manufacturer; in definition of person, after

"corporation", substituted "or other business entity, however formed" for "for profit or nonprofit corporation, joint-stock company, club, agency, syndicate, cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, and conservator"; in definition of retailer, after "concession", inserted "or other outlet"; inserted definition of sole distributor; in definition of wholesaler, at end of introductory clause, inserted "services retail outlets by maintaining an established place of business for the purchase of cigarettes and who", in (a), after "manufacturer", inserted "for the purpose of selling cigarettes to retailers", in (b), after "cigarettes from", substituted "a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers" for "any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers", and deleted (iii) and (b) that read: "(iii) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of cigarettes.

(b) Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this chapter"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Case Notes

Cost of Wholesaler: State Board of Equalization (now State Tax Appeal Board) formula requiring cigarette wholesaler to reduce wholesale price by tax discount provided for under section 84-5606.12, R.C.M. 1947 (now 16-11-114), was improper because full face value of the tax insignia was to be used in determining wholesale price. Mont. Ass'n of Tobacco & Candy Distrib. v. Bd. of Equalization, 156 M 108, 476 P2d 775 (1970).

16-10-104. Powers of department.

Compiler's Comments

1995 Amendment: Chapter 578 in (1) deleted reference to 16-10-401; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

Title 42, chapter 31, subchapters 1 through 3, ARM Cigarettes and other tobacco products.

16-10-110. Licensure as both wholesaler and retailer allowed.

Compiler's Comments

Effective Date: Section 37, Ch. 578, L. 1995, provided: "[This act] is effective July 1, 1995."

Part 2
Sales Price of Cigarettes

Part Administrative Rules

ARM 42.31.107 Accounting control of sales by wholesalers.
ARM 42.31.108 Alleged legal sales of unstamped cigarettes.
ARM 42.31.122 Decals on vending machines.

Part Collateral References

16D C.J.S. Constitutional Law §§1311, 1331; 87 C.J.S. Trademarks, Trade Names and Unfair Competition §§235, 244.

16-10-201. Wholesaler-to-wholesaler sales.

Compiler's Comments

1995 Amendment: Chapter 578 at end substituted reference to 16-10-103(5) for reference to 16-10-103(6); and made minor changes in style. Amendment effective July 1, 1995.

16-10-204. Determining cost — prices below cost — free merchandise.

Compiler's Comments

1995 Amendment: Chapter 578 in (1), in first sentence after "made", substituted "below either the cost to the retailer or the cost to the wholesaler, depending upon the status of the person accused" for "at a fictitious price"; in (2), after "purposes", inserted "any type of discount"; and made minor changes in style. Amendment effective July 1, 1995.

Part 3
Unlawful Practices — Exceptions

Part Administrative Rules

Title 42, chapter 31, ARM Miscellaneous tax — commercial activities.

16-10-301. Sales below cost.

Compiler's Comments

1995 Amendment: Chapter 578 in (1), after "wholesaler", deleted "with intent to injure a competitor or substantially lessen competition"; deleted former (2) that read: "(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or business, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen competition"; and made minor changes in style. Amendment effective July 1, 1995.

Collateral References

87 C.J.S. Trademarks, Trade Names and Unfair Competition §244.

16-10-303. Cost survey as evidence.

Compiler's Comments

1995 Amendment: Chapter 578 near beginning, after "practices", substituted "used for income tax reporting purposes" for "including those defined in 16-10-103(6)(a)", after "group" substituted "a wholesaler, or a retailer" for "for the trading area in which the offense is committed", and after "wholesaler" inserted "or both, for the state"; and made minor changes in style. Amendment effective July 1, 1995.

16-10-304. Exceptions.

Administrative Rules

ARM 42.31.305 through 42.31.317 Cigarette pricing.

16-10-306. Cigarette and tobacco product labels — federal requirements — penalty.

Compiler's Comments

2005 Amendment: Chapter 511 in (5) at end substituted "means all products containing tobacco for human consumption or use except cigarettes" for "has the meaning defined in 16-11-201"; and made minor changes in style. Amendment effective July 27, 2005.

Effective Date: This section is effective October 1, 1999.

Part 4
Enforcement

16-10-402. Injunctive and other civil relief.

Compiler's Comments

1995 Amendment: Chapter 578 in (1), near beginning, substituted "16-10-403" for "16-10-401"; and made minor changes in style. Amendment effective July 1, 1995.

16-10-403. Revocation or suspension of license — civil penalty.

Compiler's Comments

1999 Amendment: Chapter 51 in (4) at end deleted "as provided in [articles of chapter 11 of the Revised Codes of Montana, 1947]"; and made minor changes in style. Amendment effective March 15, 1999.

1995 Amendment: Chapter 578 in (1), after "license of", substituted "impose a civil penalty not to exceed $500 on, or order any combination of revocation, suspension, and penalty to be imposed on" for "or permit of"; in (2), at end of second and third sentences, inserted "impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty" and at end of fourth sentence inserted "and, in its discretion, may impose a civil penalty in an amount not to exceed $500"; and made minor changes in style. Amendment effective July 1, 1995.

CHAPTER 11
TAXATION OF TOBACCO PRODUCTS

Chapter Collateral References
15 C.J.S. Commerce §68.

Part 1
Tax on Tobacco Products

Part Compiler's Comments
Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

Collection of Cigarette Sales Tax — Resolution of Reservation Taxation Issues — Negotiations Between State and Tribal Governments Required — Report to Legislature: Section 1, Ch. 697, L. 1991, provided: "(1) The legislature directs the department of revenue to:

(a) discuss and negotiate alternative methods for the collection of cigarette taxes, including the possibility of future tribal taxation, with the tribal governments of each Montana reservation or their designated representatives, the Montana tribal chairman's association, and the state coordinator of Indian affairs;

(b) discuss and negotiate with individual Indian tribes in Montana the possibility of resolving other state taxation issues, including but not limited to the imposition of fuel and alcohol taxes on Indian reservations, through state-tribal cooperative agreements; and

(c) report its findings on negotiations with tribal authorities on a comprehensive state-tribal taxation agreement or proposed legislation to the interim committee on Indian affairs [now law and justice interim committee] prior to the 53rd legislative session.

(2) The legislature also directs the interim committee on Indian affairs [now law and justice interim committee] to work with the Montana tribal chairman's association, the state coordinator of Indian affairs, and individual tribes to:

(a) monitor negotiations conducted pursuant to subsection (1)(a) for proposed cigarette tax collection;

(b) consider alternatives for cigarette tax collection, including possible cooperative agreements to avoid dual taxation by state and tribal governments;

(c) after public hearings and consultation with tobacco wholesalers and retailers, propose legislation to the 53rd legislature to provide for collection of the cigarette sales tax from non-Indian purchasers for cigarettes sold on Indian reservations. The legislation must include a mechanism to prevent dual taxation by providing for revenue sharing between the state and a tribal government that has adopted an ordinance imposing a cigarette tax that is identical to that imposed by the state.

(d) identify other unresolved taxation issues, including but not limited to the imposition of fuel and alcohol taxes on Indian reservations, between the state and Montana Indian tribes; and

(e) propose legislation to the 53rd legislature that would facilitate a cooperative government-to-government resolution of all Indian reservation taxation issues."

Effective Date: Section 2, Ch. 697, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 27, 1991.

Termination: Section 3, Ch. 697, L. 1991, provided: "[This act] terminates July 1, 1993."

Severability Clause: Section 31, Ch. 140, L. 1969, read: "The provisions of this act shall be severable and if any of its provisions shall be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Part Administrative Rules
Title 42, chapter 31, subchapter 1, ARM Cigarettes.

Part Law Review Articles
I'll Take My Sin Taxes Unwrapped and Maximized, With a Side of Inelasticity, DePippo, 36 U. Rich. L. Rev. 543 (2002).

Cigarette Litigation's Offspring: Assessing the Issues Related to Guns, Alcohol, and Other Controversial Products in Light of the Tobacco Wars, Schwartz, 27 Pepperdine L. Rev. 751 (2000).

16-11-101. Legislative intent.

Compiler's Comments

2003 Amendment: Chapter 114 substituted "Internal Revenue Code, 26 U.S.C. 164, as amended" for "federal Internal Revenue Code of 1954". Amendment effective October 1, 2003.

16-11-102. Definitions.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) deleted chapter definition of cigarettes that read: ""Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco", inserted definition of contraband, and in definition of person near middle inserted "committee, other group or persons"; in (2) inserted definitions of cigarette, controlling person, directory, manufacturer's original container, moist snuff, roll-your-own tobacco, tobacco product, tobacco product vendor, and wholesale price, throughout subsection substituted references to tobacco products for references to cigarettes, deleted definition of cigarette vendor that read: ""Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that the person operates for a profit in premises or locations other than the person's own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer", deleted definition of public warehouses that read: ""Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers", in definition of retailer substituted "a person, other than a wholesaler, who is engaged in the business of selling tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product vending machines" for "a person who operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail", in definition of subjobber deleted third and fourth sentences that read: "A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part", and in definition of wholesaler in introductory clause after "person who" deleted "services retail outlets by maintaining an established place of business for the purchase of cigarettes and who" and near end of (i) and (ii) inserted references to subjobbers, tobacco product vendors and wholesalers; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 in definition of person, after "firm", deleted "fiduciary", after "corporation" deleted "trust, organization", and after "association" inserted "company, or other business entity"; inserted definition of manufacturer; in definition of retailer, after "person", substituted "who operates a store, stand, booth, concession, or other outlet for the purpose" for "other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business"; in definition of sale, after "cigarettes", substituted "for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means" for "by sale, as defined by 30-2-106, or by gift, barter, or exchange"; inserted definition of sole distributor; in definition of wholesaler, after "person", substituted "who services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:

(i) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or

(ii) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers" for "resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In definition of insignia, after "mark", inserted "or stamp"; inserted definition of record; at end of definition of subjobber substituted "this part" for "16-11-144"; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

Part of Section Not Codified: The first three definitions in section 84-6801, R.C.M. 1947, were not codified in the MCA as they also appeared in subsection (1) of this section and were redundant. The remainder of section 84-6801 was codified as 16-11-201 (now repealed), which gives the history of section 84-6801.

16-11-103. Powers of department.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) in first sentence near middle and at end substituted "chapter" for "part" and in second sentence near end after "imposed by" deleted "part 2 of"; in (2) in three places after "department" inserted references to the department of revenue and the department of justice, in two places after "director" inserted "the attorney general", and in third sentence near end after "make findings and" inserted "issue"; in (3) in two places substituted "chapter" for "part" and in second sentence near middle substituted "tobacco product" for "cigarette"; in (4) at end substituted "chapter" for "part"; inserted (5) relating to department of justice investigators and prosecutors; inserted (6) relating to matters the department of revenue may request from department of justice; and made minor changes in style. Amendment effective July 27, 2005.

1993 Amendment: Chapter 414 in (2), in first sentence after "empowered to conduct", deleted "investigations" and after "matter of inquiry" deleted "or investigation"; in (3), after "authorized to", inserted "contract with the department of justice for the investigations required under this part"; in (4), after "department", inserted "and the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

Title 42, chapter 31, subchapters 1 and 2, ARM Cigarettes and other tobacco products.

16-11-104. Carriers to report shipments — penalties.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) at beginning inserted exception clause, in first sentence near middle substituted "state or country any tobacco products shall report" for "state any cigarettes shall, if requested by the department, report", and in third sentence increased retention time to 36 months from 30 months; inserted (2) relating to penalties; inserted (3) relating to transport to a licensed wholesaler; and made minor changes in style. Amendment effective July 27, 2005.

1991 Amendment: Near middle of first sentence, after "cigarettes shall", inserted "if requested by the department" and inserted second sentence requiring 30-month retention of records by the carrier.

Coordination Instruction: Section 4, Ch. 207, L. 1991, provided: "If Senate Bill No. 116 is passed and approved, including a section extending the statute of limitations for assessments by the state from 2 years to 5 years, the code commissioner shall change the language in the amendment to 16-11-104, requiring the retention of records regarding cigarette shipments, from 30 months to 66 months." Senate Bill No. 116 was approved March 27, 1991, but did not include an extension of the statute of limitations for assessments. Therefore, the Code Commissioner did not change the 30-month record retention requirement implemented under sec. 3, Ch. 207, L. 1991, and the coordination instruction in sec. 4, Ch. 207, L. 1991, is void.

Collateral References

16D C.J.S. Constitutional Law §§1311, 1331.

16-11-105. Rulemaking authority of department of justice.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 414, L. 1993, provided: "A statement of intent is required for this bill because [sections 3 and 28] [section 3 amended 16-1-303 and section 28 was codified as 16-11-105 and 53-2-505] authorize the department of justice to adopt rules to carry out the investigative functions transferred to the department of justice from the department of revenue under the provisions of this bill. The investigative functions that rulemaking may address are limited to the factfinding responsibilities of investigators and the search and seizure functions associated with illegally stored or transported alcoholic beverages or tobacco products. It is the intent of the legislature to consolidate investigative functions under the supervision of the state attorney general."

Effective Date: Section 29, Ch. 414, L. 1993, provided that this section is effective April 19, 1993.

16-11-106. Regular and systematic solicitation of business — compliance with chapter.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-107. Secretary of state as process agent for unlicensed person doing business in state.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-108. Service of process.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-110. Signature alternatives for electronically filed returns.

Compiler's Comments

1997 Amendment: Chapter 6 near beginning of first sentence substituted "Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11" for "this part", near middle, after "director of revenue", inserted "and for the purposes of Title 15, chapter 70, the director of the department of transportation", and at end deleted "required to be filed by this part"; and made minor changes in style. Amendment effective February 5, 1997.

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

16-11-111. Cigarette, tobacco products, and moist snuff sales tax — exemption for sale to tribal member.

Compiler's Comments

2005 Amendment: Chapter 511 inserted (7) through (10) relating to tax and administration of tax on tobacco products other than cigarettes. Amendment effective July 27, 2005.

2004 Amendment by Initiative: Initiative Measure No. 149, proposed by initiative petition and approved at the general election held November 2, 2004, in (1)(a) in second sentence increased tax from 70 cents to $1.70. Amendment effective January 1, 2005.

Preamble: The preamble attached to I.M. No. 149, provided: "WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8 %.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend $216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

WHEREAS, significant tax increases on all tobacco products will reduce consumption, prevent kids from becoming addicted, and increase quitting success for all Montanans.

WHEREAS, Montana loses federal matching dollars every year by under funding Medicaid.

WHEREAS, 173,000 Montanans, including 41,500 children, lack health care coverage.

WHEREAS, 56% of uninsured Montanans are self-employed or work for small businesses with 10 or fewer employees; and 60% of small businesses cannot afford to offer health benefits.

WHEREAS, prescription drug costs are increasing 10% per year and are not affordable for many families, seniors or people with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA:

That we raise the tax on cigarettes by $1.00 per pack (from 70 cents to $1.70 per pack) and increase the tax on smokeless tobacco by a proportional amount and dedicate use of those tax funds for health care needs."

Severability: Section 9, I.M. No. 149, was a severability clause.

Applicability: Section 11, I.M. No. 149, provided: "This act applies to cigarettes and other tobacco products received by wholesalers after December 31, 2004."

2003 Amendment: Chapter 544 in (1) in second sentence increased tax from 18 cents a pack to 70 cents a pack; and made minor changes in style. Amendment effective April 30, 2003.

Transition: Section 55, Ch. 544, L. 2003, provided: "(1) On or before June 30, 2003, each cigarette wholesale dealer, retail dealer, and vending machine operator shall file a report with the department of revenue in the form prescribed by the department showing the number of stamped cigarettes and cigarette tax insignia on hand at 12:01 a.m. on April 30, 2003.

(2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesale dealer, retail dealer, and vending machine operator shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and cigarette tax insignia subject to [this act] held by the dealer or operator at 12:01 a.m. on April 30, 2003, that exceeds the number of stamped cigarettes and cigarette tax insignia held in inventory by the cigarette wholesale dealer, retail dealer, or vending machine operator at the close of its most recently concluded income tax reporting year."

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(1)(a), Ch. 544, L. 2003, provided: "(1) [This act] applies to the sale of the following goods and services:

(a) cigarette and tobacco products sold on or after May 1, 2003."

2001 Amendment: Chapter 56 in (1)(a) near end after "packages contain" substituted "other than 20 cigarettes" for "more or less than 20 cigarettes"; inserted (1)(b) providing that the tax computed under subsection (1)(a) applies to illegally packaged cigarettes; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 578 in (2) substituted "quota cigarettes" for "a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located". Amendment effective July 1, 1995.

1993 Amendment: Chapter 352 at beginning of first sentence of (1) inserted "A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business", after "must be" substituted "precollected by the wholesaler" for "collected", and after "Montana" substituted "The tax is" for "upon cigarettes sold or possessed in this state an excise tax of"; inserted (2) clarifying sales to which the tax does not apply; inserted (3) requiring precollection of tax on cigarettes entering a reservation; inserted (4) allowing for wholesaler refund of certain precollected taxes; inserted (5) providing for distribution of tax-free cigarettes; inserted (6) capping the amount of allowable wholesaler refunds; and made minor changes in style. Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 352, L. 1993, provided: "WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes."

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, increased tax from 18 cents to 19.26 cents.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Applicability — Termination: Section 39(8), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax liabilities beginning August 15, 1992. This section terminates August 15, 1993.

1991 Amendment: Near middle, after "excise tax", deleted "which shall be paid prior to the time of sale and delivery of cigarettes"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: Near middle increased cigarette excise tax from 16 cents to 18 cents; and made minor changes in phraseology.

1985 Amendments: Chapter 450 at beginning deleted "From and after July 1, 1981"; and near end after "then", substituted "a tax on each cigarette equal to 1/20th the tax on a package containing not more than 20 cigarettes" for "16 cents on each 20 or fraction of 20 cigarettes contained in such package".

Chapter 704 in version effective on occurrence of contingency, at beginning deleted "From and after July 1, 1981"; and increased tax from 16 cents to 24 cents in two places.

Chapter 704 Contingent Effective Date and Termination: Section 5, Ch. 704, L. 1985, provided: "This act is effective October 1, 1985, but only if the rate of tax on cigarettes imposed by 26 U.S.C. 5701(b)(1) is reduced from $8 per thousand to $4 per thousand on that date."

Section 4, Ch. 704, L. 1985, provided that the act terminates June 30, 1987.

Nonoccurrence of Contingency: Chapter 704, L. 1985, which amended this section, provided in section 5 that the act would become effective October 1, 1985, only if the federal tax rate was reduced on that date. The tax rate was not so reduced, and therefore the amendment did not take effect.

Composite Section: Chapter 450, on packages containing more than 20 cigarettes, provided for a formula which assesses a greater amount of tax than the 24 cents per package set forth in Ch. 704. Therefore, in preparation of the composite of the Ch. 450 and 704 amendments, the Code Commissioner has codified the formula set forth in Ch. 450. Section 4, Ch. 704, L. 1985, provided a termination date of June 30, 1987; therefore, the version printed as temporary is revived July 1, 1987.

1983 Amendment: Changed tax from 12 cents to 16 cents twice.

1981 Amendment: Substituted "July 1, 1981" for "March 5, 1971" following "after" in the first sentence; consolidated the sales tax on cigarettes by adding the 2-cent tax in (2) and the 1-cent tax in (3) to subsection (1); deleted former subsections (2) and (3). For former text, see sec. 4, Ch. 222, L. 1971.

Administrative Rules

ARM 42.31.131 Tax refunds.

Case Notes

Tax Not Applicable on Flathead Reservation: The cigarette excise tax imposed by the State of Montana is invalid with respect to the sale of cigarettes by a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation when sale is made within the Flathead Reservation to Indians residing on the reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 96 S Ct 1634, 48 L Ed 2d 96 (1976), affirming Confederated Salish & Kootenai Tribes v. Moe, 392 F. Supp. 1297 (D.C. Mont. 1975).

Tax Not Arbitrary: There is no merit in the contention that this is an arbitrary tax. State ex rel. Graham v. Bd. of Examiners, 125 M 419, 239 P2d 283 (1952).

Collateral References

Taxation *key* 1215, 1292.

Tobacco tax as violation of requirement of uniformity of taxation. 62 ALR 105.

16-11-112. Tax on ultimate consumer.

Compiler's Comments

Part of Section Not Codified: The first sentence of section 84-5606.10, R.C.M. 1947, was not codified in the MCA as it was a temporary definition. The second sentence became the second sentence of this section. The temporary definition was enacted by sec. 9, Ch. 140, L. 1969. It has not been repealed and is still valid law.

Administrative Rules

ARM 42.31.131 Tax refunds.

Case Notes

Tax Not Applicable on Flathead Reservation: The cigarette excise tax imposed by the State of Montana is invalid with respect to the sale of cigarettes by a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation when sale is made within the Flathead Reservation to Indians residing on the reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 96 S Ct 1634, 48 L Ed 2d 96 (1976), affirming Confederated Salish & Kootenai Tribes v. Moe, 392 F. Supp. 1297 (D.C. Mont. 1975).

Collateral References

Taxation *key* 1292.

16-11-113. Tax insignia.

Compiler's Comments

1995 Amendment: Chapter 578 in (1) substituted "wholesaler" for "distributor or dealer" and deleted second sentence that read: "A person specifically exempted under the provisions of 16-11-132(2) is not considered to be acting unlawfully under this section"; at beginning of (3) deleted "Wholesalers and" and at end deleted "and licensed retailers"; and substituted (5) concerning nonapplicability to cigarettes for an Indian tribe or a military reservation for former text that read: "Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before the sale of the cigarettes by a wholesaler." Amendment effective July 1, 1995.

1991 Amendment: In (1), at beginning, substituted "Except as provided in this section" for "Within 72 hours after receipt by" and after "any cigarettes" deleted exception clause; in (2) substituted "applied" for "canceled" and after "sale" deleted "or removal for consumption"; deleted former (3) that read: "(3) Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened"; in (4), near beginning after "cigarettes", inserted "without the insignia affixed" and near middle, after "other person", deleted "without the insignia affixed and canceled or not marked as having been received by the unlicensed wholesaler, retailer, or person within the preceding 72 hours", and near end, after "kept", inserted "in that place of business"; inserted (5) requiring affixation of insignia prior to sale by wholesaler; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

Section Not Codified: Section 84-5606.11, R.C.M. 1947, was not codified in the MCA as subsection (4) of this section states the same law. It has not been repealed and is still valid law. It was enacted by sec. 10, Ch. 140, L. 1969.

Administrative Rules

ARM 42.31.101 Affixing cigarette tax insignia.

ARM 42.31.102 and 42.31.103 Stamping of cigarettes.

ARM 42.31.107 Accounting control of cigarette distribution.

16-11-114. Insignia discount.

Compiler's Comments

2005 Amendment: Chapter 511 inserted (2) relating to wholesaler defrayment for taxes on tobacco products other than cigarettes; and made minor changes in style. Amendment effective July 27, 2005.

2004 Amendment by Initiative: Initiative Measure No. 149, proposed by initiative petition and approved at the general election held November 2, 2004, in (1) decreased percentage from 1.66% to 0.90%; in (2) decreased percentage from 1.11% to 0.60%; and in (3) decreased percentage from 0.83% to 0.45%. Amendment effective January 1, 2005.

Preamble: The preamble attached to I.M. No. 149, provided: "WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8 %.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend $216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

WHEREAS, significant tax increases on all tobacco products will reduce consumption, prevent kids from becoming addicted, and increase quitting success for all Montanans.

WHEREAS, Montana loses federal matching dollars every year by under funding Medicaid.

WHEREAS, 173,000 Montanans, including 41,500 children, lack health care coverage.

WHEREAS, 56% of uninsured Montanans are self-employed or work for small businesses with 10 or fewer employees; and 60% of small businesses cannot afford to offer health benefits.

WHEREAS, prescription drug costs are increasing 10% per year and are not affordable for many families, seniors or people with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA:

That we raise the tax on cigarettes by $1.00 per pack (from 70 cents to $1.70 per pack) and increase the tax on smokeless tobacco by a proportional amount and dedicate use of those tax funds for health care needs."

Severability: Section 9, I.M. No. 149, was a severability clause.

Applicability: Section 11, I.M. No. 149, provided: "This act applies to cigarettes and other tobacco products received by wholesalers after December 31, 2004."

2003 Amendment: Chapter 544 in (1) reduced discount from 6% to 1.66%; in (2) reduced discount from 4% to 1.11%; in (3) reduced discount from 3% to 0.83%; and made minor changes in style. Amendment effective April 30, 2003.

Transition: Section 55, Ch. 544, L. 2003, provided: "(1) On or before June 30, 2003, each cigarette wholesale dealer, retail dealer, and vending machine operator shall file a report with the department of revenue in the form prescribed by the department showing the number of stamped cigarettes and cigarette tax insignia on hand at 12:01 a.m. on April 30, 2003.

(2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesale dealer, retail dealer, and vending machine operator shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and cigarette tax insignia subject to [this act] held by the dealer or operator at 12:01 a.m. on April 30, 2003, that exceeds the number of stamped cigarettes and cigarette tax insignia held in inventory by the cigarette wholesale dealer, retail dealer, or vending machine operator at the close of its most recently concluded income tax reporting year."

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(1)(a), Ch. 544, L. 2003, provided: "(1) [This act] applies to the sale of the following goods and services:

(a) cigarette and tobacco products sold on or after May 1, 2003."

1995 Amendment: Chapter 578 near beginning, after "wholesaler", deleted "and licensed retailer"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Near middle of introductory clause after "less" deleted "3%" and inserted "the following percentage"; inserted (1) through (3) establishing progressive percentage amounts.

1981 Amendment: Reduced the discount on the purchase of an insignia from 8% to 3% of face value; deleted "This defrayment is not applicable to that portion of the tax collected for any veterans' honorarium or long-range building program." at the end of the section.

Case Notes

Calculating Wholesale Price: Despite provisions of this section for discount to wholesalers in purchasing tax insignia, under 16-11-112 the full face value of the insignia is to be used in calculating wholesale cigarette price, so that State Board of Equalization (now Tax Appeal Board) formula reducing wholesale cost by discount was improper. Mont. Ass'n of Tobacco & Candy Distrib. v. Bd. of Equalization, 156 M 108, 476 P2d 775 (1970).

16-11-115. Tax meter machine — tax stamp-applying machine — purchase of stamps.

Compiler's Comments

1995 Amendment: Chapter 578 in (1), near end of third sentence after "wholesaler", deleted "or retailer"; in last sentence of (1) and in (2)(a), after "wholesaler", deleted "or licensed retailer"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Inserted (2) allowing use of and setting regulations regarding heat-applied tax stamp machines; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.
1983 Amendment: In sixth sentence, after "defrayment" deleted "of 8%".

Administrative Rules
ARM 42.31.105 Secure storage of stamps.
ARM 42.31.111 Purchasing roll or hand-applied cigarette tax insignia.

16-11-116. Resale of insignia prohibited — rebate.

Compiler's Comments
1995 Amendment: Chapter 578 in three places, after "wholesaler", deleted "or retailer"; and made minor changes in style. Amendment effective July 1, 1995.
1991 Amendment: In second sentence, in two places after "settings", inserted "or tax insignia"; and made minor changes in style. Amendment effective July 1, 1991.
Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

16-11-117. When payment for insignia due.

Compiler's Comments
1995 Amendment: Chapter 578 in first and third sentences, after "wholesaler", deleted "or licensed retailer"; near beginning of first sentence substituted "may" for "shall" and at end deleted "after the date of purchase and shall require such licensee to"; at beginning of second sentence inserted "To be eligible to defer payment, a wholesaler" and after "department" substituted "either a surety bond or other cash security, as approved by the department" for "a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state"; in last sentence, near end after "bond", inserted "or security"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, and retailers.

Compiler's Comments
2005 Amendment: Chapter 511 throughout section in three places substituted "tobacco products" for "cigarettes"; in (1) in introductory clause inserted reference to subjobbers and decreased number of years from 5 to 3; in (1)(a) at end inserted "or sold"; inserted (2) relating to invoices to be kept by retailers and tobacco product vendors; in (3) near beginning inserted "retailer, subjobber, or tobacco product vendor"; inserted (4) relating to penalties; and made minor changes in style. Amendment effective July 27, 2005.
1995 Amendment: Chapter 578 in first sentence, near beginning, substituted "wholesalers" for "tax meter users and stampers" and after "cigarettes" deleted "by the tax meter users or stampers"; at beginning of second sentence substituted "A wholesaler" for "The tax meter users or stampers", after "examine all" deleted "taxable items of", and at end substituted "compliance with this chapter" for "whether the tax meter machine or tax stamp-applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of the tax as may be due or unpaid"; and made minor changes in style. Amendment effective July 1, 1995.
1993 Amendment: Chapter 414 in second sentence, after "department", inserted "and the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.
1991 Amendment: In three places, after "tax meter users", inserted reference to stampers; near beginning of first sentence substituted "5 years" for "a period of 1 year"; near middle of second sentence, after "meter machine", inserted "or tax stamp-applying machine"; and made minor changes in style. Amendment effective July 1, 1991.
Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

16-11-119. Disposition of taxes.

Compiler's Comments
2005 Amendment: Chapter 511 inserted (3) relating to taxes collected on tobacco products other than cigarettes. Amendment effective July 27, 2005.
2004 Amendment by Initiative: Initiative Measure No. 149, proposed by initiative petition and approved at the general election held November 2, 2004, in (1)(b) decreased percentage from 4.3% to 2.6%; inserted (1)(c) concerning allocation to health and medicaid initiatives account; and made minor changes in style. Amendment effective January 1, 2005.
Preamble: The preamble attached to I.M. No. 149, provided: "WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8 %.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend $216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

WHEREAS, significant tax increases on all tobacco products will reduce consumption, prevent kids from becoming addicted, and increase quitting success for all Montanans.

WHEREAS, Montana loses federal matching dollars every year by under funding Medicaid.

WHEREAS, 173,000 Montanans, including 41,500 children, lack health care coverage.

WHEREAS, 56% of uninsured Montanans are self-employed or work for small businesses with 10 or fewer employees; and 60% of small businesses cannot afford to offer health benefits.

WHEREAS, prescription drug costs are increasing 10% per year and are not affordable for many families, seniors or people with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA:

That we raise the tax on cigarettes by $1.00 per pack (from 70 cents to $1.70 per pack) and increase the tax on smokeless tobacco by a proportional amount and dedicate use of those tax funds for health care needs."

Severability: Section 9, I.M. No. 149, was a severability clause.

Applicability: Section 11, I.M. No. 149, provided: "This act applies to cigarettes and other tobacco products received by wholesalers after December 31, 2004."

2003 Amendment: Chapter 544 in (1) after "must" inserted "in accordance with the provisions of 15-1-501" and substituted "deposited" for "allocated"; in (1)(a) substituted "8.3% or $2 million, whichever is greater" for "The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be deposited"; deleted former (2) that read: "(2) The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited in the state general fund"; in (1)(b) substituted "4.3%" for "The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited"; inserted (1)(c) concerning deposit in general fund; inserted (2) concerning amount in fund for maintenance of state veterans' nursing homes; and made minor changes in style. Amendment effective April 30, 2003.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(1)(a), Ch. 544, L. 2003, provided: "(1) [This act] applies to the sale of the following goods and services:

(a) cigarette and tobacco products sold on or after May 1, 2003."

1997 Amendment: Chapter 422 inserted introductory clause; in (1), after "collected", deleted "under the provisions of 16-11-111"; deleted former (2) that read: "(2) All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501, be deposited as follows"; in (2), at beginning, substituted present language relating to deposit of 73.04% in the state general fund for "79.75% in the long-range building program fund in the debt service fund type"; in (3) substituted present language relating to deposit of 15.85% in the long-range building account for "20.25% in the long-range building program account provided for in 17-7-205"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 18 near end of introductory clause of (2), after "15-1-501", deleted reference to subsection (6); at beginning of (2)(a) substituted "79.75%" for "79.25%"; and made minor changes in style.

Chapter 456 at beginning of (2)(a) substituted "79.75%" for "79.25%"; in (2)(b), at end, substituted "account provided for in 17-7-205" for "fund in the capital projects fund type"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in first sentence of (1) substituted "department of public health and human services" for "department of corrections and human services"; and at beginning of (2)(a) substituted "79.75%" for "79.25%". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments: Chapter 455 near middle inserted "in accordance with the provisions of 15-1-501(6)" and after "be" deleted "paid to the state treasurer and"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 548 at beginning inserted "The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of corrections and human services for the operation and maintenance of state veterans' nursing homes"; in second sentence increased percentage deposited to debt service fund type from 70.89% to 79.25% and decreased percentage deposited to capital projects fund type from 29.11% to 20.25%; and made minor changes in style. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendments: Chapter 3, Sp. L. July 1992, in (1), at beginning, inserted exception clause and after "taxes" deleted "levied, imposed, and assessed by said section"; inserted (2) transferring money to the general fund; and made minor changes in style. Amendment effective July 21, 1992, and terminates June 30, 1993.

Chapter 15, Sp. L. July 1992, increased percentage of proceeds deposited in long-range building program fund from 70.89% to 72.79% and decreased percentage of proceeds deposited in capital projects fund type from 29.11% to 27.21%.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Applicability — Termination: Section 39(8), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax liabilities beginning August 15, 1992. This section terminates August 15, 1993.

1989 Amendment: Near middle decreased percentage to be deposited in debt service fund type from 79.75% to 70.89% and increased percentage to be deposited in capital projects fund type from 20.25% to 29.11%. Amendment effective November 1, 1989.

1985 Amendment: In version effective on occurrence of contingency, inserted provision for 33.33% to be deposited in the state general fund; decreased debt service percentage to 53.17% from 79.75%; and decreased capital projects percentage to 13.5% from 20.25%.

1985 Amendment Contingent Effective Date — Termination: Section 5, Ch. 704, L. 1985, provided: "This act is effective October 1, 1985, but only if the rate of tax on cigarettes imposed by 26 U.S.C. 5701(b)(1) is reduced from $8 per thousand to $4 per thousand on that date."

Section 4, Ch. 704, L. 1985, provided that the act terminates June 30, 1987.

Nonoccurrence of Contingency: Chapter 704, L. 1985, which amended this section, provided in section 5 that the act would become effective October 1, 1985, only if the federal tax rate was reduced on that date. The tax rate was not so reduced, and therefore the amendment did not take effect.

1983 Amendments: Chapter 281, substituted "fund in the debt service fund type" for "account in the sinking fund"; and substituted "fund in the capital projects fund type" for "account in the bond proceeds and insurance clearance fund".

Chapter 608, increased the amount deposited in the long-range building program fund in the debt service fund type from 73% to 79.75% and reduced the amount deposited in the long-range building program fund in the capital projects fund type from 27% to 20.25%.

1981 Amendment: Deleted "(1)" after "16-11-111" in the first sentence; deleted "50% in the general fund" after "as follows:" in the middle of the section; increased the amount deposited in the long-range building program account in the sinking fund from 15% to 73%; reduced the amount deposited in the long-range building program account in the bond proceeds and insurance clearance fund from 35% to 27%; deleted former subsections (2) through (5). For former text see sec. 222, Ch. 516, L. 1973.

16-11-120. Tobacco product licenses.

Compiler's Comments

2005 Amendment: Chapter 511 in three places substituted "tobacco product" for "cigarette"; and made minor changes in style. Amendment effective July 27, 2005.

1997 Amendment: Chapter 366 at beginning of third sentence, after "forms", substituted "must include" for "shall require" and at end substituted "rules" for "regulations" and inserted

fourth sentence requiring Department compliance with rules issued by the Board of Review; and made minor changes in style.

Administrative Rules

ARM 42.31.121 Names and home addresses of corporations.

Case Notes

Indian Dealer on Flathead Reservation: Cigarette dealer's license tax imposed by the State of Montana is invalid with respect to a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation selling cigarettes on the reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 96 S Ct 1634, 48 L Ed 2d 96 (1976), affirming Confederated Salish & Kootenai Tribes v. Moe, 392 F. Supp. 1297 (D.C. Mont. 1975).

Collateral References

16D C.J.S. Constitutional Law §1385.

15A Am. Jur. 2d Commerce §71; 51 Am. Jur. 2d Licenses and Permits §§5, 7, 16, 30, 130.

16-11-121. Vending machines not places of business.

Compiler's Comments

1995 Amendment: Chapter 578 at beginning of second sentence substituted "The form must include" for "which shall state"; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

ARM 42.31.122 Decals on vending machines.

16-11-122. License fees — renewal.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) near middle inserted "or a tobacco product vendor's license". Amendment effective July 27, 2005.

1997 Amendment: Chapter 366 inserted (4) allowing payment of license fees by credit card; in (5), after "annually", inserted "on or before the anniversary date established by rule by the board of review established in 30-16-302 and" and after "fee" substituted "are" for "in the amount set forth above and shall be"; and made minor changes in style.

16-11-123. Display of license.

Administrative Rules

ARM 42.31.122 Decals on vending machines.

16-11-124. Disposition of license fees.

Compiler's Comments

1993 Amendment: Chapter 414 in (2), after "department", inserted "and the department of justice" and at end substituted "cigarette enforcement responsibilities of each department" for "department's cigarette enforcement division"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Near end of (1) substituted "general" for "department's cigarette enforcement account in the state special revenue"; at beginning of (2) deleted "For the biennium beginning July 1, 1971, and each", after "biennium" deleted "thereafter", and at end, after "division", deleted "providing that after payment of all pending and known expenses, all sums so appropriated in excess of $7,500 not needed for the administration of this part shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within 15 days of the last day of the biennium"; in (3) substituted "the appropriation" for "said cigarette enforcement account"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Part of Section Not Codified: An appropriation provision of section 84-5606.6, R.C.M. 1947, relating to the 1971 fiscal year, was not codified in the MCA as it is a temporary provision. It has not been repealed and is still technically valid law.

16-11-125. Licensure as both wholesaler and retailer allowed.

Compiler's Comments

Effective Date: Section 37, Ch. 578, L. 1995, provided: "[This act] is effective July 1, 1995."

16-11-126. Joint and several liability.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-128. Tobacco product sales reporting requirements.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-129. Enforcement.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-131. Transporting tobacco products without compliance a misdemeanor — invoices and delivery tickets required — stop and inspection authorized.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) at end substituted "any tobacco products that do not comply with the requirements of this chapter" for "any cigarettes that do not bear the insignia (stamps) required by this part"; in (2)(a) in three places inserted "or roll-your-own tobacco"; in (2)(b) in introductory clause near beginning inserted "or roll-your-own tobacco", near middle inserted reference to contraband, after "forfeiture" inserted "destruction", and near end inserted references to 16-11-159 and 16-11-509; in (2)(b)(iii) at end inserted "or roll-your-own tobacco"; inserted (2)(b)(iv) relating to cigarettes and roll-your-own tobacco not on the directory; in (3) near beginning inserted "or roll-your-own tobacco" and near middle inserted "or cigarettes or roll-your-own tobacco that is not on the directory"; in (4) near middle substituted "tobacco products" for "cigarettes" and substituted "chapter" for "section"; inserted (5) relating to requiring labeling for tobacco products not shipped in original container or wrapping; in (6) at end inserted "and is subject to the penalties in 16-11-148"; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 at end of (1) deleted "except for a person specifically exempted in 16-11-132(2)"; and deleted second sentence of (2)(a) that read: "If the cigarettes are consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by 16-11-132 to possess unstamped cigarettes in this state." Amendment effective July 1, 1995.

1993 Amendment: Chapter 352 in (1), after "insignia", inserted "(stamps)"; inserted (2) establishing requirements applicable to transporting unstamped cigarettes; inserted (3) regarding transportation of cigarettes from a point outside the state to a point in another state; inserted (4) allowing certain agents and officers to stop and inspect a vehicle that is reasonably believed to be transporting illegal cigarettes; in (5), after "misdemeanor", deleted "and shall be punished as hereinafter provided"; and made minor changes in style. Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 352, L. 1993, provided: "WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes."

Coordination: Section 13(2), Ch. 352, L. 1993, provided: "If House Bill No. 609 and [this act] are both passed and approved, then the bracketed references to the department of justice in [sections 9 and 10 of this act] [amending 16-11-131 and 16-11-147] are effective. If House Bill No. 609 is not passed and approved, then the bracketed references to the department of justice in

[sections 9 and 10] are void." House Bill No. 609 was approved as Ch. 414, L. 1993; therefore, the references to the Department of Justice in (4) are effective.

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

16-11-132. Unlawful to sell tobacco products without valid license — exceptions.

Compiler's Comments

2005 Amendment: Chapter 511 throughout section substituted references to tobacco products for references to cigarettes; throughout section after "subjobber" inserted "tobacco product vendor"; in (1) at beginning inserted "Unless approved by the department"; in (3) near beginning substituted "this section shall be punished as provided in 16-11-148" for "this section is guilty of a misdemeanor and shall be punished as provided in this part" and at end substituted "and destroyed pursuant to 16-11-147, 16-11-158, and 16-11-159" for "to the state"; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 in (2), in second sentence before "wholesaler" and "subjobber", deleted "resident" and before "person" substituted "any" for "resident or nonresident"; at beginning of (2)(a), (2)(b), and (2)(c) deleted "such resident or nonresident"; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

ARM 42.31.108 Sale of unstamped cigarettes.

16-11-133. Sale and use of cigarettes without insignia unlawful.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) at beginning inserted "Unless approved by the department" and at end inserted "and is subject to the penalties in 16-11-148"; inserted (2) relating to transportation into state for personal use; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 at end deleted "and shall be punished as hereinafter provided, except that a person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section"; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

ARM 42.31.108 Sale of unstamped cigarettes.

16-11-141. Powers of arrest — search and seizure.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) in second sentence near middle substituted "chapter" for "part" and near end substituted "contraband" for "any unlawful or unlawfully possessed license, stamp, or insignia"; inserted (2) relating to seizure and forfeiture of contraband; and made minor changes in style. Amendment effective July 27, 2005.

1993 Amendment: Chapter 414 at end of first sentence substituted "of justice is a criminal justice agency" for "shall administer and enforce this part" and in second sentence, after "agents", inserted "of the department of justice" and substituted "have peace officer status" for "have the powers of peace officers"; and made minor changes in style. Amendment effective July 1, 1993.

16-11-142. Duties of county attorneys and peace officers.

Compiler's Comments

2005 Amendment: Chapter 511 in two places substituted "chapter" for "part"; and made minor changes in style. Amendment effective July 27, 2005.

1993 Amendment: Chapter 414 in two places, after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

16-11-143. Penalty and interest for unpaid tobacco product tax.

Compiler's Comments

2005 Amendment: Chapter 511 in two places before "tax" inserted "tobacco product". Amendment effective July 27, 2005.

1999 Amendment: Chapter 427 in (1) at end substituted "penalty and interest as provided in 15-1-216" for "a penalty that is the greater of 5% of the tax or $50 against the person and notify the person of the amount"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1995 Amendment: Chapter 578 in (1), after "assess the tax", substituted "plus a penalty that is the greater of 5% of the tax or $50" for "so determined" and deleted second sentence that read: "After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or $5 per day for each day after the date of such notice, whichever is greater"; in (2), in two places in first sentence after "tax", inserted "penalty"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-144. Revocation or suspension of license.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) near beginning inserted "tobacco product vendor", after "retailer" deleted "cigarette vendor", after "provision of" deleted "this part", and near end substituted "this chapter" for "the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3)"; in (4) in two places substituted "tobacco products" for "cigarettes" and near middle substituted "is subject to the penalties in 16-11-148" for "must be punished as provided in this part"; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendments — Composite Section: Chapter 439 in (1), after "vendor", inserted "or person licensed under 16-11-303" and inserted "Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3)"; and made minor changes in style.

Chapter 578 in (2), at beginning of second sentence, inserted "If the person is aggrieved by the decision of the department"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

16-11-145. Place where violations committed considered public nuisance.

Compiler's Comments

2005 Amendment: Chapter 511 in two places substituted "tobacco products" for "cigarettes"; in two places substituted "chapter" for "part"; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 in first sentence, after "permits", substituted "cigarettes to be sold in violation of this part" for "the same to be done"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-146. Penalty for forged license stamp or insignia.

Compiler's Comments

2005 Amendment: Chapter 511 inserted last sentence relating to civil penalties. Amendment effective July 27, 2005.

16-11-147. Seizure and forfeiture of property used in transporting contraband.

Compiler's Comments

2005 Amendment: Chapter 511 near beginning substituted "in which contraband with a value of $1,000 or more is being unlawfully transported, together with the contraband" for "in which cigarettes are being unlawfully transported, together with the cigarettes" and at end substituted "16-11-159" for "subsection (2)"; deleted former (2) through (4) that read: "(2) Upon the seizure of any cigarettes and within 2 days after seizure, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department.

(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee, with the assistance of the department of justice, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than $500, a person seeking the return of the property may, in lieu of

requesting a hearing, bring an action in the district court of the county in which the property was seized"; and made minor changes in style. Amendment effective July 27, 2005.

1993 Amendments — Composite Section: Chapter 352 near middle of (2), after "made", inserted "or any other person having a right or interest in the seized property" and deleted second sentence that read: "The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-305, 46-5-311, and 46-5-312"; inserted (3) allowing forfeiture of seized property within 15 days absent written notice; inserted (4) providing for a hearing upon a written claim of ownership; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 414 in (1), near end after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

A style change in (2) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Preamble: The preamble attached to Ch. 352, L. 1993, provided: "WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes."

Coordination: Section 13(2), Ch. 352, L. 1993, provided: "If House Bill No. 609 and [this act] are both passed and approved, then the bracketed references to the department of justice in [sections 9 and 10 of this act] [amending 16-11-131 and 16-11-147] are effective. If House Bill No. 609 is not passed and approved, then the bracketed references to the department of justice in [sections 9 and 10] are void." House Bill No. 609 was approved as Ch. 414, L. 1993; therefore, the reference to the Department of Justice in (4) is effective.

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

1991 Amendment: Near end of (2) substituted "46-5-311" for "46-5-302"; and made minor changes in style.

16-11-148. Penalties and other remedies.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) near beginning of first sentence inserted "purposeful, knowing, or negligent" and at end inserted "punishable by imprisonment for a term of up to 1 year or by a fine of up to $1,000, or both", deleted former second sentence that read: "A person violating any provision of this part shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months or both", inserted second sentence relating to a first offense involving contraband worth less than $1,000, deleted former third sentence that read: "If the person is the holder of a license issued under this part, the license must be revoked by the department for 1 year", and inserted third sentence relating to punishment for second and subsequent violations; inserted (2) relating to suspension or revocation of a license; inserted (3) and (4) relating to civil penalties for cigarette contraband; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 near beginning of second sentence, after "provision", inserted "of this part"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-149. Hearings before state tax appeal board.

Compiler's Comments

2005 Amendment: Chapter 511 in first sentence near beginning substituted "agents taken to enforce the tax provisions" for "agents under the provisions". Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 near middle of first sentence inserted "except for a revocation of a license pursuant to 16-11-144"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 414 made minor changes in style. Amendment effective July 1, 1993.

16-11-150. Appeal to district court.

Compiler's Comments

2005 Amendment: Chapter 511 near beginning substituted "department or the department of justice" for "state tax appeal board"; and made minor changes in style. Amendment effective July 27, 2005.

16-11-155. Definitions.

Compiler's Comments

2005 Amendment: Chapter 511 in introductory clause deleted reference to 16-11-157; and made minor changes in style. Amendment effective July 27, 2005.

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

Collateral References

Taxation on Indian Reservations and Other Issues Before the Revenue Oversight Committee, A Report to the 53rd Legislature, Mont. Leg. Council (1992).

16-11-156. Stamps affixed on cigarettes — exception.

Compiler's Comments

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

16-11-158. Sale or retention of forfeited property — use of sale proceeds — destruction of contraband.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) substituted "16-11-159" for "16-11-147"; in (1)(a) near middle substituted "this chapter" for "16-11-111, 16-11-131, 16-11-147, and 16-11-155 through 16-11-158"; in (1)(b) inserted "other than contraband" and deleted last sentence that read: "The department, before delivering a seized item, shall first require stamps to be affixed"; in (2) in first sentence near middle substituted "property" for "item"; inserted (3) relating to destruction of contraband; and made minor changes in style. Amendment effective July 27, 2005.

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

16-11-159. Forfeiture of contraband and property used in transporting contraband.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

Part 3
Youth Access to Tobacco Products Control Act

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 569, L. 1993, provided: "A statement of intent is required for this bill because [section 11] [16-11-312] grants the department of revenue authority to adopt rules.

It is the intent of the legislature to reduce the number of young people who use tobacco products, to recognize the responsibility of retail sellers for contributing to the use of tobacco products by young people, to establish a system of regulations and sanctions prohibiting the sale or distribution of tobacco products to young people, and to provide for the posting of signs informing young people that sales or distribution of tobacco products to them is illegal."

Part Collateral References

Civil liability for tobacco sales to minors. 55 ALR 4th 1238.

16-11-304. Signs.

Compiler's Comments

1995 Amendment: Chapter 439 near middle, before "sold", inserted "displayed and".

16-11-306. Sales of tobacco through vending machines restricted.

Compiler's Comments

1997 Amendment: Chapter 518 in (1), near beginning after "only in", substituted "places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The tobacco products must be in a vending machine that contains only tobacco products" for "(1) factories, businesses, offices, and other places not open to the general public;

(2) places to which individuals under 18 years of age are not permitted access;

(3) places where alcoholic beverages are sold and consumed on the premises; and

(4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person for purposes of 16-11-305"; inserted (2) limiting vending machine sale of tobacco products in restaurants; and inserted (3) clarifying that sale of tobacco products from a vending machine is considered a sale by the owner or employee of an establishment.

16-11-307. Distribution of tobacco products in other than sealed packages prohibited — minimum package size.

Compiler's Comments

2001 Amendment: Chapter 56 inserted (2) prohibiting distribution or manufacture of cigarettes in packages of less than 20 and defining rolling tobacco; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 439 inserted second sentence prohibiting the sale of single cigarettes.

16-11-308. Civil penalties — license suspension — tobacco education fee.

Compiler's Comments

2001 Amendment: Chapter 56 in (1) near middle inserted "or the manufacture or sale of cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307"; in (2) near beginning substituted "16-11-307(1)" for "16-11-307"; in (2)(d) inserted "under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2)"; in (2)(e) inserted "under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent offense under 16-11-307(2)"; in (4) inserted "or civil penalties"; in (6) near beginning substituted "16-11-307(1)" for "16-11-307"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 389 in (9) substituted present language requiring fees to be deposited into general fund for former language that read: "(9) Fees assessed pursuant to this section must be deposited in an account in the state special revenue fund. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of public health and human services to defray the costs of the tobacco education program. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144 and this section." Amendment effective July 1, 1999.

1997 Amendment: Chapter 518 in (5), at end of third sentence deleted "pursuant to the provisions of the Montana Administrative Procedure Act" and inserted fourth sentence allowing a hearing to be conducted with electronic equipment and requiring compliance with the Montana Administrative Procedure Act; in (6), at end of fourth sentence, deleted "pursuant to the provisions of the Montana Administrative Procedure Act" and inserted fifth sentence allowing a hearing to be conducted with electronic equipment and requiring compliance with the Montana Administrative Procedure Act; and made minor changes in style.

1995 Amendment — Coordination Instruction: Chapter 439 inserted second sentence in (1) authorizing Department to collect penalty in manner provided for collection of other debts; and substituted (2) through (9) relating to punishment for first through seventh and subsequent offenses and assessment of tobacco education fees for former language in (2) through (5) that read: "(2) A person who violates 16-11-305(1) may be punished by a civil penalty of $100. A

subsequent violation within 1 year is punishable by a civil penalty of $200. A third violation is punishable by a civil penalty of $300 if two violations occurred within the 2-year period prior to that violation. A fourth violation is punishable by a civil penalty of $500 if three or more violations occurred within the 2-year period prior to that violation.

(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for a civil penalty of not more than $100 for the first violation. A subsequent violation is punishable by a civil penalty of not more than $200. A third or subsequent violation is punishable by a civil penalty of not more than $500.

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of 16-11-305(1).

(5) The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty."

The amendments to this section in Ch. 578, L. 1995, were rendered void pursuant to sec. 36, Ch. 578, L. 1995, a coordination section.

Code Commissioner Change: Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

16-11-309. Inspection and notification of violation required.

Compiler's Comments

Code Commissioner Change: Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

16-11-310. Minors not liable for possession or attempt to purchase.

Compiler's Comments

2001 Amendment: Chapter 498 inserted "or the attempt to purchase"; and made minor changes in style. Amendment effective October 1, 2001.

Part 4
Tobacco Products Reserve Fund — Administration

Part Compiler's Comments

Effective Date: Section 5, Ch. 412, L. 1999, provided that this part is effective on passage and approval. Approved April 21, 1999.

16-11-402. Definitions.

Compiler's Comments

2005 Amendment: Chapter 324 in definition of units sold at end of first sentence deleted "bearing the excise tax stamp of the State"; and made minor changes in style. Amendment effective April 21, 2005.

16-11-403. Requirements.

Compiler's Comments

2003 Amendment: Chapter 397 in (2)(b)(ii) after "escrow" inserted "on account of units sold in the state" and after "than the" substituted reference to Master Settlement Agreement payments that the manufacturer would have been required to make on units had it been a participating manufacturer for "State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer"; and made minor changes in style. Amendment effective April 17, 2003.

16-11-404. Attorney fees and costs.

Compiler's Comments

2005 Amendment: Chapter 324 in (2) at end deleted "The funds are statutorily appropriated as provided in 17-7-502." Amendment effective July 1, 2005.

Severability: Section 17(1), Ch. 397, L. 2003, was a severability clause.

Effective Date: Section 20, Ch. 397, L. 2003, provided that this section is effective on passage and approval. Approved April 17, 2003.

Retroactive Applicability: Section 21, Ch. 397, L. 2003, provided: "The legislature intends that [section 13 and 15][16-11-404 and 17-7-502] apply to all pending actions in which a final judgment has not been entered prior to [the effective date of this act]." Effective April 17, 2003.

Part 5
Tobacco Products Reserve Fund — Enforcement

Part Compiler's Comments

Severability: Section 17(1), Ch. 397, L. 2003, was a severability clause.

Effective Date: Section 20, Ch. 397, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 17, 2003.

16-11-502. Definitions.

Compiler's Comments

2005 Amendment: Chapter 324 in definition of wholesaler at end inserted provision relating to a person required to remit the tax on other tobacco products; and made minor changes in style. Amendment effective April 21, 2005.

16-11-503. Certifications.

Compiler's Comments

2005 Amendment: Chapter 324 in (1) at end substituted "parts 4 and 5 of this chapter and any rules adopted pursuant to 16-11-511" for "16-11-403". Amendment effective April 21, 2005.

16-11-507. Reporting of information.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 324 in (4) inserted second sentence requiring that information be full, complete, and accurate. Amendment effective April 21, 2005.

Chapter 511 in (1) in first sentence near end after "16-11-113" deleted "or 16-11-203". Amendment effective July 27, 2005.

16-11-509. Penalties and other remedies.

Compiler's Comments

2005 Amendment: Chapter 324 in (1) at end of first sentence substituted "initiated by the department or at the request of the attorney general" for "brought by the department or by the attorney general" and near middle of third sentence inserted "and each pack sold, offered for sale, or possessed for sale"; inserted (4)(b) relating to determination of attorney fees if the state prevails; in (5)(a)(i) at beginning after "sell" inserted "offer for sale" and at end inserted "that the person knows or should know are intended for distribution or sale in the state in violation of 16-11-505"; inserted (7) relating to the allocation and statutory appropriation of recovered penalties, investigation expenses, and attorney fees and costs; and made minor changes in style. Amendment effective April 21, 2005.

16-11-511. Rules.

Compiler's Comments

2005 Amendment: Chapter 324 inserted reference to part 4; and made minor changes in style. Amendment effective April 21, 2005.

TITLE 17
STATE FINANCE

CHAPTER 1
GENERAL ADMINISTRATION

Part 1
General Administration and Fiscal Officers

17-1-101. Definition of department.

Compiler's Comments

1995 Amendment: Chapter 325 near beginning of exception clause, after "part 3", deleted "and chapter 4, part 1"; and made minor changes in style. Amendment effective July 1, 1995.

17-1-102. Uniform accounting system and expenditure control.

Compiler's Comments

2001 Amendment: Chapter 569 in (4) at end of introductory clause inserted "in accordance with the following requirements"; inserted (4)(a) regarding encumbrance of goods and services, grants, and local assistance that are paid for with the general fund; and inserted (4)(b) requiring that nongeneral fund encumbrances have a valid extension plan. Amendment effective July 1, 2001.

Applicability: Section 15, Ch. 569, L. 2001, provided: "[Section 2] [17-1-102] applies to fiscal year 2002 and thereafter."

1997 Amendment: Chapter 48 in (2), near beginning after "reporting", inserted "system", before "the receipt" substituted "reporting" for "showing", and after "principles" deleted "and shall develop plans for improvements and economies in the organization and operation of state agencies and institutions, which must be submitted to the respective heads of agencies and institutions. Copies of all plans must be delivered to the governor, and additional copies must be retained in the office of the department for inspection by the members of the legislature"; deleted former (4) that read: "The department shall examine all financial affairs of each state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation of the agencies and institutions and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this part"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in (1), before "eliminated", "improved", and "reduced", inserted "may be"; in (5), after "colleges", deleted "and the vocational-technical centers"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Inserted (3) prescribing contents of uniform accounting and reporting system; and in (5) inserted language excluding community colleges. Amendment effective July 1, 1991.

1985 Amendment: In middle of first sentence of (2), after "property", inserted "in accordance with generally accepted accounting principles"; and inserted (4) referring to input of transactions before accounts are closed.

Administrative Rules

Title 2, chapter 4, subchapter 2, ARM Receipt and disbursements.

Attorney General's Opinions

State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127 (1978).

Collateral References

States *key* 73, 76.

81A C.J.S. States §220.

Allowance of attorneys' fees in mandamus proceedings. 34 ALR 4th 457.

17-1-104. Definitions.

Compiler's Comments

Effective Date: Section 7, Ch. 121, L. 2005, provided: "[This act] is effective July 1, 2005."

17-1-105. Statewide cost allocation plan.

Compiler's Comments

2005 Amendment: Chapter 121 in (1) near beginning after "department" deleted "of administration", near middle after "among the" deleted "grantee", and near end after "established by" substituted "applicable" for "federal"; inserted (2) requiring payments in four equal installments by depositing the payments into the general fund; and made minor changes in style. Amendment effective July 1, 2005.

1983 Amendment: At beginning of section changed "The budget director" to "The director of the department of administration".

17-1-106. Agency recovery of indirect costs.

Compiler's Comments

2005 Amendment: Chapter 121 in (1) at beginning substituted "An agency receiving nongeneral funds" for "Grantee agencies", after "accordance with" substituted "all applicable regulations, guidelines, or grant rules governing those funds" for "federal regulations and guidelines and with private grant rules, as appropriate", and near end after "methodologies" substituted "so that the agency may recover indirect costs" for "and recover indirect costs of federal assistance programs and private assistance programs"; in (4) inserted first sentence requiring submission of an indirect cost proposal to the appropriate federal agency and at end of second sentence after "build" substituted "an indirect cost proposal" for "indirect costs into a grant"; in (5) at beginning of first sentence inserted exception clause, after "recovered" substituted "by an agency to pay the agency's indirect costs under 17-1-105" for "from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system", and at end substituted "as provided in 17-1-105" for "in the general fund" and in second sentence after first "costs" deleted "except those costs recovered by a unit of the university system"; and made minor changes in style. Amendment effective July 1, 2005.

2002 Amendment: Chapter 14 in (1) after "guidelines" inserted "and with private grant rules, as appropriate", after "indirect cost" substituted "reimbursement amounts and methodologies and" for "rates and endeavor, to the fullest extent possible, to", and at end inserted "and private assistance programs"; inserted (2) concerning written approval for accepting certain funds; inserted (3) concerning prohibition on waiving or forfeiting indirect cost recovery and establishing hierarchy for claiming costs; inserted (4) concerning technical assistance on building indirect costs into a grant; in (5) inserted last sentence concerning deposit of indirect costs; and made minor changes in style. Amendment effective August 16, 2002.

1993 Special Session Amendment: Chapter 37 inserted (2) requiring deposit of recovered indirect costs, except those recovered by the University System, in the general fund. Amendment effective January 5, 1994.

17-1-111. General fiscal duties of state treasurer.

Compiler's Comments

2003 Amendment: Chapter 607 inserted (2)(o) providing for state website information on how to donate to the state government; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 48 in (2)(c), before "the receipt", substituted "record" for "take upon the back of the warrant"; deleted former (2)(i) that read: "charge the outgoing state treasurer with the balance that was in the treasury when the outgoing treasurer came into office and with all money received and credit the outgoing treasurer with all warrants drawn on and paid"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 inserted (2)(f) through (2)(n) expanding fiscal duties of State Treasurer to include management plans of public revenue and registration and accounting of state warrants; and made minor changes in style. Amendment effective July 1, 1995.

Attorney General's Opinions

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and

similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

University System — Funds — Deposit and Investment: The statutes relating to the deposit and investment of state money are applicable to the Board of Regents of Higher Education and the separate units of the Montana University System. 36 A.G. Op. 2 (1975).

University System — Deposit of Funds — State Treasurer: All money received or collected by the Montana University System from any source whatsoever is required to be deposited in the state treasury except as otherwise provided by statute. 34 A.G. Op. 2 (1971).

Collateral References

States *key* 73.

81A C.J.S. States §135.

72 Am. Jur. 2d States §63.

Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited. 155 ALR 436; 93 ALR 819.

Liability of sureties on official bonds for profits realized by principal from use or investment of public funds. 104 ALR 1402.

Mandamus to compel payment of warrant. 98 ALR 442.

17-1-112. Access to offices.

Collateral References

States *key* 73.

81A C.J.S. States §135.

17-1-122. Discretionary authority of state treasurer.

Compiler's Comments

1995 Amendment: Chapter 325 at beginning substituted "state treasurer" for "state auditor"; in (2), near beginning, substituted "money" for "moneys or securities" and substituted "the department" for "his office"; in (4), after "established", deleted "under the joint control of the department of administration and the state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Collateral References

States *key* 73.

81A C.J.S. States §134.

Availability of mandamus or prohibition to review order of reference to master or auditor. 76 ALR 2d 1120.

17-1-124. Authority of state auditor concerning securities.

Compiler's Comments

Effective Date: Section 37, Ch. 325, L. 1995, provided that this section is effective July 1, 1995.

17-1-131. General duties of budget director.

Collateral References

States *key* 73.

Part 2
Anticipation of Revenue

Part Compiler's Comments

Statement of Intent: The statement of intent attached to HB 915 (Ch. 658, L. 1979) provided: "Section 1. It is the intent of the Legislature that the amount of tax anticipation notes authorized in HB 915 should not exceed more than $50,000,000 in each of the 2 fiscal years of this biennium. Further, it is the intent of the Legislature that any notes issued in a fiscal year shall be fully paid before the end of the fiscal year.

Section 2. It is further the specific intent of the Legislature that the passage of this bill will reduce the need for borrowing from other state funds, such as the highway department [now department of transportation] earmarked revenue, or any of the coal tax trust funds, and that this practice will be curtailed.

Section 3. It is further the understanding of the Senate Taxation Committee of the Legislature that sufficient income will be obtained from investment of the unused portion of any revenues from the tax anticipation notes to offset the interest cost of these notes.

Section 4. It is further the specific intent of the Legislature that no tax anticipation notes shall be issued to refund or pay outstanding notes. In the event sufficient revenues are not available to pay the tax anticipation notes at the end of the 1981 fiscal year, it is the intent of this Legislature that this program shall not be continued."

17-1-204. Payment — pledge of taxes and revenue — costs of issuance.

Compiler's Comments

1999 Amendment Void: The amendment to this section made by sec. 1, Ch. 3, L. 1999, was rendered void by sec. 16, Ch. 3, L. 1999, a contingent voidness section, which provided that if Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, was declared invalid, then [this act] was void. The initiative was declared invalid February 24, 1999.

1995 Amendment: Chapter 47 in (2) inserted second and third sentences allowing the transfer of certain available funds, considered a loan to the general fund, to pay notes and interest; and made minor changes in style. Amendment effective February 9, 1995.

1985 Amendment: Inserted (3) referring to authority of Department to pay costs of issuing notes.

1981 Amendment: Substituted (2), referring to full faith and credit and taxing power of state, for "An amount of taxes and revenues as will be sufficient to pay the amount borrowed, with interest, is pledged to the payment of the notes."

Part 5
Dedication of Revenue to State Special Revenue Fund

Part Compiler's Comments

Effective Date: Section 10(1), Ch. 593, L. 1993, provided: "[Sections 1 through 6 [17-1-501 through 17-1-506] and this section] are effective on passage and approval." Approved April 29, 1993.

17-1-501. Legislative intent.

Compiler's Comments

2003 Amendment: Chapter 41 inserted (3) concerning legislative intent. Amendment effective July 1, 2003.

1999 Amendment: Chapter 8 deleted former (1) that read: "(1) The legislature finds that provisions for dedicating state revenue and statutorily appropriating funds have increased in number, reduce legislative control over state spending, complicate the state funding structure, and increase the effort required to budget, appropriate, and monitor public funds. The dedication and statutory appropriation of funds result in the inability of the legislature to practically and systematically conduct reasoned prioritization of programs or funds"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 509 in (1), in first sentence, inserted "and statutorily appropriating funds" and in second sentence inserted "and statutory appropriation"; in (2), near beginning, substituted "criteria" for "a system"; in (2)(b) inserted "as described in 17-1-507"; inserted (2)(d) concerning legislative scrutiny; inserted (3) concerning legislative intent that statutory appropriations reflect present circumstances, are terminated when no longer necessary, and are subject to legislative scrutiny; and made minor changes in style. Amendment effective July 1, 1995.

17-1-502. Definitions.

Compiler's Comments

2003 Amendment: Chapter 41 in definition of dedicated revenue provision at end inserted "or to a local government"; inserted definition of local government; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendment: Chapter 509 inserted definitions of administrative costs, continuing and reliable source of revenue, and general revenue source; in definition of dedicated revenue provision, at end, inserted "as described in 17-2-102"; and made minor changes in style. Amendment effective July 1, 1995.

17-1-503. Transfer of fund balances to general fund.

Compiler's Comments

1999 Amendment: Chapter 8 deleted former (2) that read: "(2) If the legislative finance committee concurs, the department may transfer the unobligated balance in a special revenue account to the general fund based upon the survey conducted pursuant to 17-2-111"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendments: Chapter 18 in (1), at beginning, deleted "On April 29, 1993".

Chapter 509 in (1), at beginning, deleted "On April 29, 1993"; and inserted (2) concerning the Department transferring the unobligated balance to the general fund. Amendment effective July 1, 1995.

17-1-504. Effect of termination.

Compiler's Comments

1995 Amendments: Chapter 252 in (1) and (2) deleted reference to 31-1-602; and made minor changes in style. Amendment effective March 27, 1995.

Chapter 509 in (1), after "appropriated", substituted "revenue from sources de-earmarked by the legislature" for "the revenue from an account provided for in 15-1-501, 20-9-343, and 31-1-602"; and in (2) substituted "by the legislature" for "by 15-1-501, 20-9-343, and 31-1-602". Amendment effective July 1, 1995.

17-1-505. Review of dedicated revenue provisions.

Compiler's Comments

2003 Amendment: Chapter 41 inserted (1)(f) concerning duties of department of revenue; in (2) near beginning of first sentence after "unnecessary" inserted "and unjustified" and inserted second and third sentences concerning determination of justification and report to legislative fiscal analyst and report to legislative finance committee; inserted (3) concerning basis for determining if dedicated revenue provision is justified; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 554 deleted former (1) requiring the legislative finance committee to, each interim, review dedicated revenue provisions to ensure that legislative policy is clearly stated; deleted former (4) requiring the committee to establish procedures to facilitate a biennial review of dedicated revenue provisions; deleted former (5) requiring the committee to summarize its review findings and report them to the legislature, including recommendations for termination or extension of dedicated revenue provisions; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 8 in (1) near beginning after "review" deleted "each", after "dedicated revenue" substituted "provisions based upon procedures established" for "provision not exempted", and deleted former second sentence that read: "The committee shall also carry out the review prescribed by subsection (4)"; in (4) deleted former second sentence that read: "If the review determines that the revenue dedication is constitutionally mandated, is for debt service, funds emergency services, or is a user fee that is designed to provide direct benefits for those who pay the dedicated tax, fee, or assessment in an amount commensurate with the benefits provided, the revenue dedication may be exempt from future review"; and in (5) deleted former second and third sentences that read: "The summary must include the purpose of the revenue dedication, the source of funding, the activity funded, the number of personnel associated with the activity, and any balance in the dedicated revenue fund. The summary must state the reason why the revenue dedication is exempt from future review." Amendment effective October 1, 1999.

Chapter 51 in (2)(b) after "legislative" substituted "fiscal" for "finance". Amendment effective March 15, 1999.

1995 Amendment: Chapter 509 in (1), after "under", substituted "subsection (4) and the principles of revenue dedication set forth in 17-1-507 to ensure that legislative policy is clearly stated. The committee shall also carry out the review prescribed by subsection (4)" for "subsection (3) and review statutory appropriations assigned by the legislature"; in (2), at beginning, substituted "The legislature recognizes that dedicated revenue provisions are subject to review by" for "The review conducted by the committee must include an evaluation of the dedicated revenue provision, based on whether it"; inserted (2)(a) through (2)(e) concerning review by various state entities; inserted (3) concerning avoiding the unnecessary use of dedicated revenue provisions; in (3)(a), at beginning, inserted "The program or activity funded" and at end inserted "and the tax, fee, or assessment is commensurate with the costs of the program or activity"; at beginning of (3)(b), (3)(c), (3)(d), (3)(e), (3)(f), (3)(g), and (3)(h) inserted

reference to the dedicated revenue provision; in (3)(d) inserted "and current priorities"; in (3)(e) inserted "does not impair"; in (3)(f) substituted "an appropriate projected ending" for "an inappropriate ending"; in (3)(h) inserted "does not result"; in (4), near beginning of first sentence, inserted "a biennial" and after "evaluation" substituted "of dedicated revenue provisions" for "required by this section", deleted former second sentence that read: "Each interim, the committee shall attempt to propose measures that will reduce dedicated revenue to an amount that is less than one third of all state revenue", and in last sentence, near end, substituted "may be exempt from future" for "does not need a future"; deleted former (5) that read: "(5) The committee shall review statutory appropriations to determine if the appropriation should be made by a legislative appropriation. During the 1995 biennium, the committee shall review the statutory appropriation of administrative costs in 75-11-313"; and made minor changes in style. Amendment effective July 1, 1995.

Code Commissioner Change: The Code Commissioner has substituted a reference to the Legislative Finance Division for a reference to the Office of the Legislative Fiscal Analyst to reflect the name change in 5-12-301.

The Code Commissioner has substituted references to the Legislative Services Division for references to the Legislative Council to reflect the amendment of 5-11-112.

17-1-507. Principles of revenue dedication.

Compiler's Comments

Effective Date: Section 84, Ch. 509, L. 1995, provided that this section is effective July 1, 1995.

17-1-508. Review of statutory appropriations.

Compiler's Comments

2001 Amendment: Chapter 554 deleted former (1) requiring the legislative finance committee to, each interim, review statutory appropriations listed in 17-7-502 to eliminate those no longer needed and to ensure that legislative policy is clearly stated; in (1) before "identify" inserted "review and"; deleted former (5) requiring the committee to establish procedures to facilitate a biennial review of statutory appropriations and requiring the committee to summarize its review findings and report them to the legislature, including recommendations for termination or extension of statutory appropriations; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 8 in (1) near beginning after "shall" inserted "based upon procedures established pursuant to subsection (5)", after "review" substituted "statutory appropriations" for "each statutory appropriation", and after "17-7-502" deleted "and that is not exempted under subsection (6) of this section and shall review the guidelines set forth in subsection (4)"; deleted former (3) that read: "(3) As part of each agency audit, the legislative auditor shall review statutory appropriations to the agency and report instances in which they do not appear consistent with the guidelines set forth in subsection (4)"; in (5) substituted second sentence concerning the committee's postreview summary to the legislature for former sentence that read: "If the review determines that continual review of a statutory appropriation is not necessary, the statutory appropriation may be exempt from future review"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 51 in (3) at end of first sentence substituted "17-7-502" for "17-7-501". Amendment effective March 15, 1999.

1997 Amendment: Chapter 422 in (1) substituted "review each statutory appropriation that is contained in a section listed in 17-7-502 and that is not exempted under subsection (6) of this section and shall review the guidelines set forth in subsection (4) to eliminate statutory appropriations that no longer fulfill a legislative need and to ensure" for "review the criteria set forth in subsection (4) to ensure"; in (2) after "office of budget and program planning", deleted "and the legislative fiscal analyst", after "in development" deleted "and analysis", and near end substituted "guidelines" for "criteria"; in (3), near end, substituted "guidelines" for "criteria"; in (4) substituted "17-7-501" for "17-1-505" and inserted last two sentences and (4)(a) through (4)(i) relating guidelines for appropriate statutory appropriations; in (5), in first sentence, inserted "shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It" and in second sentence substituted "guidelines" for "review provisions"; inserted (6) relating to a biennial review of statutory appropriations; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 84, Ch. 509, L. 1995, provided that this section is effective July 1, 1995.

CHAPTER 2
ACCOUNTING

Chapter Law Review Articles

The Basic Concepts of Accounting, Kempner, 30 Mont. L. Rev. 1 (1968).

Single Audit Overhaul: Easing the Burden?, Foelster & Scott, 185 J. Acct. 75 (1998).

Chapter Collateral References

Liability of public accountant to third parties. 46 ALR 3d 979.

Part 1
Treasury Funds and Accounts

17-2-101. Title and purpose.

Compiler's Comments

1997 Amendment: Chapter 532 inserted (2)(a) regarding compliance with the Montana Constitution; and made minor changes in style. Amendment effective July 1, 1997.

1981 Amendment: Substituted "the state's revenues, expenditures, expenses, and financial position in accordance with generally accepted accounting principles" for "governmental costs and revenues" at the end of the section.

Attorney General's Opinions

Appropriations — Legislative Control Over Marketing Assessment Funds: Although the control of the Legislature over appropriations to state agencies is based upon broad constitutional provisions, certain money may either be exempt from the appropriation process or the purposes for which that money may be appropriated may be limited by statute. Thus, the Legislature may control appropriations from the Wheat Marketing and Research Account, but those appropriations are subject to the statutorily stated purposes of the Account. Any attempt by the Legislature in an appropriation bill to alter the purposes for which appropriations from the Account are made is subject to the constitutional restriction that the purpose of legislation must be clearly stated in the title of the bill. 39 A.G. Op. 3 (1981).

17-2-102. Fund structure.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 34 in (1)(b) near beginning after "other than" substituted "private purpose trusts" for "expendable trusts"; inserted (1)(e) regarding the permanent fund type; in (3)(a) substituted "private purpose" for "expendable"; deleted former (1)(c)(ii) that read: "(ii) nonexpendable trust fund type"; in (3)(c) after "pension" inserted "and other employee benefit"; in (4)(c) at end of first sentence after "investment" deleted "thus producing consumable income"; deleted former (2) that read: "(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v)"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 305 in (1)(b)(i) near beginning and near middle after "money" inserted "and other proceeds". Amendment effective April 21, 2001.

1999 Amendment: Chapter 291 inserted (1)(c)(iii) concerning investment trust fund type; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 532 in (1), at beginning, inserted "For the purpose of ensuring strict accountability for all revenue received and spent". Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in (1)(d)(i), (1)(d)(ii), (1)(d)(iii), (1)(d)(iv), in two places, (1)(d)(v), and (1)(d)(vi), after "system", deleted reference to vocational-technical centers; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 433 at end of (1)(a)(ii)(A), after "government", inserted "and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation" and deleted former second sentence

that read: "Other nonstate and nonfederal revenue deposited in the state special revenue account is not subject to the emergency budget amendment provisions of 17-7-403"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In first sentence of (1)(a)(ii)(A) inserted "and other nonfederal" and inserted second sentence eliminating nonstate and nonfederal revenue in state special revenue account from emergency budget amendment provisions of statutorily required budget amendment certification; and deleted (1)(a)(ii)(C) providing that other special revenue funds in state treasury include money from private sources used for state government operation and reimbursable expenditures. Amendment effective July 1, 1989.

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

1985 Amendment: In (1) at beginning of (1)(d), substituted "higher education funds" for "university funds"; throughout (1)(d) following "the Montana university system", inserted references to postsecondary vocational-technical centers; throughout (1)(d)(i), substituted references to current fund for references to university current fund; at beginning of (1)(d)(ii) substituted "student loan fund" for "university student loan fund"; at beginning of (1)(d)(iii) substituted "endowment fund" for "university endowment fund"; at beginning of (1)(d)(iv) substituted "annuity and life income fund" for "university annuity and life income fund"; at beginning of (1)(d)(v) substituted "plant fund" for "university plant fund"; at beginning of (1)(d)(vi) substituted "agency fund" for "university agency fund"; and near end of (2)(a) and (2)(b) substituted "higher education funds" for "university funds".

1983 Amendment: In (1), introductory clause, changed "funds" to "fund categories and types"; in (1)(a), substituted "fund category, which includes" for "funds, which include"; in (1)(a)(ii), near beginning, substituted "special revenue fund type, which accounts" for "special revenue funds, which account" and inserted second sentence referring to subdivision of financial activities of special revenue fund type; inserted (1)(a)(ii)(A) referring to state special revenue fund; inserted (1)(a)(ii)(B) referring to federal special revenue fund; inserted (1)(a)(ii)(C) referring to other special revenue funds; in (1)(a)(iii), substituted "capital projects fund type, which account" for "capital projects funds, which account"; in (1)(a)(iv), substituted "debt service fund type, which accounts" for "debt service funds, which account"; at beginning of (1)(b), substituted "proprietary fund category, which includes" for "proprietary funds, which include"; at beginning of (1)(b)(i), substituted "enterprise fund type, which accounts" for "enterprise funds, which account"; in (1)(b)(ii), substituted "internal service fund type, which accounts" for "internal service funds, which account"; near beginning of (1)(c), substituted "fiduciary fund category, which includes trust and agency fund types" for "fiduciary funds, which include trust and legacy funds"; and in (1)(c)(i) through (1)(c)(iv), changed "funds" to "fund type".

1981 Amendments — Sunset Provision Removed — Effective Date: Section 2, Ch. 438, L. 1977, read: "The additional funds established by subsections (10) through (15) of 79-410 [17-2-102] are effective only through June 30, 1981, at which time they shall cease to exist as a part of the treasury fund structure." The title to Ch. 28, L. 1981 (HB 341), read in part: "An act to rename and define treasury funds to be in accordance with current authoritative literature and generally accepted accounting principles; removing the sunset provision on the university funds; ... and providing effective dates." Chapter 28, L. 1981, made no amendments to Sec. 2, Ch. 438, L. 1977, which terminated subsections (10) through (15) of this section. However, the Code Commissioner did not remove those subsections because the testimony of witnesses on HB 341, as well as the title to HB 341, indicates an apparent intent to remove the sunset provisions.

Section 2, Ch. 28, L. 1981, rewrote subsection (1) establishing fund structure of state treasury by inserting all new language in (a) dealing with governmental funds, (b) dealing with proprietary funds, and (c) dealing with fiduciary funds and by making minor changes in (d) which deals with university funds; added subsection (2) establishing fixed assets account group and long-term debt account group.

Section 6, Ch. 28, L. 1981, provided that the amendments to this section will be effective July 1, 1983.

Attorney General's Opinions

Transfer of Money Between State Treasury Accounts — Statutory Appropriation Not Required: Article VIII, sec. 14, Mont. Const., requires a statutory appropriation only when money is paid out of the state treasury, but neither the constitution nor state law requires a statutory appropriation when money is transferred between accounts within the state treasury. 44 A.G. Op. 43 (1992).

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and

similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

Appropriations — Legislative Control Over Marketing Assessment Funds: Although the control of the Legislature over appropriations to state agencies is based upon broad constitutional provisions, certain money may either be exempt from the appropriation process or the purposes for which that money may be appropriated may be limited by statute. Thus, the Legislature may control appropriations from the Wheat Marketing and Research Account, but those appropriations are subject to the statutorily stated purposes of the Account. Any attempt by the Legislature in an appropriation bill to alter the purposes for which appropriations from the Account are made is subject to the constitutional restriction that the purpose of legislation must be clearly stated in the title of the bill. 39 A.G. Op. 3 (1981).

State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127 (1978).

Collateral References

States *key* 75, 127.

81A C.J.S. States §228.

17-2-103. Previous definitions of funds — identification or segregation of money and funds.

Compiler's Comments

2001 Amendment: Chapter 34 in (2) near beginning after "enacted" deleted "in the future" and after "entered into" deleted "in the future"; in (3) after "created by" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 532 in (4), near end before "fund", substituted "state special revenue" for "fiduciary"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 556 in (4), after "are to be", deleted "wholly or partially", substituted "a fiduciary" for "the state special revenue", and inserted final clause regarding generally accepted accounting principles; and made minor changes in style. Amendment effective July 1, 1995.

1985 Amendment — Applicability: Inserted (3) referring to accounting of federal grants or other federal money; and inserted (4) referring to accounting of taxes to be distributed to local government entities.

Section 2(1), Ch. 515, L. 1985, provided: "The provisions of 17-2-103(3) are not applicable to federal funds received by the department of highways [now department of transportation] for or on behalf of the state for the construction, reconstruction, repair, and maintenance of highways in the state until July 1, 1987."

1981 Amendment: Deleted former (3) that read: "The additional funds established by subsections (10) through (15) of 17-2-102 are effective only through June 30, 1981, at which time they shall cease to exist as a part of the treasury fund structure."

Collateral References

States *key* 75.

Federal or state law as controlling in litigation concerning government bonds or other government paper. 1 L. Ed. 2d 1583.

17-2-105. Maintenance of fund and account records and interfund loans.

Compiler's Comments

1999 Amendment: Chapter 11 near beginning of (2)(b) inserted "to the general fund". Amendment effective July 1, 1999.

1995 Amendment: Chapter 47 in (2)(a), in first sentence after "treasury funds", inserted "excluding pension trust funds" and at beginning of second sentence inserted exception clause; inserted (2)(b) regarding repayment of interest on a loan made from a fund that retains its own interest; and made minor changes in style. Amendment effective February 9, 1995.

1983 Amendment: In second sentence of (1), after "individual", substituted "funds within the debt service, agency, capital projects, and trust fund types" for "subfunds within the sinking fund, bond proceeds and insurance clearance fund, and trust and legacy fund" and at end of sentence changed "subfund" to "fund"; and in last sentence of (1) after "establish", substituted "accounts, funds, or subfunds within any fund type" for "subfunds within any fund".

Collateral References
States *key* 75.

17-2-106. Creation and abolition of new accounts.

Attorney General's Opinions
State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127 (1978).

17-2-107. Accurate accounting records and interentity loans.

Compiler's Comments
2002 Amendment: Chapter 8 inserted (9) prohibiting loan to fund or accounting entity owed federal or third-party funds unless requesting agency bills federal government or third party on earliest date allowable for agency share of costs incurred and requiring borrowing agency to bill federal government or third party and to recertify timely billing to approving agency. Amendment effective August 13, 2002.

2001 Amendment: Chapter 34 in (2)(a) near beginning after "designated in" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; in (2)(b)(i) and (2)(b)(ii) near beginning after "designated in" substituted "17-2-102(4)" for "17-2-102(1)(d)"; in (4) near beginning after "designated in" substituted "17-2-102(4)(a)(iv) and (4)(b) through (4)(f)" for "17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi)"; in (6) near beginning after "designated in" substituted "71-2-102(4)" for "17-2-102(1)(d)"; in (7)(a) near beginning after "designated in" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; in (7)(b)(i) at end substituted "17-2-102(4) for "17-2-102(1)(d)"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 11 at beginning of (2)(a) inserted "Subject to 17-2-105"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 291 in (7)(a) in second sentence substituted "a fund type within each agency" for "an accounting entity"; and in (8) inserted second sentence concerning loans from funds other than the general fund. Amendment effective July 1, 1999.

1997 Amendments: Chapter 42 in (2)(b)(i), in first sentence, and in (2)(b)(ii) substituted "17-2-102(1)(d)" for "17-2-102(1)(d)(i)(A) through (1)(d)(vi)"; in (6) substituted "17-2-102(1)(d)" for "17-2-102(1)(d)(i) through (1)(d)(vi)"; in (7)(b)(i) substituted "17-2-102(1)(d)" for "17-2-102(1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi)"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 547 in (4) deleted last sentence that read: "Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student activity fees used to support student governments at units of the university system, are credited to the state general fund"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 547, L. 1997, provided: "WHEREAS, Article X, section 10, of the Montana Constitution provides in part that the interest from university funds must be devoted to the maintenance and perpetuation of the respective University System institutions; and

WHEREAS, section 17-2-107, MCA, currently requires some of the investment earnings from some university funds to be credited to the state general fund."

1995 Amendment: Chapter 308 in (7)(b)(i), after "system", deleted "or vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In (8), after introductory clause, substituted "the department of administration may authorize loans to accounting entities" for "the department of social and rehabilitation services may maintain positive cash balances", at end of first sentence, after "timing", substituted "of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made" for "for transmittal of obligated matching funds", and in second sentence, after "federal", substituted "private, or other governmental entity sources" for "and county governments"; and made minor changes in style. Amendment effective July 1, 1991.

Severability: Section 2, Ch. 628, L. 1991, was a severability clause.

1989 Amendments: Pursuant to coordination instruction in sec. 3, Ch. 151, L. 1989, in (8) substituted "federal and state special revenue funds" for "federal special revenue fund". Amendment effective March 18, 1989.

Chapter 622 throughout section substituted reference to accounting entity for reference to account; in (1), near end, inserted "or loans"; in (2)(a) inserted reference to fund designated in 17-2-102(1)(a) through (1)(c), after "authorize" deleted "a transfer, as", after "sufficient to" substituted "repay the loan" for "restore the amount so transferred", and inserted last sentence prohibiting impairment of account; inserted (2)(b) relating to higher education funds; near beginning of (2)(c) inserted reference to subsections (2)(a) and (2)(b) and at end deleted "No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended"; in first sentence of (3) inserted reference to Board of Regents and reference to subsections (2)(a) and (2)(b) and near beginning of second sentence substituted "director or board" for "department of administration"; in (4), after "Any loan from", deleted "the general fund or" and deleted reference to subsection (1)(d)(i)(C); inserted (5) relating to a report, analysis, and repayment plan when a loan or loan extension is made to the same entity 2 years in a row; inserted (6) relating to a report on the reason for a negative cash balance 2 years in a row in a higher education fund and providing for a solvency analysis and problem-solving plan; at beginning of (7)(b)(i) inserted exception clause; inserted (7)(b)(ii) relating to inadvertent negative balance; and made minor changes in form and phraseology. Amendment effective April 24, 1989.

Coordination Instruction: Section 3, Ch. 151, L. 1989, provided that if Senate Bill No. 80 is passed and approved to eliminate the other special revenue funds category, then the language "and other" inserted in 17-2-107 is deleted and the language "and state" is inserted in 17-2-107 in place of the language "and other". Senate Bill 80 was enacted as Ch. 700, L. 1989.

1987 Amendments: Chapter 170 inserted (6) allowing Department of Social and Rehabilitation Services to maintain positive cash balances in federal special revenue fund in certain cases.

Chapter 341 in (4) inserted reference to (1)(d)(i)(C); and near end of (4) inserted "other than investment earnings on student activity fees used to support student governments at units of the university system".

Chapter 658 before "vocational-technical" deleted "postsecondary".

1986 Amendment: Chapter 1, Sp. L. June 1986, in (2) near end of first sentence after "income" deleted "provided for the remainder of the fiscal year", after "transferred" inserted "within 1 calendar year", near beginning of second sentence after "repaid" substituted "within 1 calendar year of the date the loan is approved" for "before the end of the fiscal year", and before "subsection (3)" deleted "the criteria of"; deleted former (3) that read: "(3) No loan may be extended into the next fiscal year unless it is for the sole purpose of:

(a) repairing or replacing property damage covered by insurance; or

(b) payment of expenses which will later be reimbursed by:

(i) contractual receipts due from federal revenue;

(ii) receipts due to the auxiliary and restricted subfunds;

(iii) receipts due to the loan fund; or

(iv) receipts from the sale of state prison ranch products"; and in present (3) deleted the first two sentences that read: "These loans may be extended into the next fiscal year if the department of administration receives sufficient written justification therefor from the borrower. A loan extended beyond the fiscal yearend must be repaid within 1 calendar year of the date the loan is approved."

Applicability: Chapter 1, Sp. L. June 1986, applies retroactively, within the meaning of 1-2-109, to loans processed on or after July 1, 1985 (sec. 2, Ch. 1, Sp. L. June 1986).

1985 Amendments: Chapter 136 in (5) substituted "current unrestricted subfund" for "university current unrestricted subfund"; and in (6)(b) after "university system", inserted "and postsecondary vocational-technical centers".

Chapter 354 inserted (3)(b)(iv) relating to receipts from sale of state prison ranch products.

1983 Amendment: In (2), inserted second sentence requiring repayment within 1 calendar year, and at end of third sentence after "met" inserted "even if the loan is extended"; inserted (3) relating to extension; and inserted (4) allowing extension of loan for up to 1 year.

1981 Amendment: Changed internal references to subsections of 17-2-102 to be consistent with amendments in sec. 2, Ch. 28, L. 1981.

Attorney General's Opinions

Disaster and Emergency Expenditures: An interaccount loan was not appropriate to provide a loan of $11.4 million to the Department of State Lands (now Department of Natural Resources and Conservation) from the state's general fund to be repaid by a subsequent appropriation of the same amount from the general fund. An interaccount loan may not be made to a special revenue account when the borrower anticipates no income, other than the possibility of a

supplemental appropriation sometime in the future, with which to repay the loan. The reliance on the possibility of a supplemental appropriation does not meet the requirement of reasonable evidence of future income under the interaccount loan statute. 42 A.G. Op. 123 (1988).

Collateral References

States *key* 76.

17-2-108. Expenditure of nongeneral fund money first.

Compiler's Comments

2005 Amendment: Chapter 151 in (1) near beginning after "22-1-226(5)" inserted "the Montana school for the deaf and blind in 20-8-107(5)"; and made minor changes in style. Amendment effective April 8, 2005.

2003 Amendments — Composite Section: Chapter 332 inserted (3) relating to federal and state fund switching. Amendment effective July 1, 2003.

Chapter 576 in (1) near middle after "22-1-226(5)" inserted "and the department of public health and human services in 53-1-612"; and at beginning of (2) inserted exception clause. Amendment effective July 1, 2003.

1995 Amendment: Chapter 339 at beginning of (1), in exception clause, inserted reference to Montana State Library; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 4 at beginning of (1) inserted exception language regarding the Montana Historical Society. Amendment effective July 1, 1993.

1991 Amendment: In (1), before "nongeneral fund money", inserted "appropriated"; and inserted (2) requiring approving authority to authorize decrease in general fund appropriation. Amendment effective July 1, 1991.

1989 Amendment: At beginning substituted "An office or entity of the executive, legislative, or judicial branch of state government" for "The department" and made minor changes in phraseology.

Attorney General's Opinions

University System — Unanticipated Nongeneral Funds — Carryover: When the Montana University System received unanticipated nongeneral funds which were not used to offset the general fund appropriation or expended prior to expenditure of the general fund appropriation, it must carry over the balances to the next biennium. The Board of Regents may expend these funds by approved budget amendment. 36 A.G. Op. 76 (1976).

Collateral References

When limitations begin to run against actions on public securities or obligations to be paid out of a special or particular fund. 50 ALR 2d 271.

17-2-109. Department access to records.

Collateral References

States *key* 73, 76.

81A C.J.S. States §220.

17-2-110. Fiscal year and financial reports.

Compiler's Comments

1997 Amendment: Chapter 48 in (2), in first and third sentences, substituted "end of each fiscal year" for "close of each fiscal year", at end of first sentence deleted "as of the end of the fiscal year", in second sentence, after "financial", substituted "records" for "statements", and in third sentence, after "reports", inserted "of the uniform accounting and reporting system prescribed in 17-1-102(2)"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in (2), in first sentence after "unit", deleted "vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1985 Amendment: Near middle of first sentence of (2), after "university unit", inserted "vocational-technical center"; and near middle of second sentence of (3), after "agency", inserted "in accordance with generally accepted accounting principles".

17-2-111. State special revenue accounts — report.

Compiler's Comments

1999 Amendment: Chapter 8 in first sentence after "shall" substituted "provide information on" for "conduct a survey of", after "accounts" substituted "as requested by" for "not exempt under 17-1-505 and coordinate with", and at end deleted "to provide information necessary to complete

the review required by 17-1-505" and in second sentence after "provide the" deleted "survey". Amendment effective October 1, 1999.

1995 Amendment: Chapter 509 near beginning, after "shall", substituted "conduct a survey of" for "examine", after "accounts" substituted "not exempt under 17-1-505 and coordinate with the legislative finance committee to provide information necessary to complete the review required by 17-1-505. The department shall provide the survey information to the legislative finance committee" for "and proprietary accounts as required by this section and report the findings and recommendations to the legislative finance committee", and substituted "February 1" for "June 1"; deleted (2) that read: "(2) The department shall examine restrictions against the transfer of unobligated balances in state special revenue accounts to the general fund. If such restrictions are considered unnecessary by the department and if they may be eliminated by administrative action, the department shall to the fullest extent possible eliminate such restrictions and require the transfer of unobligated balances in the accounts to be made to the general fund, either on an annual or biennial basis. If administrative action is unavailable, the department shall make recommendations for legislative action"; deleted (3) that read: "(3) The department shall examine all state special revenue accounts and proprietary accounts to determine if they should continue to exist or be eliminated or modified to provide better program operation or fiscal control. In conducting the examination, the department shall consider whether an account:

(a) is accurately classified as a state special revenue account or proprietary account;

(b) is required by the Montana constitution or by statute;

(c) operates in compliance with the statutes that established the program;

(d) receives an amount of revenue that is equal to or close to the expenditure required for the activity funded by the account;

(e) allows the funded program to operate without supplemental general funds; and

(f) has any restrictions against the transfer of unobligated balances in the account to the general fund"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In first sentence of (1), (2), and (3), after "state", deleted "and other"; and in (3)(a), after "account", deleted "other special revenue account". Amendment effective July 1, 1989.

17-2-131. Genetic engineering technology research and development account created.

Compiler's Comments

2005 Amendment: Chapter 130 at beginning of second sentence deleted "Funds appropriated under section 2, Chapter 686, Laws of 1989, and"; and made minor changes in style. Amendment effective October 1, 2005.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Part 2
Special Accounts

17-2-201. Contingent revolving accounts — when established.

Compiler's Comments

1997 Amendment: Chapter 48 in (1) and (2), in first sentence, substituted reference to state agency for reference to state institution; in (2), near middle of first sentence after "administration", substituted "upon request" for "monthly"; and made minor changes in style. Amendment effective July 1, 1997.

Case Notes

Change in Method of Handling Funds: This section, authorizing the state Board of Examiners (Department of Administration) to establish revolving accounts for state institutions, departments, or commissions, does not vest in the Veterans' Welfare Commission any power that may not be modified or repealed by subsequent legislation; hence the only remedy available to the Commission to correct the method of handling and accounting for the funds allotted to it by the general appropriation bill lies with the Legislature and not with the courts. State ex rel. Davidson v. Ford, 115 M 165, 141 P2d 373 (1943).

Attorney General's Opinions

Educational Institutions — Extension Programs — Fees: All fees derived from extension programs authorized by the State Board of Education must be placed in the general fund. 28 A.G. Op. 7 (1959).

Collateral References

States *key* 127.
81A C.J.S. States §228.

17-2-202. Retention of agency moneys.

Case Notes

State Board of Education: Nothing contained in 17-3-1003 and 17-6-105 or in this section, relative to the duties of the State Treasurer and state boards, is out of harmony with Ch. 94, L. 1929 (since repealed), concerning power of State Board of Education to erect and operate dormitories. Barbour v. St. Bd. of Educ., 92 M 321, 13 P2d 225 (1932).

Attorney General's Opinions

University System — Deposit of Funds — State Treasurer: All money received or collected by the Montana University System from any source whatsoever is required to be deposited in the state treasury except as otherwise provided by statute. 34 A.G. Op. 2 (1971).

Educational Institutions — Extension Programs — Fees: All fees derived from extension programs authorized by the State Board of Education must be placed in the general fund. 28 A.G. Op. 7 (1959).

Collateral References

States *key* 127.
81A C.J.S. States §228.

Part 3
State and Local Charges for Services — Limit on Fund Balance

Part Compiler's Comments

Preamble: The preamble attached to Ch. 270, L. 1997, provided: "WHEREAS, some state agencies and local government entities set and collect charges for all or part of the cost of some public services; and

WHEREAS, there is a growing concern that some state agencies and local government entities are building large reserves in operating revenue due to the amount of charges for services; and

WHEREAS, governments must be responsible to the people they serve and always be vigilant not to charge or retain more in charges for services than is justified by the operating expenses of the government programs supported by the charges."

Retroactive Applicability: Section 5, Ch. 270, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to charges for services, as defined in [section 1] [17-2-301], collected prior to [the effective date of this act]." Effective July 1, 1998.

Effective Date: Section 6, Ch. 270, L. 1997, provided: "[This act] is effective July 1, 1998."

17-2-304. Reports required.

Compiler's Comments

2003 Amendment: Chapter 332 in (1) substituted "September 15" for "August 1". Amendment effective July 1, 2003.

2001 Amendment: Chapter 483 in (2) near beginning after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

CHAPTER 3
FEDERAL REVENUES AND ENDOWMENTS

Chapter Law Review Articles

Reducing State Accountability to the Federal Government: The Suter v. Artist M. Decision to Dismiss Section 1983 Claims for Violating Federal Fund Mandates, Smith, 1992 Wis. L. Rev. 1267 (1992).

Chapter Collateral References
72 Am. Jur. 2d States §68.

Part 1
Federal Assistance Management

17-3-102. Definitions.

Compiler's Comments
1997 Amendment: Chapter 48 in definition of application substituted present text for former text that read: "means a written request to a federal agency for federal assistance program funds"; and made minor changes in style. Amendment effective July 1, 1997.

17-3-105. Governor authorized to accept funds — designation of state agency.

Attorney General's Opinions
Department of Commerce Authorized to Administer Housing Assistance Payments Program — No Restriction in Area Served by Municipal Housing Authority: The Montana Department of Commerce fits the description of a public housing authority under regulations of the United States Department of Housing and Urban Development (HUD) and is authorized to contract with HUD to administer HUD's Housing Assistance Payments Program, including federal Section 8 certificate and voucher programs. The restriction in 7-15-4414 applies only to municipal housing authorities operating in the same geographic location and therefore does not restrict the administration of federal Section 8 housing programs in the same area by an authorized state agency. 44 A.G. Op. 23 (1992).

17-3-106. Fiscal officer for receipt of federal grants.

Compiler's Comments
1997 Amendment: Chapter 48 in (2), at beginning, substituted "A state agency may return from the state treasury, through the state treasurer" for "The state treasurer may return to the federal government". Amendment effective July 1, 1997.
1993 Amendment: Chapter 107 inserted (2) allowing the State Treasurer to return to the federal government any federal funds plus interest that may not be retained by the state and statutorily appropriating those funds to the State Treasurer for the purpose of returning the funds; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References
States *key* 68.
81A C.J.S. States §135.

17-3-107. Federal funds for welfare of Indians.

Collateral References
Indians *key* 7.
42 C.J.S. Indians §§46, 47.

17-3-108. Approved budget amendment.

Compiler's Comments
1993 Amendment: Chapter 109 deleted former first sentence that read: "Approval of a state agency application under 17-3-104 shall not constitute authority to expend any federal assistance program funds subsequently granted." Amendment effective March 18, 1993.

Part 2
Distribution of Federal Return on State Resources

17-3-211. Forest reserve money and other federal funds.

Compiler's Comments
2001 Amendment: Chapter 334 in (1) in two places inserted references to Public Law 106-393; near beginning of (2) after "money" inserted "and the Public Law 106-393 money" and at end inserted "or the Public Law 106-393 account, as appropriate"; and made minor changes in style. Amendment effective July 1, 2001.
1985 Amendment: In (1), near beginning substituted "16 U.S.C. 500" for "an act of congress of May 23, 1908, 35 United States Statutes at Large, p. 260", near middle after "thereunder", inserted "plus interest earned", and near end after "receiving", inserted "full payment of the"; and inserted (2) requiring investment of forest reserve money.

Collateral References

Woods and Forests *key* 8.

81A C.J.S. States §135; 98 C.J.S. Woods and Forests §§8 through 13.

17-3-212. Apportionment of forest reserve funds and other federal funds among counties.

Compiler's Comments

2001 Amendment: Chapter 334 in (1) in first and second sentences after "funds" inserted "all Public Law 106-393 funds" and at end of second sentence substituted "based upon federal law and this section" for "in proportion to the acreage of the forest reserve in each county". Amendment effective July 1, 2001.

1999 Amendment: Chapter 389 in (1) near end of first sentence inserted "from the federal special revenue fund" and in second sentence after "allocation" deleted "between the several counties as follows: all funds received from each forest reserve shall be apportioned between"; and made minor changes in style. Amendment effective July 1, 1999.

1985 Amendments: Chapter 703 substituted present language in lead-in before "all funds" for "The state auditor shall apportion said forest reserve funds between the several counties as follows".

Chapter 712 near end inserted "plus interest thereon, as provided in 17-3-211".

Collateral References

Woods and Forests *key* 8.

17-3-213. Allocation of forest reserve funds and other federal funds — options provided in federal law.

Compiler's Comments

2001 Amendment: Chapter 334 substituted (1) concerning determination of payment options and distribution of forest reserve and Public Law 106-393 funds for "The forest reserve funds so apportioned to each county must be apportioned by the county treasurer in each county as follows"; inserted (2) concerning 25% payment distributed pursuant to subsection (5); inserted (3) concerning 80% to 85% of full payment being used pursuant to subsection (5) and the remainder allocated by the county pursuant to Public Law 106-393; inserted (4) concerning full payment of less than $100,000; inserted introductory clause of (5); in (5)(a) at end substituted "amount designated" for "total amount received"; in (5)(b) at end substituted "amount designated" for "total sum received"; in (6) near beginning of second sentence substituted "subsection (5)(b)" for "this section"; near middle of (7) after "66 2/3%" substituted "distributed under subsection (5)(b)" for "of the total amount received"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In (1)(b)(iii) substituted "county transportation fund provided for in 20-10-146" for "high school transportation fund provided for in 20-10-143". Amendment effective July 1, 1991.

1989 Special Session Amendment: In (1), after "county", deleted "between the several funds"; in (1)(b)(i) substituted "county equalization" for "the annual basic tax levy"; in (1)(b)(ii) substituted "county equalization" for "the annual special tax"; substituted (1)(b)(iv) relating to elementary and high school district retirement fund obligations for former (1)(b)(iv) and (1)(b)(v) relating to elementary teacher retirement and Social Security fund and high school teacher retirement and Social Security fund; and made minor changes in phraseology. Amendment effective July 1, 1990.

1983 Amendment: In (1)(b), changed "common school fund" to "following countywide school levies" and inserted (1)(b)(i) through (1)(b)(v) detailing distribution between countywide school levies; and inserted (2) establishing formula for apportionment.

Collateral References

Counties *key* 161.

20 C.J.S. Counties §195.

Validity of basing public school financing system on local property taxes. 41 ALR 3d 1220.

17-3-221. State treasurer to be custodian of money received under Taylor Grazing Act.

Compiler's Comments

1997 Amendments: Chapter 42 near end, after "Taylor Grazing Act", substituted "43 U.S.C. 315i" for "approved June 28, 1934, (Public No. 482), which provides that the secretary of the United States treasury pay one-half of the moneys received from each grazing district each year

to the state where collected"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 532 inserted second sentence requiring deposit in the federal special revenue fund; and made minor changes in style. Amendment effective July 1, 1997.

U.S. Statute: Public Law 482, referred to in this section, is compiled in the United States Code as Title 43, sec. 315, et seq.

Section Not Codified: Section 79-703, R.C.M. 1947, dealing with the scope of the act disposing of funds from the Taylor Grazing Act, was not codified in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 102, L. 1939.

Collateral References

Public Lands *key* 17.

73A C.J.S. Public Lands §20.

17-3-222. Apportionment of money to counties.

Compiler's Comments

2005 Amendment: Chapter 53 in (1) after "apportion" substituted "the money received under 17-3-221 to the appropriate counties and then allocate the money due each county as follows" for "and allocate the money received under 17-3-221 to the county treasurers, who shall allocate the money as follows"; in (1)(a) after "to the" inserted "county treasurer for deposit in the"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 41 in (1)(b) near beginning after "50% to" inserted "the state general fund to be used for". Amendment effective July 1, 2003.

1999 Amendment: Chapter 51 in (1)(b) at end substituted "BASE funding programs of the school districts in the county" for "county equalization fund". Amendment effective March 15, 1999.

1997 Amendments: Chapter 22 at end of (1)(b) substituted "elementary county equalization fund" for "common school fund of the county"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (1), in introductory clause after "apportion and allocate", substituted "the money received pursuant to 17-3-221" for "these moneys"; inserted (2) statutorily appropriating payments from the state to the County Treasurers; and made minor changes in style. Amendment effective July 1, 1997.

Attorney General's Opinions

Allocation of County Share of Taylor Grazing Act Funds: Pursuant to 20-9-331 and this section, a county must allocate its share of funds provided by the federal government to the state under the Taylor Grazing Act, 43 U.S.C. 315i, in the proportion of 50% to the county general fund and 50% to the equalization account of the elementary BASE funding program (see 2003 and 2005 amendments). 46 A.G. Op. 27 (1996).

Collateral References

Counties *key* 161; Public Lands *key* 17.

20 C.J.S. Counties §231; 73A C.J.S. Public Lands §20.

17-3-240. Federal mineral leasing funds.

Compiler's Comments

2005 Amendment: Chapter 568 in (1) at beginning inserted exception clause and at end after "fund" deleted "and must be distributed as provided in subsections (2) and (3)"; in (2) deleted former first three sentences that read: "At the conclusion of fiscal year 2002, the state treasurer shall distribute all money received in fiscal year 2002 in excess of $21,756,000 pursuant to subsection (3). At the conclusion of fiscal year 2003, the state treasurer shall distribute all money received in fiscal year 2003 in excess of $21,671,000 pursuant to subsection (3). At the conclusion of fiscal year 2004, the state treasurer shall distribute 12.5% of all money received pursuant to subsection (3)"; at beginning of (2) substituted "In" for "At the conclusion of", before "25%" deleted "the state treasurer shall distribute", and at end after "subsection" substituted "(1) must be deposited in the mineral impact account established in 17-3-241 and is dedicated to local governments" for "(3)"; in (3) in first sentence after "distribute the" substituted "revenue dedicated" for "distributions" and after "(2)" deleted "to the mineral impact account established in 17-3-241" and in second sentence after "must be" deleted "allocated"; and made minor changes in style. Amendment effective July 1, 2005.

2002 Amendment: Chapter 5 in (2) substituted $21,671,000 for $20,474,000. Amendment effective August 13, 2002.

Preamble: The preamble attached to Ch. 594, L. 2001, provided: "WHEREAS, in Montana, the royalty revenue from federal Bureau of Land Management land currently accrues only to the state, while similar revenue from forest service land is shared between the state and the counties; and

WHEREAS, 30 U.S.C. 191 provides that money paid to any state is to be used by the state as the legislature of the state may direct, giving priority to those subdivisions of the state socially or economically impacted by development of minerals; and

WHEREAS, county governments located within the counties that generate the money derived from federal mineral leasing are impacted by the development of the minerals; and

WHEREAS, the state does not have a mechanism to return federal mineral leasing funds to the impacted counties of the state as federal law requires."

Effective Date — Applicability: Section 5(2), Ch. 594, L. 2001, provided that this section is effective January 1, 2002, and applies to mineral royalties received after December 31, 2001.

17-3-241. Mineral impact account.

Compiler's Comments

Preamble: The preamble attached to Ch. 594, L. 2001, provided: "WHEREAS, in Montana, the royalty revenue from federal Bureau of Land Management land currently accrues only to the state, while similar revenue from forest service land is shared between the state and the counties; and

WHEREAS, 30 U.S.C. 191 provides that money paid to any state is to be used by the state as the legislature of the state may direct, giving priority to those subdivisions of the state socially or economically impacted by development of minerals; and

WHEREAS, county governments located within the counties that generate the money derived from federal mineral leasing are impacted by the development of the minerals; and

WHEREAS, the state does not have a mechanism to return federal mineral leasing funds to the impacted counties of the state as federal law requires."

Effective Date — Applicability: Section 5(2), Ch. 594, L. 2001, provided that this section is effective January 1, 2002, and applies to mineral royalties received after December 31, 2001.

Part 3
Federal Sums in Lieu of Taxes

17-3-301. Definitions.

Collateral References

Taxation *key* 5.

84 C.J.S. Taxation §198.

Part 10
Endowments

17-3-1001. State institutions which may take by gift, bequest, or grant.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of corrections" for "department of corrections and human services" and inserted reference to Department of Public Health and Human Services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Attorney General's Opinions

Gift to Private Nonprofit Corporation: Under 20-8-111, prior to the 1983 amendment, the Board of Public Education, in its discretion, could give money that had been donated for the use and benefit of the Montana School for the Deaf and Blind to a private nonprofit corporation created and controlled by the Board and operated for the benefit of that school. However, the Board remained accountable for the money until it was used directly for the general support, maintenance, or improvement of the Montana School for the Deaf and Blind. 38 A.G. Op. 111 (1980).

Conditional Bequests: The State Soldiers' Home (replaced in 1965 by the Montana Veterans' Home) is authorized to accept conditional bequests and the prescribed conditions must be fulfilled as far as possible. 28 A.G. Op. 36 (1959).

Collateral References

States *key* 82, 85.

81A C.J.S. States §§145, 146.

72 Am. Jur. 2d States §25.

Validity and effect of gift for charitable purposes which excludes otherwise qualified beneficiaries because of their race or religion. 25 ALR 3d 736.

17-3-1002. Persons who may make gifts to state institutions.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of corrections" for "department of corrections and human services" and inserted reference to Department of Public Health and Human Services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

17-3-1003. Support of state institutions.

Compiler's Comments

2003 Amendment: Chapter 355 in (1) in first sentence inserted reference to 77-2-362; and made minor changes in style. Amendment effective April 17, 2003.

Severability: Section 20, Ch. 355, L. 2003, was a severability clause.

1999 Amendment: Chapter 122 in (1) near middle of first sentence inserted reference to 77-1-108; in (2) at beginning in exception clause inserted reference to subsection (1); in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 1999.

Repeal of Termination Date: Section 3, Ch. 157, L. 1995, repealed sec. 12, Ch. 533, L. 1993, that terminated this section. Repealer effective June 30, 1995.

1993 Amendment: Chapter 533 in (1), near beginning after "appropriated", inserted "after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

1992 Special Session Amendment: Chapter 14 at beginning of (2) inserted exception clause; and inserted (3) requiring money received from timber sales from a state institution land grant to be deposited to the permanent trust fund for institution support. Amendment effective February 4, 1992.

Preamble: The preamble attached to Ch. 14, Sp. L. January 1992, provided: "WHEREAS, the Legislature recognizes that timber on school trust lands is a finite renewable resource to be managed on a sustainable yield basis by the Department of State Lands [now Department of Natural Resources and Conservation]."

1989 Amendment: At end of (2) substituted "state" for "other"; and made minor changes in grammar. Amendment effective July 1, 1989.

1983 Amendment: Substituted "other special revenue funds" for "federal and private revenue fund".

Case Notes

State Board of Education: Nothing contained in 17-2-202 and 17-6-105 or in this section, relative to the duties of the State Treasurer and state boards, is out of harmony with Ch. 94, L. 1929 (since repealed), concerning power of State Board of Education to erect and operate dormitories. Barbour v. St. Bd. of Educ., 92 M 321, 13 P2d 225 (1932).

Attorney General's Opinions

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

University System — Deposit of Funds — State Treasurer: All money received or collected by the Montana University System from any source whatsoever is required to be deposited in the state treasury except as otherwise provided by statute. 34 A.G. Op. 2 (1971).

Educational Institutions — Extension Programs — Fees: All fees derived from extension programs authorized by the State Board of Education must be placed in the general fund. 28 A.G. Op. 7 (1959).

Collateral References

States *key* 124, 127, 131.

81A C.J.S. States §§225, 228, 236 through 239.

17-3-1004. Disbursement of funds.

Compiler's Comments

1995 Amendment: Chapter 325 in (1) changed "shall" to "may" and substituted "treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Collateral References

States *key* 123.

81A C.J.S. States §226.

CHAPTER 4
DEBT COLLECTION

Chapter Collateral References

72 Am. Jur. 2d States §63.

Part 1
Debt Collection Service

Part Collateral References

Use of criminal process to collect debt as abuse of process. 27 ALR 3d 1202.

17-4-101. Definitions.

Compiler's Comments

1999 Amendment: Chapter 105 in introduction inserted "unless the context indicates otherwise"; in definition of agency in (a) before "offices" deleted "state", inserted "political subdivisions", and before "state government" inserted "this" and in (c) inserted "federal"; and in definition of department substituted "department of revenue provided for in 2-15-1301" for "department of administration". Amendment effective July 1, 1999.

Saving Clause: Section 4, Ch. 105, L. 1999, was a saving clause.

Applicability: Section 6, Ch. 105, L. 1999, provided: "[This act] applies to refunds or payments made after December 31, 1999."

1997 Amendments: Chapter 17 in definition of agency, in (b), substituted "department" for "state auditor" and inserted (c) referencing the Internal Revenue Service; and made minor changes in style. Amendment effective February 11, 1997.

Chapter 48 in definition of agency, in (b), substituted "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 325 in definition of Department substituted "department of administration" for "department of revenue"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 substituted "agency" for "state agency" as defined term and inserted (b) concerning taxes; and made minor changes in style. Amendment effective July 1, 1995.

Coordination Instruction: Section 7(1)(a), Ch. 589, L. 1995, provided: "(1) If [this act] and House Bill No. 563 are both passed and approved, then:

(a) the definition of department in [section 11] [17-4-101] of House Bill No. 563 is effective and the striking of the definition in [section 1 of this act] [17-4-101] is void." House Bill No. 563 was approved as Ch. 325, L. 1995.

17-4-102. Accounts of persons indebted to state.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 325 in (1) substituted "The department may" for "In his discretion it is the duty of the state auditor to"; in (1)(a), after "amount",

substituted "owed, and" for "to the treasurer and, upon presentation and filing of the treasurer's receipt therefor" and at end deleted "and charge the treasurer therewith"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 in (1)(a), after "indebted to", substituted "agencies" for "the state"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Collateral References

States *key* 73, 122.

81A C.J.S. States §§134, 223, 224.

72 Am. Jur. 2d States §§59, 60.

17-4-103. Collection of claims by department.

Compiler's Comments

1995 Amendment — Composite Section: Chapter 325 throughout section substituted "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 throughout section substituted "department" for "state auditor"; in (1)(a), near end, substituted "an agency" for "the state"; in (1)(a)(iii), at end, substituted "agencies" for "state"; in (3)(a) inserted third sentence concerning cost of assistance in collecting personal property taxes; inserted (3)(b) concerning collection of personal property taxes; at end of (4) substituted "agencies" for "the state"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Coordination Instructions: Pursuant to sec. 16(2), Ch. 529, L. 1995, a coordination section, throughout section substituted Department of Administration for State Auditor. Amendment effective April 25, 1995.

Section 7(1)(b), Ch. 589, L. 1995, provided: "(1) If [this act] and House Bill No. 563 are both passed and approved, then:

(b) the references to "state auditor" in 17-4-103, 17-4-105, and 17-4-106 of [this act] are changed to "department"." House Bill No. 563 was approved as Ch. 325, L. 1995.

1991 Amendment: At end of (3) inserted "and may separately charge the state agency that transferred the debt for the cost of assistance. The state auditor may designate the percentage of collected proceeds to be retained for the cost of assistance"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: In (3) and (4) changed references to Department of Revenue to State Auditor. Amendment effective January 1, 1990.

Administrative Rules

ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.

Case Notes

Change of Venue From Lewis and Clark County Based on Residence Denied: Subsection (1) does not necessarily grant exclusive jurisdiction to the Lewis and Clark County District Court. However, there can be no doubt that Courts in that county are a proper venue and the Courts are powerless, based upon the residence of the parties, to transfer the cause to another venue even though the other venue may also have been proper. The power to change the place of trial based on residence exists only when the county designated in the complaint is not the proper county. St. v. Sec. St. Bank, 184 M 461, 603 P2d 681, 36 St. Rep. 2166 (1979).

Attorney General's Opinions

Authority of Auditor to Recover Unauthorized Compensation: The State Auditor has the authority to compel an elected member of the Public Service Commission to repay unauthorized compensation received from the state for service in the Montana Army National Guard. 43 A.G. Op. 43 (1989).

Collateral References

States *key* 122.

81A C.J.S. States §§223, 224.

17-4-104. Circumstances when department shall assist.

Compiler's Comments

1995 Amendment: Chapter 325 throughout section substituted "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: Throughout section changed references to Department of Revenue to State Auditor; inserted (4) relating to debts resulting from a child support obligation; and made minor changes in phraseology. Amendment effective January 1, 1990.

Administrative Rules

Title 23, chapter 2, subchapter 4, ARM Referral of debt for recovery and offset.

Title 37, chapter 2, subchapter 3, ARM Recovery and offset of debts.

Collateral References

States *key* 73, 76.

81A C.J.S. States §220.

Constitutional provision against imprisonment for debt as applicable to nonpayment of tax. 48 ALR 3d 1324.

17-4-105. Authority to collect debt — offsets.

Compiler's Comments

2003 Amendment: Chapter 236 inserted (6) providing that a debt owed to a state agency by a local government may not be offset against a payment due to a local government. Amendment effective April 7, 2003.

1999 Amendment: Chapter 105 at end of second sentence in (2) inserted "pursuant to 15-1-211"; deleted former (3) that read: "(3) (a) The department of revenue retains the power to offset tax refunds due individuals against taxes owed the state. The department of revenue may not exercise this right of offset until the taxpayer has been notified by the department of revenue and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department of revenue shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department of revenue after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and a decision made as a result of that proceeding has become final"; and inserted (3) allowing the department to agree with the federal government to offset against tax refunds payable by the federal government and pay to Montana taxes or other debts owed Montana, allowing the department to agree with another state to offset against tax refunds payable by the other state and pay to Montana taxes or other debts owed Montana, allowing Montana to agree on a reciprocity basis to allow another state to offset against tax refunds payable by Montana the whole or part of an amount owed for taxes to the other state, and providing that another state cannot offset against tax refunds unless it has notified the taxpayer of the taxes due, given the taxpayer an opportunity for review or appeal, and given the department proof of notification and opportunity for review or appeal. Amendment effective July 1, 1999.

Saving Clause: Section 4, Ch. 105, L. 1999, was a saving clause.

Applicability: Section 6, Ch. 105, L. 1999, provided: "[This act] applies to refunds or payments made after December 31, 1999."

1997 Amendment: Chapter 482 near beginning of fourth sentence in (4)(c), after "must", inserted "initially" and inserted fifth sentence requiring Department, following teleconferencing hearing, to grant de novo in-person hearing upon request or upon showing that party prejudiced by lack of in-person hearing. (See coordination instruction comments.) Amendment effective May 2, 1997.

Coordination Instruction: Section 100, Ch. 552, L. 1997, a coordination section, deleted the amendment in (4)(c), inserting the fifth sentence, that read: "At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall, following a teleconferencing hearing, grant a de novo in-person hearing."

1995 Amendments — Composite Section: Chapter 325 throughout section substituted "department" for "state auditor"; in (3), (3)(a), in three places, (3)(b), and (3)(c), after "department", inserted "of revenue"; in (4)(a), after "department", inserted "of administration"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2), in second sentence, in (4)(a), in three places, and in (4)(c), in last sentence, substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 throughout section substituted "department" for "state auditor"; in (1), in second sentence after "collection", substituted "agents" for "agencies" and at end substituted "to agencies" for "the state"; in (2), near beginning of first sentence after "shall", inserted "when appropriate" and after "entity by" deleted "any state" and in fourth sentence, after "respective", deleted "state"; in (3)(a), at beginning, substituted "department of revenue" for "department"; in (4)(c) inserted second sentence concerning request in writing; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Coordination Instruction: Section 7(1)(b), Ch. 589, L. 1995, provided: "(1) If [this act] and House Bill No. 563 are both passed and approved, then:

(b) the references to "state auditor" in 17-4-103, 17-4-105, and 17-4-106 of [this act] are changed to "department"." House Bill No. 563 was approved as Ch. 325, L. 1995.

1993 Amendment: Chapter 429 in (4)(a), after "A debt", deleted "resulting from or relating to a child support obligation"; deleted (4)(a)(ii) and (4)(a)(iii) that read: "(ii) the debt is for repayment of child support payments retained contrary to the assignment at 53-2-613; or

(iii) the debt is for costs of fees under any contract, judgment, or administrative order entered in the course of child support enforcement by the department of social and rehabilitation services"; in (4)(c) inserted second sentence disallowing hearing to person owing valid debt; and made minor changes in style.

Severability: Section 5, Ch. 429, L. 1993, was a severability clause.

1989 Amendments: Chapter 419 in (1), in two places, changed references to Department of Revenue to State Auditor and in first sentence, after "authority to collect it", deleted "including the power to offset tax refunds due to individuals against the debt transferred by the state agency to the department provided the department may not exercise this right of offset until the debtor has first been notified by the department and given an opportunity for a hearing"; in (2), at beginning, deleted "upon notification by the department", after "any amount" inserted "including refunds or taxes", at end of first sentence, after "any state agency", inserted provisional clause relating to notification and opportunity for hearing, inserted second sentence relating to amounts collected as child support, and in last sentence inserted clause giving child support debts priority; inserted (3) relating to offset of individual tax refunds against taxes owed the state; inserted (4) relating to debts resulting from child support obligations; deleted former (4) that read: "(4) The department may establish and maintain a procedure to offset against a debtor's income tax refund any debt which is assigned to the state pursuant to 53-2-613 or which the department is attempting to collect on behalf of an individual who has applied for service under 40-5-203. Such debt must have accrued through written contract, court judgment, or administrative order and be in the form of a liquidated sum due and owing for the support of a minor child"; and made minor changes in phraseology.

Section 28, Ch. 702, L. 1989, in (2) and (4) changed references to Department of Revenue to references to Department of Social and Rehabilitation Services. The direction to the Code Commissioner erroneously provided that the change be made in 17-4-105(3)(d). The apparent intent was to change the reference in 17-4-105(4). The Code Commissioner also changed a similar reference in (2) to reflect the intent of sec. 28, Ch. 702, L. 1989. Amendment effective January 1, 1990.

1989 Statement of Intent: The statement of intent attached to Ch. 419, L. 1989, provided: "A statement of intent is required for this bill because 17-4-105 is being amended to require the department of revenue [now department of public health and human services, pursuant to sec. 28, Ch. 702, L. 1989] to adopt rules governing procedures to be used in conducting a hearing relating to tax offsets for the purpose of satisfying unpaid child support obligations."

1985 Amendments: Chapter 160 in (1) at end of last sentence, after "owed the state", deleted "by debtors residing outside the boundaries of the state"; and in (2) at beginning of first sentence, substituted introductory clause for "In his discretion it is the duty of the state auditor to" and in second sentence, made deductions mandatory rather than discretionary.

Chapter 679 inserted (4) authorizing offsetting of child support debts.

Administrative Rules

ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.

ARM 42.15.326 Request for adjustment of joint return.

ARM 42.15.327 Statement required for adjustment of joint return.

Case Notes

Child Support Enforcement Remedies Held Separate Remedies to Be Exercised Within Ten-Year Statute of Limitations — Due Process Requirements Applicable to Separate Remedies — Connell Distinguished: Emery was divorced from Keep in 1987, and Emery was ordered to pay child support. In exchange for Keep's receipt of payments under the Aid to Families With Dependent Children (now FAIM financial assistance) program, Keep assigned the Child Support Enforcement Division (CSED) of the Department of Public Health and Human Services her right to receive child support and her right to enforcement of support. In 1991, CSED served Emery with a Notice of Intent (NOI) to collect the child support payments by referral of his debt to the Internal Revenue Service (IRS) for collection by interception of any federal tax refund owed to Emery. In response to the NOI, Emery timely requested an administrative hearing before CSED, which was granted, but the hearing was indefinitely continued, and no interception was made by the IRS. In 1992, CSED sent a second NOI to Emery, but Emery made no response. In 1992, no interception was made by the IRS. Also in 1992, Emery and Keep executed a stipulated change of their children's custody. In that stipulation, Keep waived her ability to collect child support arrearages, and the District Court approved the stipulation in an order. In 1995, CSED sent a third NOI to Emery notifying him of CSED's intent to collect child support payments by interception of Emery's federal tax refund. In response to the 1995 NOI, Emery requested a hearing before the CSED. Within 8 months from service of the 1995 NOI upon Emery, the Administrative Law Judge (ALJ) held that CSED's assigned right to child support was not affected by the waiver because CSED was not a party to the stipulation. The District Court approved the decision of the ALJ. On a motion for alteration or amendment of the District Court's order, the District Court, relying upon In re Connell v. St., 280 M 491, 930 P2d 88 (1997), held that the delay between Emery's 1991 request for administrative review and the 1996 hearing before the ALJ violated Emery's right to due process of law and his right to the administration of justice without delay. The Supreme Court reviewed its decision in Connell and pointed out that in that case, 44 months elapsed before the ALJ made a decision in response to Connell's request for administrative review of a CSED NOI and that the 44-month lapse denied Connell his constitutional rights to due process and administration of justice without delay. In contrast, the Supreme Court held that the NOI served upon Emery in 1995 in the case before it was a separate proceeding from the NOI served upon him in 1991 and was not, as interpreted by the District Court, a continuation of the 1991 proceeding because the 1991 proceeding was discontinued once the IRS failed to make an interception of the federal tax refund owed to Emery. Further, the Supreme Court pointed out that the various administrative remedies, such as state debt offsets, license suspension, warrants for distraint, and state income withholding, are all separate remedies for the CSED to pursue, and election of one remedy does not preclude pursuit of another remedy after, or at the same time as, the remedy chosen by the CSED until the debt assigned to the CSED is fully paid. Any of the remedies, the Supreme Court held, were subject to the 10-year statute of limitations provided in 27-2-201. The Supreme Court therefore held that because the lapse of time in the case before it was between different proceedings and not within one proceeding and the lapse of time within the 1995 proceeding was reasonable, Emery's right of due process and right to administration of justice without delay were not violated. The Supreme Court also held that because Emery had no right under Montana law to a hearing when no action was being taken by the CSED against him, the failure of the CSED to grant a hearing did not implicate Emery's rights of due process and administration of justice. In response to Emery's argument that the CSED did not act soon enough in initiating its collection action, the Supreme Court held that Art. II, sec. 16, Mont. Const., imposes no requirement that the CSED act "speedily and without delay" within the 10-year statute of limitations provided in 27-2-201, noting that imposition of such a requirement would effectively eliminate that 10-year limitation period. For these reasons, the Supreme Court reversed the decision made by the District Court that Emery's constitutional rights were violated by the decision of the CSED. Emery v. St., 286 M 376, 950 P2d 764, 54 St. Rep. 1454 (1997).

17-4-106. Agency owed debt to receive all money collected.

Compiler's Comments

2003 Amendment: Chapter 114 in (2) at beginning of second sentence deleted "Except as provided in subsection (3)"; and deleted (3) that read: "(3) The amount of $400,000 is transferred from the internal service fund referred to in subsection (2) to the general fund prior to June 30, 2003." Amendment effective October 1, 2003.

2002 Amendment: Chapter 7 in (2) at beginning of second sentence inserted exception clause; inserted (3) transferring $400,000 from the internal service fund to the general fund; and made minor changes in style. Amendment effective August 13, 2002.

1997 Amendment: Chapter 17 in (2) deleted former fourth sentence that read: "At the end of each biennium, any fund balance in excess of $10,000 must be transferred to the general fund"; and made minor changes in style. Amendment effective February 11, 1997.

1995 Amendments: Chapter 325 in three places substituted "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 throughout section substituted "department" for "state auditor"; in (1) inserted second sentence concerning delinquent personal property tax collection; and made minor changes in style. Amendment effective July 1, 1995.

Coordination Instruction: Section 7(1)(b), Ch. 589, L. 1995, provided: "(1) If [this act] and House Bill No. 563 are both passed and approved, then:

(b) the references to "state auditor" in 17-4-103, 17-4-105, and 17-4-106 of [this act] are changed to "department"." House Bill No. 563 was approved as Ch. 325, L. 1995.

1991 Amendment: In (1), after "state agencies", inserted "except funds collected under 17-4-103(3)"; inserted (2) establishing procedure for handling funds collected under 17-4-103(3); and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: Changed reference to Department of Revenue to State Auditor. Amendment effective January 1, 1990.

Administrative Rules

ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.

17-4-107. Writeoff procedures.

Compiler's Comments

1997 Amendments: Chapter 17 deleted second sentence that read: "The procedures must be established in accordance with subsection (2)"; deleted former (2) that read: "(2) The department may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies that are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. The procedures must include the reporting to the budget director of any canceling and writing off of accounts receivable"; and made minor changes in style. Amendment effective February 11, 1997.

Chapter 347 deleted second sentence that read: "The procedures must be established in accordance with subsection (2)"; deleted (2) that read: "(2) The department may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies that are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. The procedures must include the reporting to the budget director of any canceling and writing off of accounts receivable"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 in (1), in two places, substituted reference to Department for reference to State Auditor; in (2), after "department", deleted "of administration"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 349 in second sentence of (2), after "reporting", substituted "to the budget director" for "as provided in 5-11-210"; and made minor changes in style.

1991 Amendment: In second sentence of (2) inserted reference to 5-11-210 and at end deleted "to the next session of the legislature". Amendment effective March 20, 1991.

1989 Amendment: Changed "department of revenue" to "state auditor"; and made minor change in phraseology. Amendment effective January 1, 1990.

17-4-108. Circumstances under which previously written-off debt may be collected.

Compiler's Comments

1997 Amendments: Chapter 17 near middle substituted "17-4-107" for "17-4-107(1)". Amendment effective February 11, 1997.

Chapter 347 near middle substituted "17-4-107" for "17-4-107(1)". Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 substituted "department" for "state auditor". Amendment effective July 1, 1995.

1989 Amendment: Changed reference to Department of Revenue to State Auditor. Amendment effective January 1, 1990.

17-4-110. State agencies to adopt rules.

Administrative Rules

Title 23, chapter 2, subchapter 4, ARM Referral of debt for recovery and offset.

Title 37, chapter 2, subchapter 3, ARM Recovery and offset of debts.

ARM 42.15.326 Request for adjustment of joint return.

ARM 42.15.327 Statement required for adjustment of joint return.

17-4-111. Right of hearing to aggrieved persons.

Compiler's Comments

1999 Amendment: Chapter 105 substituted "17-4-105(4)(c)" for "17-4-105(3)"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 4, Ch. 105, L. 1999, was a saving clause.

Applicability: Section 6, Ch. 105, L. 1999, provided: "[This act] applies to refunds or payments made after December 31, 1999."

1989 Amendment: Near end substituted reference to 17-4-105(3) and the Montana Administrative Procedure Act for "as provided by law for taxpayer appeals". Amendment effective January 1, 1990.

Administrative Rules

ARM 42.15.327 Statement required for adjustment of joint return.

CHAPTER 5
PUBLIC BOND ISSUES

Chapter Law Review Articles

Public Bonds and Warrants, 22 Mont. L. Rev. 127 (1961).

Tax-Exempt Bond Examination Procedures, Foster & Spector, 99 Tax Notes 731 (2003).

The Impact of State Disclosure Requirements on Municipal Yields, Brown & Koch, 51 Nat'l Tax J. 733 (1998).

Constitutional Limitations on Borrowing: An Analysis of State Bonded Indebtedness, Kiewiet & Szakaly, 12 J.L., Econ., & Organization 62 (1996).

Financing America's Public Infrastructure: Issues for Local Governments, 22 Akron L. Rev. 381 (1989).

Chapter Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§13, 39, 40.

Adverse impact upon existing business as factor affecting validity and substantive requisites of issuance, by state or local governmental agencies, of economic development bonds in support of private business enterprise. 39 ALR 4th 1096.

Construction and effect of absentee voters' laws. 97 ALR 2d 257.

Power of state to issue bonds as implying power to refund them. 1 ALR 2d 134.

Part 1
Rates of Interest — Notice

Part Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§375, 378.

17-5-101. Definitions.

Compiler's Comments

1995 Amendments — Phrase Change — Code Commissioner Correction: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in the definition of political subdivision. Amendment effective July 1, 1995.

Chapter 418 in definition of political subdivision, in (b), deleted reference to "division of water resources"; and made minor changes in style. Amendment effective July 1, 1995. The amendment also substituted "department of natural resource management" for "department of natural resources and conservation". As enacted, Ch. 418, L. 1995, no longer created a Department of Natural Resource Management but retained the Department of Natural Resources and Conservation. Pursuant to sec. 73, Ch. 18, L. 1995, the Code Commissioner has corrected the erroneous reference.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

17-5-102. Rate of interest on bonds to be determined by governing bodies.

Compiler's Comments

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Deleted "except that no such rate shall exceed 7% except revenue bonds issued under the terms of Title 7, chapter 7, parts 44 and 45, Title 7, chapter 13, part 43, and 90-5-101 through 90-5-113, which rate shall not exceed 9%" at the end of (1); added subsection (2) relating to superiority of interest rates established by this section.

Case Notes

Interest Rate on Special Assessment: A municipality or county acting in behalf of a legally formed special improvement district, under the provisions of Title 7, ch. 12, may issue and sell bonds or warrants bearing an interest rate in excess of 7% per annum. State ex rel. Townsend v. D. A. Davidson, Inc., 166 M 104, 531 P2d 370 (1975).

Attorney General's Opinions

Payment Directly to Purchaser Not Considered Interest: A payment made directly to the purchaser of industrial development revenue bonds by the user-beneficiary of the bond proceeds from the user-beneficiary's own funds did not have to be considered in applying the interest limitation that was contained in 17-5-102 prior to 1981 amendment. 38 A.G. Op. 78 (1980).

Sale of Bonds at Less Than Face Value: Prior to 1981 amendment removing specific interest rate limitations, the sale of industrial revenue bonds issued pursuant to Title 90, ch. 5, part 1, at a price less than the face value of the bonds did not violate 17-5-102 if the yield of the bonds exceeded the 9% limitation. 38 A.G. Op. 78 (1980).

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§375, 378.

17-5-103. Rate of interest on special assessments determined by governing bodies — limitations.

Compiler's Comments

2005 Amendment: Chapter 451 at end after "interest on the bonds" inserted reference to additional rate of interest to pay principal and interest on bonds; and made minor changes in style. Amendment effective April 28, 2005.

Case Notes

Rate of Interest: In order to give the phrase "the rate of interest on said bonds" any meaning, a municipality or county acting on behalf of a special improvement district has the power to issue and sell bonds or warrants bearing an interest rate in excess of 7% per annum (see 2005 amendment). State ex rel. Townsend v. D. A. Davidson, Inc., 166 M 104, 531 P2d 370 (1975).

17-5-104. Effect of revisions on bonds previously authorized.

Compiler's Comments

1983 Amendment: Made section permanent. (Section was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

17-5-105. Redemption of bonds — optional method.

Compiler's Comments

1983 Amendment: Made section permanent. (Section was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

17-5-106. Notice of public bond sale.

Compiler's Comments

Codification: Chapter 173, L. 1987, did not contain a codification instruction for this section, but it clearly was intended to be codified in this part.

Collateral References

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date. 98 ALR 2d 1331.

17-5-111. Electronic submission of bids.

Compiler's Comments

Effective Date: Section 24, Ch. 451, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

Part 2
Bond Validating Act

17-5-202. Definitions.

Compiler's Comments

1997 Amendment: Chapter 42 in definition of public body substituted "department of natural resources and conservation" for "board of natural resources and conservation"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in the definition of public body. Amendment effective July 1, 1995.

1981 Amendment: Inserted "or any commission, authority, or agency of a political or governmental subdivision" after "subdivision of the state" in (1).

Collateral References

Federal or state law as controlling in litigation concerning government bonds or other government paper. 1 L. Ed. 2d 1583.

17-5-203. Validation.

Case Notes

Constitutionality: Chapter 45, L. 1941, construed in connection with Ch. 55, L. 1941 (omitted), directing the state Board of Examiners to issue and sell bonds for the erection of necessary buildings at the state hospital for the insane, did not run counter to the provisions of Art. XIII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 8, 1972 Mont. Const.), prescribing the manner in which state indebtedness in excess of $100,000 may be created. Such provision did not require that a law creating a state debt in excess of $100,000 must be submitted to the people at a general election for their approval or rejection, but only a law authorizing the debt. Nordquist v. Ford, 112 M 278, 114 P2d 1071 (1941).

Collateral References

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax. 68 ALR 2d 1041.

17-5-205. Application.

Compiler's Comments

2005 Amendment: Chapter 9 at end substituted "March 15, 2005" for "March 27, 2003". Amendment effective March 15, 2005.

2003 Amendment: Chapter 139 at end extended the application of the Bond Validating Act from February 9, 2001, to March 27, 2003. Amendment effective March 27, 2003.

2001 Amendment: Chapter 8 substituted "February 9, 2001" for "February 12, 1999". Amendment effective February 9, 2001.

1999 Amendment: Chapter 9 at end substituted "February 12, 1999" for "February 24, 1997". Amendment effective February 12, 1999.

1997 Amendment: Chapter 31 at end substituted "February 24, 1997" for "March 22, 1995". Amendment effective February 24, 1997.

1995 Amendment: Chapter 190 at end substituted "March 22, 1995" for "February 8, 1993". Amendment effective March 22, 1995.

1993 Amendment: Chapter 19 at end substituted "February 8, 1993" for "March 26, 1991"; and made minor changes in style. Amendment effective February 8, 1993.

1991 Amendment: At end substituted "March 26, 1991" for "March 20, 1989". Amendment effective March 26, 1991.

1989 Amendment: Substituted "March 20, 1989" for "March 16, 1987". Amendment effective March 20, 1989.

1987 Amendment: Changed "March 26, 1985" to "March 16, 1987".

1985 Amendment: Changed "April 19, 1983" to "March 26, 1985".

1983 Amendment: Changed "April 6, 1981" to "April 19, 1983".

1981 Amendment: Substituted "April 6, 1981" for "January 15, 1979".

Collateral References

Supreme Court's construction of Eleventh Amendment restricting federal judicial power to entertain suits against a state. 50 L. Ed. 2d 928.

Part 3
Refunding Bonds

Part Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§222 through 228.

For a discussion of bonds generally, see O'Neill v. Yellowstone Irrigation District, 44 M 492, 121 P 283 (1912), and Edmunds v. Glasgow, 89 M 596, 300 P 203, 86 ALR 1052 (1931).

Governmental unit's power to issue bonds as implying power to refund them. 1 ALR 2d 134.

17-5-301. Refunding bonds or debentures authorized — interest rate.

Compiler's Comments

1983 Amendment: Deleted former (1) and (2), which read: "(1) when the amount of any such issue of bonds or debentures is less than $500,000, the same shall not be refunded unless such refunding bonds shall bear interest at a rate of at least 1/2 of 1% per annum less than the rate of interest on the bonds to be refunded;

(2) when the amount of any such issue of bonds or debentures is more than $500,000, the same shall not be refunded unless such refunding bonds shall bear interest at a rate of at least 1/4 of 1% per annum less than the rate of interest on the bonds to be refunded; and"; made former (3) second sentence of section, in which was inserted "and interest" after "the principal" and "costs of issuance" before "plus any defaulted interest".

Collateral References

81A C.J.S. States §259.

64 Am. Jur. 2d Public Securities and Obligations §§224 through 228.

17-5-302. Character of bonds.

Compiler's Comments

2005 Amendment: Chapter 374 deleted former (1) that read: "(1) All refunding bonds or debentures issued by the board of examiners under the provisions of this part shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semiannual payments due thereon, which coupons shall bear the signature of each member of the board of examiners"; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

17-5-303. Application of refunding bond law.

Compiler's Comments

1983 Amendment: At end of section, inserted "or with the provisions of any law authorizing particular refunding bonds".

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§222 through 228.

Governmental unit's power to issue bonds as implying power to refund them. 1 ALR 2d 134.

17-5-304. Cost and expense of refunding.

Compiler's Comments

2005 Amendment: Chapter 374 near beginning after "may" substituted "pay" for "require the purchaser to bear", after "debentures" deleted "in connection with the bid submitted, or the cost and expense may", and at end substituted "from the proceeds of the bonds or from the general fund" for "out of the sinking and interest fund when there is money in such fund"; deleted former second sentence that read: "The balance remaining in such sinking and interest fund shall be transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law"; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

1983 Amendment: In last sentence, substituted "transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law" for "transferred to and shall become the sinking and interest fund for such refunding bonds or debentures. Any and all moneys thereafter received by the state treasurer for such sinking and interest fund shall be placed in the sinking and interest fund of such refunding bonds or debentures".

Collateral References

72 Am. Jur. 2d States §84.

17-5-305. Sale of bonds and debentures.

Compiler's Comments

1983 Amendment: Deleted from end of (2) "subject, however, to the provisions for reduced interest rates required by 17-5-301".

Collateral References

81A C.J.S. States §256.

64 Am. Jur. 2d Public Securities and Obligations §§193 through 214.

When limitations begin to run against actions on public securities or obligations to be paid out of a special or particular fund. 50 ALR 2d 271.

Part 4
Long-Range Building Program Bonds

Part Case Notes

Approval by Voters: Issuance of new bonds under 17-5-410 (now repealed) created a liability within the meaning of Art. XIII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 8, 1972 Mont. Const.), and must be approved by a vote of the people before the bonds are issued. State ex rel. Ward v. Anderson, 158 M 279, 491 P2d 868 (1971).

Part Attorney General's Opinions

Two-Thirds Majority Required: When a bill authorizing the Department of Administration to incur future lease and/or purchase payments did not pass by a two-thirds majority of each house as required by the Montana Constitution, no legal method or procedure existed for a lease-purchase plan for construction of the building. 35 A.G. Op. 41 (1973).

Part Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§102, 222 through 228.

Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private religious-affiliated colleges or universities. 95 ALR 3d 1000.

Validity of submission of proposition to voters at bond election as affected by inclusion of several structures or units. 4 ALR 2d 617.

Governmental unit's power to issue bonds as implying power to refund them. 1 ALR 2d 134.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters. 97 ALR 442.

17-5-405. Debt service account.

Compiler's Comments

1997 Amendment: Chapter 422 deleted former (1), (2), and (3) that read: "(1) From and after the pledge and appropriation of any special tax to the debt service account, as provided and contemplated in this section, 17-5-407, and 17-5-408, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the debt service account.

(2) No special taxes pledged to the debt service account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this part prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any, that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds.

(3) Subject to the provisions of subsections (1) and (2), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the debt service account"; in (2), at end of second sentence, substituted "credit to the debt service account an amount sufficient to restore the balance from the general fund" for "credit to said account an

amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the debt service account to the general fund"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1983 Amendment: Throughout section, substituted "debt service account" for "sinking fund account".

Case Notes

Approval by Voters: Because portions of the proceeds of the income tax, corporation license tax, and tobacco tax are pledged for the security of bonds issued under this chapter, the issuance of new bonds would create a liability within the meaning of Art. XIII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 8, 1972 Mont. Const.), and such bonds may not be issued without approval by a vote of the people. This holding does not have retroactive effect; bonds issued in good faith before November 23, 1971, but without approval by a vote of the electors pursuant to Art. XIII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 8, 1972 Mont. Const.), are valid. State ex rel. Ward v. Anderson, 158 M 279, 491 P2d 868 (1971), distinguishing Cottingham v. St. Bd. of Examiners, 134 M 1, 328 P2d 907 (1958).

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§5, 359.

For a general discussion of sinking funds, see First Nat'l Bank v. County of Dawson, 74 M 439, 240 P 981 (1925).

17-5-406. Use of debt service account.

Compiler's Comments

1983 Amendment: Substituted "debt service account" for "sinking fund account".

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §354.

Part 5
General Obligation Highway Bonds

17-5-501. Authority for general obligation highway bonds.

Compiler's Comments

1999 Amendment Void: The amendment to this section made by sec. 4, Ch. 3, L. 1999, was rendered void by sec. 16, Ch. 3, L. 1999, a contingent voidness section, which provided that if Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, was declared invalid, then [this act] was void. The initiative was declared invalid February 24, 1999.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Bonds for Headquarters Building: Sections 1 through 7 of Ch. 477, L. 1975, authorize the sale of general obligation highway bonds for the purpose of erecting and equipping a Department of Highways (now Department of Transportation) headquarters building and complex and provide for the appropriation of a portion of net proceeds from gasoline taxation to a special sinking fund account for the payment and security of such bonds.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §12.

17-5-502. Site acquisition and construction authorized.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

17-5-503. Amount authorized and reservation of future authorizations — payment.

Compiler's Comments

1983 Amendment: In second-to-last sentence, substituted "debt service account" for "sinking fund account" in two places.

17-5-506. Deposit and use of proceeds.

Compiler's Comments

1983 Amendment: In first sentence, substituted "highway capital projects fund which is created within the capital projects fund type established by 17-2-102, referred to herein as the highway capital projects fund" for "highway subfund which is created within the bond proceeds and insurance clearance fund established by 17-2-102, referred to herein as the clearance fund account".

17-5-507. State pledge of gasoline tax — use.

Compiler's Comments

2005 Amendments — Code Commissioner Correction: Chapter 130 in (1) in third sentence after "15-70-204" deleted "enacted by section 3, Chapter 369, Laws of 1969, as amended by section 1, Chapter 202, and by section 2, Chapter 204, Laws of 1971, and by section 90, Chapter 516, Laws of 1973, or by any subsequent enactment"; and made minor changes in style. Amendment effective October 1, 2005.

In (1) in first sentence the code commissioner inserted the brackets to reflect the repeal of 17-5-401.

1983 Amendment: Throughout section, substituted "debt service account" for "sinking fund account"; in last sentence of (2), substituted "highway fund" for "highway subfund" and "debt service fund type" for "sinking fund"; and in (3), substituted "state special revenue fund" for "earmarked revenue fund".

Collateral References

Propriety of class action in state courts to recover taxes. 10 ALR 4th 655.

Part 7
Coal Severance Tax Bonds — Water Development

Part Compiler's Comments

Severability Clause: Section 51, Ch. 505, L. 1981, was a severability section.

Appropriation — Creation of Debt for Coal Severance Tax Bonds: Section 16, Ch. 613, L. 1993, provided: "(1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [sections 1 through 3] [not codified] to be issued pursuant to Title 17, chapter 5, part 7, pursuant to the provisions of [sections 1 through 3] [not codified], and pursuant to the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(2) The legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana constitution, authorizes the creation of a state debt in an amount not to exceed $3,855,242 for loans to political subdivisions and local government entities for water development projects approved in [sections 1 through 3] [not codified] and for funding a reserve for the coal severance tax bonds authorized to fund those projects.

(3) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account and may be used for the purposes allowed under 85-1-604(3)(c).

(5) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section." Effective May 5, 1993.

State Debt: Section 17, Ch. 613, L. 1993, required that [section 16] (not codified) receive a three-fourths vote of each house to create state debt and appropriate coal severance tax bond fund deposits. [Section 16] received the necessary three-fourths vote of each house.

Severability: Section 18, Ch. 613, L. 1993, was a severability clause.

Part Case Notes

Special Legislation — Permissible When General Act Cannot Be Provided: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The bonds would be financed by coal severance taxes to provide proceeds for development of state water resources. Plaintiff contended that the appropriation of funds for favorable loans to a score of small municipalities, water districts, and portions of counties constituted special legislation and was unconstitutional. The court noted that Art. V, sec. 12, Mont. Const., is not absolutely prohibitory. The court noted that the Legislature cannot draft a general act of statewide application providing for the issuance and sale of revenue bonds and at the same time control the way the proceeds are to be spent or loaned except through its direct authorization of projects. The court held that the passage of Ch. 705, L. 1983, was an implementation of Title 85, ch. 1, part 6, and excluded no class of governmental entity. Therefore, those enactments were "general" legislation within the meaning of Art. V, sec. 12, Mont. Const. The court also held sections 5 and 6 of Ch. 705, L. 1983, were valid in any event because even though local in effect, these were provisions for which a general act could not be provided. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-701. State of Montana coal severance tax bonds.

Compiler's Comments

1993 Amendment: Chapter 478 at beginning of (1) substituted "finance renewable resource projects" for "finance water resource development projects and activities". Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 3, Sp. L. January 1992, inserted (2) concerning infrastructure projects. Amendment effective October 1, 1992.

17-5-702. Purpose and intent.

Compiler's Comments

1993 Amendment: Chapter 478 near middle of (1), after "specific", substituted "renewable resource projects" for "water resource development projects and activities"; in first sentence of (2), after "include", substituted "renewable resource projects" for "water resource development projects and activities" and before "program" deleted "water development" and near beginning of second sentence substituted "renewable resource projects" for "water resource development projects and activities" and before "state" substituted "renewable resource grant and loan program" for "water development"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Near end of section, substituted "state special revenue account" for "earmarked account".

17-5-703. Coal severance tax trust funds.

Compiler's Comments

2005 Amendment: (Temporary version) Chapter 588 inserted (1)(g) regarding big sky economic development fund; inserted (5) regarding transfers of money to and from big sky economic development fund; and made minor changes in style. Amendment effective July 1, 2005.

(Version effective July 1, 2016) Inserted (1)(f) regarding big sky economic development fund; inserted (5) regarding transfers of money to and from big sky economic development fund; and made minor changes in style.

2003 Amendment: Chapter 114 near beginning of (4)(a) and (4)(b) of temporary version and near beginning of (4)(a) of version effective July 1, 2016, substituted "2016" for "2013". Amendment effective October 1, 2003.

2001 Amendments — Composite Section: Chapter 61 in temporary version and in version effective July 1, 2003, in (4)(c) and (4)(d) in first sentence inserted "excluding unrealized gains and losses"; and in version effective July 1, 2016, in (4)(b) in first sentence inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

(Version effective July 1, 2003) Chapter 380 at beginning of (3)(a) deleted "On January 21, 1992, and continuing"; at beginning of (4)(a) substituted "Until" for "Beginning July 1, 1993, and ending" and near middle after "endowment fund" substituted "50%" for "75%"; at beginning of (4)(b) substituted "Until" for "Beginning July 1, 1999, and ending"; and made minor changes in style.

(Version effective July 1, 2016) At beginning of (3)(a) deleted "On January 21, 1992, and continuing"; at beginning of (4)(a) substituted "Until" for "Beginning July 1, 1993, and ending"; and made minor changes in style.

Extension of Termination Date: Section 1, Ch. 70, L. 2001, amended sec. 6, Ch. 495, L. 1999, by extending the termination date imposed by Ch. 495 to June 30, 2016. Effective June 30, 2013.

1999 Amendment: Section 4, Ch. 495, inserted (1)(c) creating treasure state endowment regional water system fund; in (4)(a) increased transferable amount from 50% to 75%; inserted (4)(b) requiring quarterly transfer to treasure state endowment regional water system fund; inserted (4)(d) requiring monthly transfers to treasure state endowment regional water system special revenue account; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2013.

The amendments to this section made by sec. 1, Ch. 495, L. 1999, were rendered void by sec. 4, Ch. 495, L. 1999, a coordination section.

The amendments to this section made by Ch. 563, L. 1999, were rendered void by sec. 4, Ch. 495, L. 1999, a coordination section.

1997 Natural Resource Damage Litigation Program Extension of Previous Loans: Section 2, Ch. 154, L. 1997, provided: "Repayment of principal and interest on all loans authorized from the coal severance tax permanent fund under Chapter 354, Laws of 1993, and Chapter 411, Laws of 1995, is extended through the end of the 1999 biennium in accordance with 17-2-107(8)."

1997 Natural Resource Damage Litigation Program Contracts: Section 4, Ch. 154, L. 1997, provided: "(1) In order to extend the previous loans authorized in Chapter 354, Laws of 1993, and Chapter 411, Laws of 1995, the board of investments shall enter into a revised contract with the department of justice, pledging the amount recovered in the litigation to the repayment of the loans to the full extent allowable under law. The contract must provide that loan repayments must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool.

(2) The appropriation in [section 1] [not codified, see 1997 compiler's comments] is not effective until the department of justice enters into a contract with the state treasurer implementing the redeposit provisions of [section 1]."

1993 Special Session Amendments: Chapter 8 near beginning of (2)(a), after "determine", inserted "on July 1 of each year" and near end, before "and retain", substituted "during the next 12 months" for "on the next two ensuing semiannual payment dates"; inserted (2)(b) requiring the transfer of excess tax bond fund amounts; in (4)(a), before "transfer", inserted "quarterly" and after "endowment fund" substituted "50% of the" for "any"; deleted former (6)(a) that read: "(6) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year"; in first sentence of (4)(b), after "shall", substituted "monthly transfer from the treasure state endowment fund" for "annually transfer" and before "earnings" deleted "interest" and at beginning of second sentence substituted "Earnings" for "Interest earnings"; inserted (5) requiring transfer of excess unallocated tax bond fund amounts into the permanent fund; and made minor changes in style. Amendment effective December 17, 1993.

Chapter 33 deleted former (1)(c) providing for a clean coal technology demonstration fund; deleted former (4) providing for transfers from the coal severance tax bond fund to the clean coal technology demonstration fund; adjusted subsection references; and made minor changes in style. Amendment effective January 3, 1994.

Required Fund Transfer: Section 2, Ch. 8, Sp. L. November 1993, provided: "The state treasurer shall on [the effective date of this act] [effective December 17, 1993] transfer from the coal severance tax bond fund to the coal severance tax permanent fund the cash balance of the bond fund as of July 1, 1993, that is in excess of the amount required by 17-5-703(2)(a), including the amount either held in the fund for the clean coal technology demonstration fund or required to be transferred to the clean coal technology demonstration fund. The provisions of this section do not affect the authorizations contained in section 10, Chapter 722, Laws of 1991." The section related to a temporary, one-time transfer of funds and therefore was not codified.

Funds Transfer Repealed: Section 3, Ch. 8, Sp. L. November 1993, repealed sec. 11, Ch. 722, L. 1991, which had transferred $25 million from the coal severance tax permanent fund to the clean coal technology demonstration fund. Repealer effective December 17, 1993.

1993 Amendment: Chapter 515 in (4), near end, substituted "department of revenue shall, upon request from the department of natural resources and conservation" for "state treasurer

shall from time to time" and after "amount" substituted "up to" for "not exceeding". Amendment effective April 24, 1993.

Loan Authorization — Appropriation of Loan Proceeds: Section 3, Ch. 354, L. 1993, provided: "In addition to the litigation listed in [sections 1 and 2] [not codified, see 1993 Session Laws], loan proceeds are authorized for the purpose of conducting any other natural resource damage assessment, litigation, or administration as provided by Title 75, chapter 10, part 7."

Loan Contract: Section 5, Ch. 354, L. 1993, provided: "In order to make the loans authorized in [sections 1 and 2] [not codified, see 1993 Session Laws], the board of investments shall enter into an irrevocable contract with the department of health and environmental sciences [now department of environmental quality] pledging the amount recovered in the litigation to the repayment of the loans. The contract must provide that loan repayments must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loans from the portion of the coal severance tax permanent fund invested in the short-term investment pool. The loans authorized in [sections 1 and 2] [not codified, see 1993 Session Laws] may not be made until the contract required by this section has been entered into by the board and the department."

Preamble: The preamble attached to Ch. 515, L. 1993, provided: "WHEREAS, the 52nd Legislature established and provided funds for a clean coal technology demonstration fund within the coal severance tax trust fund; and

WHEREAS, the Billings MHD demonstration project was designated by the 52nd Legislature as a clean coal technology demonstration project eligible to receive a clean coal technology demonstration loan in the amount of $25 million."

1992 Special Session Amendment: Section 7, Ch. 12, Sp. L. January 1992, inserted (1)(b) creating a treasure state endowment fund; inserted (1)(f) creating a coal severance tax school bond contingency loan fund; inserted (3) providing for transfer of funds necessary for yearly payment of principal and interest on school bonds secured by state loans to the coal severance tax school bond contingency loan fund; in (4), after "1997", inserted language requiring transfer of excess amounts in the coal severance tax bond fund and coal severance tax school bond contingency loan fund to the clean coal technology demonstration fund, after "transfer" substituted "an amount not exceeding $5 million" for "from the excess amount in the coal severance tax bond fund $5 million", after "million" substituted "per fiscal year" for "a year", and after "fund" deleted "and any remaining amount to the coal severance tax permanent fund"; inserted (5) providing for transfers to the treasure state endowment fund; and inserted (6) concerning transfer of funds from the treasure state endowment fund to the coal severance tax permanent fund and the deposit of earnings in the treasure state endowment special revenue account. Amendment effective June 2, 1992.

Effective on Occurrence of Contingency: Section 8(2), Ch. 12, Sp. L. January 1992, provided: "(2) If House Bill No. 19 is passed and is approved by the electorate, then [section 3 of this act] [amending 17-5-703] and [section 4 of House Bill No. 19] [amending 17-5-703] are void and [section 7 of this act] [amending 17-5-703] is effective on the date of approval by the electorate." House Bill No. 19 was approved by the electorate June 2, 1992.

1991 Amendment: Inserted (1)(b) creating clean coal technology demonstration fund; in (2), after "shall", deleted "from time to time transfer to the coal severance tax permanent fund all money in the coal severance tax bond fund except" and inserted "determine" and at end inserted "and retain that amount in the coal severance tax bond fund"; and inserted (3) providing for transfer of funds to clean coal technology demonstration fund and coal severance tax permanent fund. Amendment effective July 1, 1991.

1985 Amendment: At beginning of (2) substituted "The state treasurer shall from time to time" for "On each December 31 and June 30 the state treasurer shall", and at end of (2) substituted "next two ensuing semiannual payment dates" for "next ensuing semiannual payment date".

1983 Amendment: Throughout section, changed "subfund" to "fund".

Case Notes

1999 Coal Producer's License Tax Violative of Constitutional Coal Severance Tax Provisions: By simple majority vote, the 1999 Legislature passed House Bill No. 260, which created a license tax on the production of coal and allocated revenue from the tax to various state programs. Several legislators challenged the validity of the new tax, contending that by creating a license tax on the same taxable event for which the state coal severance tax is imposed and then providing a credit against the severance tax in an amount slightly greater than the amount of the license tax, the Legislature simply diverted what in substance and character are coal severance taxes to purposes other than the coal tax trust fund, in violation of Art. IX, sec. 5, Mont. Const.

The Supreme Court agreed, noting that the only difference between the coal severance tax and the coal producer's license tax was the purpose for which each was allocated. A tax on the production of natural resources is characterized by the nature of the activity upon which the tax is imposed, and the effect of a legislative assessment is more important than its label in determining the character of the tax. Legislative imposition of a tax can become unlawful when done to accomplish an unlawful end, which was the case in this instance because the coal producer's license tax diverted production-based coal severance taxes for an unconstitutional purpose. Although the Legislature has the authority to determine the percentage of the coal severance tax, in this case, the Legislature simply gave a different name to the same tax and thereby diverted revenue to causes other than the coal tax trust fund. A coal severance tax by any other name is just as dedicated. By diverting and allocating coal severance tax revenue in a manner contrary to the requirement in Art. IX, sec. 5, and by doing so without the required three-fourths vote of each house of the Legislature, House Bill No. 260 violated the constitution; thus, the state was enjoined from enforcing House Bill No. 260. Montanans for the Coal Trust v. St., 2000 MT 13, 298 M 69, 996 P2d 856, 57 St. Rep. 73 (2000). See also Oliver Iron Co. v. Lord, 262 US 172, 67 L Ed 929, 43 S Ct 526 (1923), Gomillion v. Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960), and Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

Law Review Articles

Reflections on Commonwealth Edison Co. v. Montana, Mcgrath & Hellerstein, 43 Mont. L. Rev. 165 (1982).

17-5-704. Investment of funds.

Compiler's Comments

2001 Amendment: Chapter 61 in second sentence inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

1995 Amendments — Composite Section: Chapter 442 at end substituted "are deposited in the state general fund" for "are statutorily appropriated, as provided in 17-7-502, as follows:

(1) 15% to the state equalization aid account; and

(2) 85% to the state general fund". Amendment effective July 1, 1995.

Chapter 509 at end substituted "must be deposited in the state general fund" for "are statutorily appropriated, as provided in 17-7-502, as follows:

(1) 15% to the state equalization aid account; and

(2) 85% to the state general fund". Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1992 Special Session Amendment: Chapter 12 in first sentence inserted "and the coal severance tax school bond contingency loan fund". Amendment effective January 21, 1992.

1991 Amendment: In first sentence of introductory clause, after "coal severance tax funds", deleted "except as provided in subsection (2)" and in second sentence, after "from all funds", deleted "must be transferred to and retained in the coal severance tax income fund until appropriated by the legislature" and inserted statutory appropriation language; inserted (1) specifying an appropriation to the state equalization aid account; and in (2) deleted language requiring appropriation of 15% of income and earnings from all funds to be deposited in state equalization aid account each year and inserted "85% to the state general fund". Amendment effective July 1, 1991.

1989 Special Session Amendment: Near beginning of (2) substituted "1990" for "1989", near end substituted "state equalization aid account" for "coal severance tax permanent fund", and deleted former last sentence that read: "The funds appropriated to the coal severance tax permanent fund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature." Amendment effective August 11, 1989.

1989 Amendments: Chapter 83 deleted former (2) that read: "(2) Beginning on July 1, 1987, the legislature shall appropriate 2% of the income and earnings from all funds to be deposited to the coal severance tax permanent fund each year."

Chapter 634 at end of first sentence of (1) inserted reference to subsection (3) (now (2)); and at beginning of (2) inserted exception clause. Amendment effective July 1, 1989.

1987 Amendment: Inserted (2) authorizing appropriation of 2% of income and earnings from coal severance tax permanent fund each year; and in (3), after "July 1" changed "1983" to "1989". Amendment applicable to interest and income earned after June 30, 1986, and before July 1, 1989.

Severability: Section 13, Ch. 662, L. 1987, was a severability section.

1983 Amendments: Chapter 149, at end of (1), inserted "until appropriated by the legislature".

Chapter 298 changed "subfund" to "fund" throughout section.

Attorney General's Opinions

Investment Earnings Not to Be Credited to Science and Technology Development Account: Investment earnings on funds earmarked to be loaned but not yet paid out to a loan recipient are not payback funds or loan repayments within the context of 17-6-201 or 90-3-305 (now repealed). Therefore, those earnings may not be credited to the science and technology development account to be used to cover costs of administering programs under the Montana Science and Technology Financing Act. 45 A.G. Op. 28 (1994).

Three-Fourths Vote Required to Appropriate Severance Tax Trust Fund Income: Income deposited in the coal severance tax permanent fund under this section becomes part of the principal of the trust. As such, the Legislature may not appropriate by a simple majority the income and interest earned on the trust fund since July 1, 1983; rather, a three-fourths vote of each house is required. (See 1989 amendment.) 42 A.G. Op. 110 (1988).

17-5-705. Pledge of coal severance tax bond fund.

Compiler's Comments

1983 Amendment: Throughout section, changed "subfund" to "fund".

Case Notes

Bonded Debt — Not Invalid as Continuing Appropriation: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The bonds would be financed by coal severance taxes to provide proceeds for development of state water resources. Plaintiff contended that this was an invalid "continuing appropriation". Plaintiff contended that the 48th Legislature by enacting the program could not constitutionally bind future Legislatures to "appropriate" the coal tax money necessary to service the bonds; that the principal of the coal severance tax trust funds had been invaded for years; and that each bond issue requires a separate appropriation of coal severance tax revenues by a three-fourths vote of each house of the Legislature. The Supreme Court harmonized the various constitutional provisions involved. The court held that the Legislature can authorize long-term borrowing by issuing and selling bonds and can provide for the servicing for such indebtedness by repayment or refunding. The court found nothing making the coal severance tax trust fund immune from use as a source of funding for long-term state bonds. When the Legislature validly acts to establish a debt, that indebtedness becomes a state obligation extending over the life of the indebtedness, and every succeeding Legislature has an unavoidable duty to provide for it in the manner required by the authorizing law. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-706. Authority to issue coal severance tax bonds.

Compiler's Comments

1993 Amendment: Chapter 478 in first sentence substituted "renewable resource projects" for "water resource development projects and activities" and in second sentence, after "project", deleted "or activity"; and made minor changes in style. Amendment effective July 1, 1993.

Coordination: Subsections (1) and (2), sec. 53, Ch. 505, L. 1981, provided: "(1) The bonds authorized under section 29 [17-5-706] may not be issued unless:

(a) HB 851 [see Ch. 507, L. 1981] is passed and approved by a three-fourths vote of each house of the legislature; or

(b) another bill authorizing the debts and appropriating the funds pledged for their repayment is passed and approved by a three-fourths vote of each house of the legislature.

(2) In addition to the requirements of subsection (1), the legislature must specifically approve each project or activity before the bonds to finance that project or activity may be issued."

17-5-708. Special fund revenues.

Compiler's Comments

1983 Amendment: In (1), substituted "severance tax bond fund" for "severance tax bond subfund", "special bond fund" for "special bond account", and "a debt service fund" for "the sinking fund"; and in (2), substituted "severance tax bond fund" for "severance tax bond account" and "special bond fund" for "special account".

17-5-709. Continued tax deposit limit on additional bonds.

Compiler's Comments

2001 Amendment: Chapter 7 deleted former (1)(b) that read: "(b) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal producer's license tax bond account established in 90-3-1004 of the coal producer's license taxes that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that when combined with the deposits in subsection (1)(a) is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds"; near middle of (2) after "coal severance tax bond fund" deleted "and coal producer's license tax bond account established in 90-3-1004"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 563 inserted (1)(b) requiring assessment, levy, collection, and deposit of coal producer's license tax into coal producer's license tax bond account; in (2) inserted reference to coal producer's license tax bond account; and made minor changes in style. Amendment effective July 1, 1999.

1983 Amendment: In (1) and (2), substituted "severance tax bond fund" for "severance tax bond subfund" and "special bond funds" for "special bond accounts".

Case Notes

Amount of Funding Indefinite — Certainty Upon Sale of Bonds: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The plaintiff contended that H.B. 846, L. 1981, whereby the Legislature authorized issuance of up to $10 million in coal severance tax bonds for the state's share of construction costs of Tongue River Dam rehabilitation, violated Art. VIII, sec. 14, and Art. IX, sec. 5, Mont. Const., in that the amount of money necessary to finance the project was not definite or certain. The court found that at the time of the bill's passage, it was impossible for the Legislature to determine the exact cost. The authorization is contingent on legislative approval of a detailed project plan. Sections 17-5-709 and 17-5-710 place limits on the bonds that may be issued. The court found that no Legislature can be expected to predict the interest rate which will meet the market for the issuance of state bonds. The court found that when the bonds are issued and sold, the interest rate to be paid by the state will become certain. The amounts necessary to service and repay the indebtedness will be definite. The court relied on State ex rel. Toomey v. St. Bd. of Examiners, 74 M 1, 238 P 316 (1925), which held "that is certain which can be made certain", to uphold the authorization for the project. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

Bonded Debt — Not Invalid as Continuing Appropriation: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The bonds would be financed by coal severance taxes to provide proceeds for development of state water resources. Plaintiff contended that this was an invalid "continuing appropriation". Plaintiff contended that the 48th Legislature by enacting the program could not constitutionally bind future Legislatures to "appropriate" the coal tax money necessary to service the bonds; that the principal of the coal severance tax trust funds had been invaded for years; and that each bond issue requires a separate appropriation of coal severance tax revenues by a three-fourths vote of each house of the Legislature. The Supreme Court harmonized the various constitutional provisions involved. The court held that the Legislature can authorize long-term borrowing by issuing and selling bonds and can provide for the servicing for such indebtedness by repayment or refunding. The court found nothing making the coal severance tax trust fund immune from use as a source of funding for long-term state bonds. When the Legislature validly acts to establish a debt, that indebtedness becomes a state obligation extending over the life of the indebtedness, and every succeeding Legislature has an unavoidable duty to provide for it in the manner required by the authorizing law. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-710. Form — principal and interest — fiscal agent — deposit of proceeds.

Compiler's Comments

1983 Amendment: In (5), substituted "a capital projects fund or a state special revenue account" for "a bond proceeds and insurance clearance fund account" and substituted "debt service fund" for "sinking fund account".

Case Notes

Amount of Funding Indefinite — Certainty Upon Sale of Bonds: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The plaintiff contended that H.B. 846, L. 1981, whereby the Legislature authorized issuance of up to $10 million in coal severance tax bonds for the state's share of construction costs of Tongue River Dam rehabilitation, violated Art. VIII, sec. 14, and Art. IX, sec. 5, Mont. Const., in that the amount of money necessary to finance the project was not definite or certain. The court found that at the time of the bill's passage, it was impossible for the Legislature to determine the exact cost. The authorization is contingent on legislative approval of a detailed project plan. Sections 17-5-709 and 17-5-710 place limits on the bonds that may be issued. The court found that no legislative assembly can be expected to predict the interest rate which will meet the market for the issuance of state bonds. The court found that when the bonds are issued and sold, the interest rate to be paid by the state will become certain. The amounts necessary to service and repay the indebtedness will be definite. The court relied on State ex rel. Toomey v. St. Bd. of Examiners, 74 M 1, 238 P 316 (1925), which held "that is certain which can be made certain", to uphold the authorization for the project. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-711. Trust indenture.

Compiler's Comments

1985 Amendment: Near beginning substituted "bonds or notes issued under this part" for "coal severance tax bonds".

17-5-713. Personal liability — suit to compel performance.

Compiler's Comments

1985 Amendment: Near end of (1) after "severance tax bond" inserted "or bond anticipation note".

17-5-714. Negotiability of bonds.

Compiler's Comments

1985 Amendment: At beginning substituted "Bonds or notes issued under this part" for "Coal severance tax bonds issued".

17-5-715. Signatures of board members.

Compiler's Comments

1985 Amendment: Substituted "bonds, notes, or coupons issued under this part" for "coal severance tax bonds or coupons"; and after "delivery of the bonds" inserted "or notes".

17-5-718. Tax exemption of bonds — legal investments.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 at end of (1) deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

1985 Amendment: At beginning of (1) and (2) substituted "bonds or notes issued under this part" for "coal severance tax bonds".

17-5-719. Limitation on amount of coal severance tax bonds issued.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Case Notes

Bonded Debt — Not Invalid as Continuing Appropriation: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The bonds would be financed by coal severance taxes to provide proceeds for development of state water resources. Plaintiff contended that this was an invalid "continuing appropriation". Plaintiff contended that the 48th Legislature by enacting the program could not constitutionally bind future Legislatures to

"appropriate" the coal tax money necessary to service the bonds; that the principal of the coal severance tax trust funds had been invaded for years; and that each bond issue requires a separate appropriation of coal severance tax revenues by a three-fourths vote of each house of the Legislature. The Supreme Court harmonized the various constitutional provisions involved. The court held that the Legislature can authorize long-term borrowing by issuing and selling bonds and can provide for the servicing for such indebtedness by repayment or refunding. The court found nothing making the coal severance tax trust fund immune from use as a source of funding for long-term state bonds. When the Legislature validly acts to establish a debt, that indebtedness becomes a state obligation extending over the life of the indebtedness, and every succeeding Legislature has an unavoidable duty to provide for it in the manner required by the authorizing law. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-720. Authorization to issue revenue bonds.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Severability: Section 10, Ch. 775, L. 1991, was a severability clause.

Effective Date: Section 12, Ch. 775, L. 1991, provided: "[This act] is effective on passage and approval." Approved May 17, 1991.

17-5-721. Authorization to issue revenue bonds.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Effective Date: Section 13, Ch. 497, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 24, 1993.

Part 8
General Obligation Bonds and Notes

Part Law Review Articles

The Role of the Comprehensive Plan in Infrastructure Financing, Sullivan & Lester, 37 Urb. Law. 53 (2005).

Part Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§42, 102.

17-5-801. Definitions.

Compiler's Comments

1985 Amendment: Inserted definition of costs.

17-5-802. Authority to issue general obligation bonds and notes.

Compiler's Comments

2005 Amendment: Chapter 374 deleted former (3) that read: "(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4"; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

1999 Amendment Void: The amendment to this section made by sec. 5, Ch. 3, L. 1999, was rendered void by sec. 16, Ch. 3, L. 1999, a contingent voidness section, which provided that if Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, was declared invalid, then [this act] was void. The initiative was declared invalid February 24, 1999.

Collateral References

81A C.J.S. States §22.

64 Am. Jur. 2d Public Securities and Obligations §§13, 38, 102.

17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds.

Compiler's Comments

2005 Amendment: Chapter 374 in (2) deleted former second and third sentences that read: "Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law"; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

1999 Amendment Void: The amendment to this section made by sec. 6, Ch. 3, L. 1999, was rendered void by sec. 16, Ch. 3, L. 1999, a contingent voidness section, which provided that if Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, was declared invalid, then [this act] was void. The initiative was declared invalid February 24, 1999.

Collateral References

81A C.J.S. States §§255 through 257.

64 Am. Jur. 2d Public Securities and Obligations §§165 through 182.

17-5-804. Use of capital projects account.

Compiler's Comments

1997 Amendment: Chapter 422 at end deleted "and for such purposes the money is statutorily appropriated as provided in 17-7-502". Amendment effective July 1, 1997.

1985 Amendments: Chapters 372 and 703 at end of first sentence, after "accounts", deleted "upon order of the department acting within the limits of the authority conferred upon it by the legislature". Chapter 372 inserted second sentence, authorizing transfer of administrative expenditure money, through "special revenue fund", and Ch. 703 inserted entire second sentence authorizing transfer of administrative expenditure money and creating statutory appropriation.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §102.

17-5-805. Bond, grant, or revenue anticipation notes — when issued — payment of principal and interest.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Chapter 323 inserted (1)(b) relating to money to be received from the federal government; inserted (1)(c) relating to money for a specified program; in (2) at end of first sentence inserted references to grant anticipation notes and revenue anticipation notes, in second sentence near beginning after "sale of the" deleted "bond anticipation" and near middle inserted "grants, or revenue", in third sentence in first clause inserted "or receipt of the proceeds of the grants or revenue", near middle after "necessary to" inserted "pay or", and after "additional" deleted "bond anticipation", and near middle of last sentence inserted "or receipt of the proceeds of the grants or revenue"; in (3) at beginning of first sentence inserted "grant, or revenue", after "anticipation notes" deleted "or other short-term evidences of indebtedness", and near middle substituted "2 years" for "1 year"; and made minor changes in style. Amendment effective April 21, 2005.

Pursuant to sec. 6, Ch. 323, a coordination section, the code commissioner in (3) in first sentence substituted "3 years" for "2 years". Amendment effective April 21, 2005.

Chapter 374 in (2) near middle of first sentence increased time of maturity from 1 year to 3 years; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§20, 42.

17-5-807. Limitations on general obligation bonds and bond anticipation notes.

Compiler's Comments

Effective Date: Section 4, Ch. 92, L. 2003, provided that this section is effective July 1, 2003.

17-5-820. Authorization of bonds.

Compiler's Comments

2005 Amendment: Chapter 590 in (1) in first sentence near middle after "in 7-15-4288" deleted "and equipment"; in (2) in second sentence near beginning in two places after "department" inserted "of commerce", after "the infrastructure improvements" deleted "or acquire the equipment", near middle after "project is located" inserted authority of department to contract with airport authority, port authority, or regional port authority, inserted "upon a determination that it is in the best interest of the project", and at end after "infrastructure improvement" deleted "or the acquisition of equipment upon a determination that it is in the best interest of the project", in third sentence near beginning after "for the infrastructure" deleted "and equipment" and after "the bonds must be" substituted requirement that plans and specifications must be prepared by engineer or architect licensed in Montana and state must be named as additional insured and fourth sentence requiring that plans and specifications must be approved by department of commerce after consultation with department of administration for "approved by and be acceptable to the department following a review of the plans and specifications of the infrastructure by the architecture and engineering division of the department of administration", in fifth sentence after "of the infrastructure" deleted "and the acquisition of equipment", inserted sixth sentence requiring construction contracts to name state as additional insured, in seventh sentence at beginning substituted "All improvements" for "Infrastructure and equipment", in eighth sentence near beginning inserted "lease or the" and after "use of the infrastructure" deleted "and equipment", and in ninth sentence near beginning after "The agreement" substituted language requiring contractor to insure for liability and workers' compensation and provide developer with right of first refusal for purchase of real property and improvements for "may provide the project developer with the right of first refusal for the purchase of real property secured by the bonds at fair market value plus reimbursement to the state for any costs incurred in the issuance of the bonds"; in (3) in first sentence near beginning after "of the legislature that" substituted language declaring intent of legislature that taxes generated by aerospace transportation and technology projects be at least equal to debt service over term of bonds for "debt service payments for the bonds authorized by this section will be covered by the totality of the taxes generated by the aerospace transportation and technology development projects to be calculated by an economic impact analysis of the projects on state tax revenue", in second sentence near middle after "financial ability to" deleted "construct and" and at end inserted "of the developer", and in third sentence near middle after "the department" inserted "of commerce"; in (3)(b) after "program planning that the" substituted remainder of subsection regarding content of certificate, tax revenue analysis, job creation, and sale of facility for "tax revenue to be received by the state from each aerospace transportation and technology development project over the term of the bonds will be sufficient to pay the principal amount of and interest on the bonds issued to assist with the specific project"; in (4) substituted language authorizing department to consider only certain matters in making recommendation to board of examiners for "For the purposes of this section, "equipment" means machinery used in the design, manufacture, repair, and maintenance of aerospace transportation and technology projects"; inserted (5) regarding department's recommendation of amount of bonds to be issued; and made minor changes in style. Amendment effective May 6, 2005.

2003 Amendment: In (1) in first sentence after "financing" inserted "and acquiring"; and in (2) in second sentence before "construct" inserted "acquire or", in second and third sentences before "construction" inserted "acquisition or", and inserted sixth and seventh sentences providing that the agreement may provide the project developer with the right of first refusal and that fair market value must be determined by a certified appraiser. Amendment effective April 11, 2003.

Part 9
Highway Revenue Bonds

Part Law Review Articles

The Role of the Comprehensive Plan in Infrastructure Financing, Sullivan & Lester, 37 Urb. Law. 53 (2005).

17-5-902. Purpose.

Collateral References

81A C.J.S. States §148.

64 Am. Jur. 2d Public Securities and Obligations §101; 72 Am. Jur. 2d States, Territories, and Dependencies §§79, 82.

17-5-903. Definitions.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: At end of definition of highway revenues, substituted "credited to the department in the state special revenue fund and the federal special revenue fund" for "credited to the highway earmarked revenue fund and the highway trust federal and private revenue account".

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§1 through 8.

17-5-911. Highway revenue bond debt service account — deposit of bond proceeds.

Compiler's Comments

1986 Amendment: Deleted former (4) that read: "Notwithstanding 17-6-202 and except as provided in subsection (3), interest and investment earnings on the highway state special revenue account shall be credited to the general fund until July 1, 1985, and thereafter shall be retained in the highway state special revenue account."

1983 Amendment: In (1), substituted language of first sentence creating highway revenue bond debt service account for "There is in the highway earmarked revenue fund a highway revenue bond sinking account", and near end of subsection, substituted "highway revenue bond debt service account" for "highway revenue bond sinking account"; in (2), in first sentence substituted "state special revenue fund" for "highway earmarked revenue fund", and after "separate account" inserted "in the debt service fund", in second sentence substituted "highway revenue bond debt service account" for "separate account", in third sentence substituted "separate accounts in the state special revenue fund" for "separate accounts" and substituted "highway revenue bond debt service account" for "highway revenue bond sinking account"; in (3), substituted "the separate accounts referred to in subsection (2)" for "the highway earmarked revenue fund"; and in (4), substituted "highway state special revenue account" for "highway earmarked revenue fund" in two places.

Collateral References

81A C.J.S. States §254.

64 Am. Jur. 2d Public Securities and Obligations §43; 72 Am. Jur. 2d States, Territories, and Dependencies §82.

17-5-912. Pledge of highway revenues.

Compiler's Comments

1983 Amendment: Substituted "highway revenue bond debt service account" for "highway revenue bond sinking account".

Collateral References

81A C.J.S. States §254.

64 Am. Jur. 2d Public Securities and Obligations §43; 72 Am. Jur. 2d States, Territories, and Dependencies §82.

17-5-913. Authority to issue highway revenue bonds.

Collateral References

81A C.J.S. States §252.

72 Am. Jur. 2d States, Territories, and Dependencies §§80 through 82.

17-5-914. Continuation of taxes — limit on additional highway revenue bonds.

Compiler's Comments

1983 Amendment: Substituted "state special revenue fund for the credit of the department" for "highway earmarked revenue fund".

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §182; 72 Am. Jur. 2d States, Territories, and Dependencies §§81 through 83.

17-5-921. Bond anticipation notes — issued when — payment of principal and interest.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §14.

17-5-922. Form — principal and interest — fiscal agent — bonds authorized.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §165.

17-5-923. Trust indenture.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §177.

17-5-924. Provisions for protecting bondholders.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §177.

17-5-925. Personal liability — suit to compel performance.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§430 through 445.

17-5-927. Signatures of board members.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §170.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other pecuniary obligation. 94 ALR 768.

17-5-928. Refunding obligations.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§222 through 228; 72 Am. Jur. 2d States, Territories, and Dependencies §85.

Governmental unit's power to issue bonds as implying power to refund them. 1 ALR 2d 134.

17-5-929. Pledge of the state.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§26 through 29; 72 Am. Jur. 2d States, Territories, and Dependencies §86.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds. 115 ALR 220.

17-5-930. Tax exemption of bonds — legal investments.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 at end of (1) deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Collateral References

Bond or warrant of governmental subdivision as subject of taxation or exemption. 26 ALR 547, supplemented by 44 ALR 510.

Part 10
Actions

17-5-1001. Action to restrain bond issues.

Case Notes

Noncompliance With Statutes: This section has no application where there was not just a mere defect or irregularity in the proceedings but an entire absence of any attempt to comply with the statutes controlling such election. Weber v. Helena, 89 M 109, 297 P 455 (1931), distinguished in State ex rel. Wolff v. Geurkink, 111 M 417, 109 P2d 1094 (1941).

Collateral References

Counties *key* 196(5); Municipal Corporations *key* 1000; Schools and School Districts *key* 111.

Part 11
Public Obligations Registration

Part Compiler's Comments

Preamble: The preamble attached to Ch. 364, L. 1983, provided: "WHEREAS, Congress has enacted the Tax Equity and Fiscal Responsibility Act of 1982 that requires, among other things, that all public obligations be issued in registered form if the interest earned on such obligations is to be exempt from the federal income tax; and

WHEREAS, Congress has extended from January 1, 1983, to July 1, 1983, the effective date of the Act insofar as it applies to the registration of public obligations for the purpose of allowing states, municipalities, and the commercial world to enact laws and ordinances and implement procedures to facilitate compliance with the law; and

WHEREAS, current Montana law does not provide for the issuance of most public obligations in a registered form; and

WHEREAS, the inability of the state, local governments, school districts, or other governmental entities to issue registered bonds results in an inability to issue public obligation bonds on which the interest earned is tax exempt; and

WHEREAS, the ability to finance public improvements through the issuance of tax-exempt bonds is critical to the conduct of the public business.

THEREFORE, it is the intent of the Legislature to authorize the state, local governments, school districts, and other governmental entities to issue in a registered form the public obligations they are now authorized to issue."

17-5-1102. Definitions.

Compiler's Comments

2003 Amendment: Chapter 114 deleted former definition of code that read: ""Code" means the Internal Revenue Code of 1954, as amended"; inserted definition of Internal Revenue Code; and made minor changes in style. Amendment effective October 1, 2003.

17-5-1103. Declarations of state interest — purposes.

Compiler's Comments

2003 Amendment: Chapter 114 in (1) in two places substituted "Internal Revenue Code, 26 U.S.C. 103 and 103A" for "code"; and made minor changes in style. Amendment effective October 1, 2003.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §36.

17-5-1105. Applicability — election — rescission.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §163.

17-5-1111. System of registration.

Compiler's Comments

2003 Amendment: Chapter 114 at end of (6) and near end of (7) substituted "Internal Revenue Code" for "code"; and made minor changes in style. Amendment effective October 1, 2003.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §232.

17-5-1112. Certificated public obligation — execution — authentication.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§168 through 171.

17-5-1113. Certificated public obligation — signatures.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§170, 171.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other pecuniary obligation. 94 ALR 768.

17-5-1121. Agents — depositories.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§177, 178.

17-5-1122. Costs — collection.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §188.

17-5-1123. Deposits for security.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §177.

Part 13
Montana Unified Volume Cap Bond Allocation Plan Act

17-5-1302. Definitions.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 32 in definition of allocation before "volume" inserted "state's"; in definition of local portion before "volume" inserted "state's"; in definition of Montana higher education student assistance corporation after "established" inserted "to provide student loan capital to the student loan program established by the board of regents of higher education"; in definition of private activity bonds after "section" substituted "141 of the Internal Revenue Code" for "1301 of the tax act"; in definition of state portion before "volume" inserted "state's"; inserted definition of state's volume cap; in definition of tax act after "means the" substituted "latest limitation" for "Tax Reform Act of 1986" and at end inserted "on the amount of cap bonds that may be issued by a state or local issuer"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 137 substituted Montana facility finance authority (MFFA) for Montana health facility authority (MHFA) as defined term; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 18, Ch. 137, L. 2001, was a saving clause.

1991 Amendment: Deleted former definition of Montana Agricultural Loan Authority that read: ""Montana agricultural loan authority" (MALA) means the authority provided for in 2-15-3011." Amendment effective March 26, 1991.

Preamble: The preamble attached to Ch. 168, L. 1991, provided: "WHEREAS, the Montana Agricultural Loan Authority Act and beginning farm loan program have been inactive since adoption of the federal Tax Reform Act of 1986 because of the loss of an effective funding source."

Function Transfer: Section 2, Ch. 581, L. 1987, abolished the Montana Economic Development Board and transferred its functions to the Montana Board of Investments. The Code Commissioner has changed the reference in (12) to correspond to this function transfer.

17-5-1311. State's volume cap and reservations — department to adopt rule.

Compiler's Comments

2001 Amendment: Chapter 32 in (1) at end of first sentence substituted "the amount specified by the department pursuant to subsection (2)" for "$150 million" and in second sentence after "17-5-1313" substituted "70%" for "$105 million", before "volume" inserted "state's", and after "portion and" substituted "30%" for "$45 million"; inserted (2) requiring adoption of a rule for the state's volume cap; and made minor changes in style. Amendment to subsection (1) effective October 1, 2001; amendment to subsection (2) effective March 13, 2001.

Administrative Rules

ARM 2.4.301 Volume cap allocation.

17-5-1312. Allocation to state issuers.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 32 in (3) at beginning after "following" substituted "set-aside percentages of the state's volume cap" for "set-asides" and deleted former column entitled "Allocation Amount" (see 2001 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2001.

Chapter 137 in (3) near bottom of first column substituted "MFFA" for "MHFA". Amendment effective July 1, 2001.

Saving Clause: Section 18, Ch. 137, L. 2001, was a saving clause.

1991 Amendment: In (3) deleted MALA as a state issuer and deleted percentage and allocation amount for MALA, increased MBH percentage from 40 to 41 and allocation amount from $42,000,000 to $43,050,000, and increased MHESAC percentage from 25 to 26 and allocation amount from $26,250,000 to $27,300,000. Amendment effective March 26, 1991.

Preamble: The preamble attached to Ch. 168, L. 1991, provided: "WHEREAS, the Montana Agricultural Loan Authority Act and beginning farm loan program have been inactive since adoption of the federal Tax Reform Act of 1986 because of the loss of an effective funding source."

Function Transfer: Section 2, Ch. 581, L. 1987, abolished the Montana Economic Development Board (MEDB) and transferred its functions to the Montana Board of Investments (MBI). The Code Commissioner has changed the reference in (3) to correspond to this function transfer.

Attorney General's Opinions

Montana Higher Education Student Assistance Corporation Not State Bond Issuer — Bond Fee Inapplicable: A reasonable interpretation of this section is that it governs application of the audit fee for entities issuing private activity bonds, while 17-5-2201 governs application of the fee for all other types of bond issuance. The Montana Higher Education Student Assistance Corporation is not a state bond issuer as that term is used in 17-5-2201; therefore, the fees in that section do not apply to bonds issued by the Corporation. 47 A.G. Op. 1 (1997).

17-5-1315. Carryforward elections.

Compiler's Comments

2001 Amendment: Chapter 32 in three places before "volume cap" inserted "state's". Amendment effective October 1, 2001.

17-5-1316. Allocations by the department.

Compiler's Comments

2001 Amendment: Chapter 32 near middle of first sentence of (1) and in (1)(b), (1)(e), (1)(f), and (1)(h) before "cap" inserted "state's volume". Amendment effective October 1, 2001.

17-5-1318. Terms of allocations.

Compiler's Comments

2001 Amendment: Chapter 32 in two places before "cap" inserted "state's volume". Amendment effective October 1, 2001.

17-5-1323. Recordkeeping.

Compiler's Comments

2001 Amendment: Chapter 32 at end before "are observed" inserted "and the requirements of the state's volume cap"; and made minor changes in style. Amendment effective October 1, 2001.

17-5-1325. Reassignment of bonding authority for agricultural purposes — contingency.

Compiler's Comments

Preamble: The preamble attached to Ch. 168, L. 1991, provided: "WHEREAS, the Montana Agricultural Loan Authority Act and beginning farm loan program have been inactive since adoption of the federal Tax Reform Act of 1986 because of the loss of an effective funding source."

Effective Date: Section 7, Ch. 168, L. 1991, provided: "[This act is effective on passage and approval." Approved March 26, 1991.

Part 15
Economic Development Bonds

Part Compiler's Comments

Statement of Intent: The statements of intent attached to Ch. 68 and Ch. 701, L. 1983, were substantially identical and provided: "A statement of intent is required for House Bill 700 [Ch. 701, L. 1983] because it provides rulemaking authority for the Montana economic development board [now the Board of Investments] in Section 21 of the bill.

It is the intention of the legislature that in implementing the rulemaking provisions of the bill, the board will examine the procedures used in other states to take advantage of proven methods of soliciting and reviewing applications for loans. It is further the intention of the legislature that the board will maintain close contact and solicit the opinions of the investment businesses in Montana and the financial institutions of the state. It is further the intention of the

legislature that in the examination of the rules provided for assessment of a collection of fees in connection with its programs, the board shall make a concerted effort to consider not only the needs of the board, but the needs of the potential borrowers of the state and the general need for capital investment in Montana. Where possible, the board shall use proven methods of operation which have been provided through the experience of other boards in the state and the experience of other states. The rules should also provide for a local hearing to be held to determine whether a proposed project is in the public interest."

Severability: Section 30, Ch. 686, L. 1983, and sec. 32, Ch. 701, L. 1983, were severability sections.

Part Law Review Articles

Do IDB's Make Economic Sense Any Longer?, Heffernan & Ide, 59 Fla. B.J. 25 (1985).

Industrial Development Bond Financing After the Deficit Reduction Act of 1984: The Final Chapter?, 13 Fordham Urb. L.J. 443 (1984-1985).

Out in the Cold: McDonald's Corp. v. DeVenney [415 So. 2d 1075 (Ala.)] Excludes Retail Enterprises From Alabama Industrial Development Statutes, 34 Ala. L. Rev. 297 (1983).

Industrial Development Bonds After TEFRA, Winston, 61 Taxes 20 (Jan. 1983).

Special Issue on Economic Development, 17 Columbia J. L. & Soc. Prob., 351 (1983).

Alliance for Growth: Stimulating Urban Revitalization Through Corporate, Governmental, and Community Cooperation, Murphy, 9 Fordham L. J. 835 (1980-1981).

Industrial Development Bond Financing: Section 103(b) Examined, Roberts, 32 U. Fla. L. Rev. 1 (1979).

Part Collateral References

Adverse impact upon existing business as factor affecting validity and substantive requisites of issuance, by state or local governmental agencies, of economic development bonds in support of private business enterprise. 39 ALR 4th 1096.

17-5-1502. Legislative declaration.

Compiler's Comments

1987 Amendment: In (1), near middle, changed "economic development board" to "board of investments".

Collateral References

81A C.J.S. States §215.

64 Am. Jur. 2d Public Securities and Obligations §38.

17-5-1503. Definitions.

Compiler's Comments

1989 Amendment: Inserted definition of finance; and in definition of project costs inserted (f) relating to working capital for agricultural enterprise projects. Amendment effective May 16, 1989.

1987 Amendments: Chapter 94 at end of (4) deleted "and maintaining an office in the state".

Chapter 581 substituted definition of Board for "the Montana economic development board created in 2-15-1805".

Administrative Rules

ARM 8.97.1301 Investments in mortgages and loans — definitions.

17-5-1504. Powers of the board.

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

ARM 8.97.1601 Bonds and notes of board.

Title 8, chapter 97, subchapter 17, ARM Economic development bond program.

Title 8, chapter 97, subchapter 18, ARM Moral obligation economic development bond program.

Title 8, chapter 97, subchapter 19, ARM Stand-alone economic development bond program.

Title 8, chapter 97, subchapter 20, ARM Conservation reserve payment enhancement program.

Collateral References

81A C.J.S. States §§141, 142.

17-5-1505. Financing programs of the board.

Compiler's Comments

1985 Amendment: Inserted (1)(d) authorizing financing of in-state projects.

Administrative Rules

ARM 8.97.1901 Description of the SABP program.

ARM 8.97.2002 through 8.97.2009 State CRP program.

Law Review Articles

Economic Development Projects: A Perspective, Gold, 19 Urb. Law. 193 (1987).

Problems With State Aid to New or Expanding Businesses, Barrett, 58 S. Cal. L. Rev. 1019 (1985).

Collateral References

81A C.J.S. States §§208, 209.

64 Am. Jur. 2d Public Securities and Obligations §104.

Constitutionality of statutory plan for financing or refinancing smaller political units by larger political unit. 106 ALR 608.

Bonds issued by state officer or board payable solely out of proceeds of obligations of political subdivisions pledged as security as within constitutional or statutory provisions which impose a limit on state indebtedness or require consent of electors. 100 ALR 1114.

17-5-1506. Bonds and notes for projects and major projects.

Compiler's Comments

2003 Amendment: Chapter 609 in (6) at end substituted "$100 million" for "$75 million". Amendment effective May 9, 2003.

1991 Amendment: In (6), near beginning before "outstanding", deleted reference to 17-5-1519; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1985 Amendment: In (6), near beginning after "bonds" inserted "secured under 17-5-1515 and 17-5-1519" and after "one time" deleted "[for projects other than major projects]", and at end increased bonding limit from $25 million to $75 million; and deleted former (7) that read: "The total amount of bonds outstanding at any one time for major projects, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $50 million."

Composite Section: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Subsection (6) is from sec. 6, Ch. 701, L. 1983, which had no provision for major projects. The compiler inserted the bracketed language in (6) to clarify that the amount of outstanding bonds in (6) relates only to projects other than major projects. Subsection (7) was from sec. 4, Ch. 686, L. 1983.

Administrative Rules

ARM 8.97.1901 through 8.97.1903 Stand-alone economic development bond program.

Collateral References

81A C.J.S. States §§252 through 262.

64 Am. Jur. 2d Public Securities and Obligations §§38, 166, 172 through 182.

17-5-1507. Bond anticipation notes — issuance — payment of principal and interest.

Collateral References

81A C.J.S. States §250.

64 Am. Jur. 2d Public Securities and Obligations §20.

17-5-1508. Provisions of bond resolutions.

Compiler's Comments

1983 Amendment: Chapter 281, in (4), substituted "debt service funds" for "sinking funds".

Collateral References

81A C.J.S. States §§253, 255.

64 Am. Jur. 2d Public Securities and Obligations §§165 through 182.

17-5-1509. Personal liability.

Collateral References

81A C.J.S. States §127.

17-5-1510. Purchase of notes and bonds — cancellation.

Collateral References

81A C.J.S. States §261.

64 Am. Jur. 2d Public Securities and Obligations §215.

17-5-1513. Signatures of board members.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§170, 171.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other pecuniary obligation. 94 ALR 768.

17-5-1514. Accounts.

Compiler's Comments

Composite Section — 1983 Amendment: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Section 12, Ch. 686, L. 1983, contained only the first sentence of 17-5-1514 which was identical to the first sentence of sec. 14, Ch. 701, L. 1983. Compiler has codified section as set forth in sec. 14, Ch. 701, L. 1983, as there is no conflict between the sections.

Chapter 281, in (1), substituted "a fund" for "a bond proceeds fund".

17-5-1515. Reserve funds and appropriations.

Compiler's Comments

1983 Amendment: Chapter 281, in (2), substituted "debt service fund" for "sinking fund" in two places.

Collateral References

81A C.J.S. States §254.

17-5-1517. Refunding obligations.

Collateral References

81A C.J.S. States §259.

64 Am. Jur. 2d Public Securities and Obligations §§222, 224 through 227.

17-5-1518. Tax exemption of bonds.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near end of first sentence deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

17-5-1521. Adoption of rules.

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

ARM 8.97.1601 Bonds and notes of Board.

Title 8, chapter 97, subchapter 17, ARM Economic development bond program.

Title 8, chapter 97, subchapter 18, ARM Moral obligation economic development bond program.

Title 8, chapter 97, subchapter 19, ARM Stand-alone economic development bond program.

Title 8, chapter 97, subchapter 20, ARM Conservation reserve payment enhancement program.

17-5-1522. Pledge of the state.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§27, 355.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds. 115 ALR 220.

17-5-1525. Bonds as legal investment.

Compiler's Comments

1991 Amendment: In (2), near beginning after "under", substituted "17-5-1505 through 17-5-1518 and 17-5-1521 through 17-5-1529" for "17-5-1505 through 17-5-1529"; and made minor change in style. Pursuant to sec. 62, Ch. 16, L. 1991, the Code Commissioner has changed the reference to 17-5-1718 to 17-5-1518. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

17-5-1526. Procedure prior to financing projects.

Compiler's Comments

1993 Amendment: Chapter 464 inserted (1)(g) requiring an applicant to submit a statement that the contractor will pay the standard prevailing wage for work on certain projects financed from bond proceeds; and made minor changes in style. Amendment effective April 21, 1993.

1991 Amendment: At end of (1)(d), after "guarantor", deleted "including but not limited to a guaranty by the board pursuant to 17-5-1519"; near middle of (5), before "capital reserve", deleted "board's guarantee under 17-5-1519 or the"; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1987 Amendments: Chapter 273 in lead-in of (1) substituted commas for brackets around "other than major projects"; and inserted (6) exempting projects financed with bonds that are not exempt from federal taxation.

Chapter 561 in (1)(e) deleted reference to subsection (4) of 18-2-401.

1985 Amendments: Chapter 296 in (4) reduced notice requirement from 3 weeks to 2 weeks; and inserted (5) creating an exemption from certain requirements for bonds not secured by the Board's guaranty or the capital reserve account.

Chapter 653 inserted (1)(e) requiring a hiring preference for Montana residents.

Statement of Intent: The statement of intent attached to Ch. 653, L. 1985, provided: "It is the intent of the legislature that nothing contained in HB 554 shall require the economic development board [now the Board of Investments] of the department of commerce to enforce the statements submitted by an applicant to comply with section 17-5-1526(1)(e), MCA, provided a statement has been submitted by the applicant prior to the approval of the loan."

Compiler Clarification: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Section 24, Ch. 686, L. 1983 (17-5-1527), provided for the procedure prior to financing major projects. Section 26, Ch. 701, L. 1983 (17-5-1526), dealt with the procedure prior to financing projects. Since Ch. 701 did not deal with major projects, for clarification the compiler has inserted in 17-5-1526(1) bracketed language (now codified) referring to major projects.

Administrative Rules

ARM 8.97.1707 through 8.97.1709 Economic development bond program.

ARM 8.97.1801 and 8.97.1802 Moral obligation economic development bond program.

ARM 8.97.1901 and 8.97.1902 Stand-alone economic development bond program.

Attorney General's Opinions

Local Government Determination of Public Interest Question Binding on Board: If a local government elects to hold a hearing pursuant to 17-5-1526 or 17-5-1527 to determine whether a project is in the public interest, the Montana Economic Development Board (now the Board of Investments) is bound by the decision of the local government on the public interest question. 40 A.G. Op. 78 (1984).

Collateral References

81A C.J.S. States §253.

17-5-1527. Procedure prior to financing major projects.

Compiler's Comments

2003 Amendment: Chapter 609 in (1)(b) substituted "$50 million" for "$10 million"; and inserted (7) encouraging the board to consider certain applications for project financing. Amendment effective May 9, 2003.

1993 Amendment: Chapter 464 inserted (1)(g) requiring an applicant to submit a statement that the contractor will pay the standard prevailing wage for work on certain projects financed from bond proceeds; and made minor changes in style. Amendment effective April 21, 1993.

1991 Amendment: At end of (1)(d), after "guarantor", deleted "including but not limited to a guaranty by the board pursuant to 17-5-1519"; near middle of (5), after "secured by", deleted "the board's guarantee under 17-5-1519 or"; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1987 Amendments: Chapter 273 inserted (6) exempting projects financed with bonds that are not exempt from federal taxation.

Chapter 561 in (1)(e) deleted reference to subsection (4) of 18-2-401.

1985 Amendments: Chapter 296 in (4) reduced notice requirement from 3 weeks to 2 weeks; and inserted (5) creating an exemption from certain requirements for bonds not secured by the Board's guaranty or the capital reserve account.

Chapter 653 inserted (1)(e) requiring a hiring preference for Montana residents.

Administrative Rules

ARM 8.97.1902 Eligibility requirements of SABP program.

Attorney General's Opinions

Local Government Determination of Public Interest Question Binding on Board: If a local government elects to hold a hearing pursuant to 17-5-1526 or 17-5-1527 to determine whether a project is in the public interest, the Montana Economic Development Board (now the Board of Investments) is bound by the decision of the local government on the public interest question. 40 A.G. Op. 78 (1984).

17-5-1529. Annual audits.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 483 in (1) near middle after "department" inserted "of administration"; and made minor changes in style. Amendment effective July 1, 2001. The amendment by Ch. 487 rendered the amendment by Ch. 483 void.

Chapter 487 deleted former (1) that read: "(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds"; near beginning after "books and records" inserted "related to economic development bonds"; and made minor changes in style. Amendment effective May 1, 2001.

1985 Amendment: Inserted (1) requiring examination of Board's loans and investments by Department's bank examiners.

Part 16
Municipal Finance Consolidation Act

Part Compiler's Comments

Preamble: The preamble attached to Ch. 8, L. 2005, provided: "WHEREAS, the Legislature has previously authorized various state agencies to borrow from the INTERCAP program authorized under the Municipal Finance Consolidation Act of 1983; and

WHEREAS, some of these previously authorized loans may constitute state debt; and

WHEREAS, the Legislature has specified loan security for some of these loans and not for others; and

WHEREAS, the funding for these loans is obtained from proceeds of bonds purchased by private investors and the status of these loans should be clarified."

Loan Reauthorization: Section 1, Ch. 8, L. 2005 provided: "(1) All loans listed in subsection (2) are reauthorized. The amount shown for each loan represents the actual amount authorized by the legislature or, in the absence of a specified amount authorized by the legislature, the amount committed by the Montana board of investments in its loan agreements. The terms of and security for these loans, either as authorized by the legislature or embodied in loan agreements with the Montana board of investments, are ratified.

(2) The following loans are reauthorized in the original principal amount of:

(a) $500,000 to the department of justice for the law enforcement academy to be paid from the state general fund as provided in Chapter 531, Laws of 1995;

(b) $3,712,000 to the petroleum tank release compensation board to clean up leaking underground storage tanks to be paid from petroleum storage tank cleanup fees as provided in Chapter 115, Laws of 1997;

(c) $600,000 to the department of natural resources and conservation for information technology to be paid from the state general fund instead of school trust land income as provided in Chapter 578, Laws of 1999;

(d) $2,000,000 to the department of administration, public employees' retirement board, for the state defined contribution retirement system plan startup costs to be paid from employer and employee contributions as provided in Chapter 471, Laws of 1999;

(e) $340,000 to the department of administration for the voluntary employees' beneficiary association startup costs to be paid from the state general fund as provided in Chapter 272, Laws of 2001;

(f) $4,500,000 to the department of justice for information technology to be paid from motor vehicle fees as provided in Chapter 394, Laws of 2001; and

(g) $18,000,000 to the department of justice for information technology to be paid from motor vehicle fees as provided in Chapter 562, Laws of 2003."

Saving Clause: Section 4, Ch. 8, L. 2005, was a saving clause.

Severability: Section 34, Ch. 620, L. 1983, was a severability section.

Part Law Review Articles

Expanding Responsibilities: Recent Disclosure Actions Involving Municipal Securities Issuers, Doty, 37 Urb. Law. 113 (2005).

Municipal Finance Advising, Part I: Fiduciary Relationships of Municipal Finance Advisors With Their Issuer Clients, Doty, 33 Urb. Law. 225 (2001).

Municipal Finance Advising, Part II: Managing Relationships of Municipal Finance Advisors With Issuers, Doty, 33 Urb. Law. 259 (2001).

Yield Burning and Municipal Finance: A Primer, Wick, 18 Ann. Rev. Banking L. 533 (1999).

Municipal Bond Financing After South Carolina v. Baker [108 S. Ct. 1355] and the Tax Reform Act of 1986: Can State Sovereignty Reemerge?, 42 Tax Law. 147 (1988).

Part Collateral References

Bonds issued by state officer or board payable solely out of proceeds of obligations of political subdivisions pledged as security as within constitutional or statutory provisions which impose a limit on state indebtedness or require consent of electors. 100 ALR 1114.

17-5-1602. Policy and purpose.

Compiler's Comments

1995 Amendment: Chapter 208 in (1)(a) substituted "eligible government units" for "counties, cities, towns, school districts, special taxing districts, and other public bodies"; in (1)(b), before "public indebtedness", deleted "local"; and in (2)(a) substituted "eligible government units" for "public bodies".

Administrative Rules

ARM 8.97.717 Description of Municipal Finance Consolidation Act programs.

Attorney General's Opinions

Solid Waste Management District Not Considered Political Subdivision for Municipal Finance Consolidation Purposes: A solid waste management district is not governed by an independent board autonomous from the supervisory control of the Board of County Commissioners. Therefore, a solid waste management district is not considered a political subdivision for purposes of funding under the Municipal Finance Consolidation Act. 44 A.G. Op. 28 (1992).

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §71.

17-5-1604. Definitions.

Compiler's Comments

1999 Amendment: Chapter 498 in definition of eligible government unit in (a) inserted reference to regional water and wastewater authorities; and made minor changes in style. Amendment effective April 27, 1999.

Severability: Section 26, Ch. 498, L. 1999, was a severability clause.

1995 Amendment: Chapter 208 substituted "eligible government unit" for "local government unit" as defined term, at beginning of (b) inserted "the state, any board, agency, or department of the state", and at end inserted "when authorized by law to borrow money"; and made minor changes in style.

1993 Amendment: Chapter 380 in (3), after "taxing district", inserted "an assessment or service district authorized by law to borrow money". Amendment effective April 15, 1993.

1991 Amendment: At end of definition of local government unit, after "taxing district", inserted "or the board of regents of the Montana university system". Amendment effective July 1, 1991.

1987 Amendment: Substituted definition of Board for "the Montana economic development board created in 2-15-1805".

1983 Amendment: In (1), substituted reference to the Montana Economic Development Board for reference to the Board of Investments.

Attorney General's Opinions

Solid Waste Management District Not Considered Political Subdivision for Municipal Finance Consolidation Purposes: A solid waste management district is not governed by an independent board autonomous from the supervisory control of the Board of County Commissioners. Therefore, a solid waste management district is not considered a political subdivision for purposes of funding under the Municipal Finance Consolidation Act. 44 A.G. Op. 28 (1992).

Refuse District Not Special Taxing District or Political Subdivision: Under the rationale of this section and 42 A.G. Op. 80 (1988), a refuse disposal district has no independent governing body and therefore does not fall within the definition of "special taxing district". Further, under the rationale of 43 A.G. Op. 56 (1990), because a refuse board is not a separate and independent body and has not been delegated supervisory authority over a refuse disposal district, a refuse disposal district cannot be considered a political subdivision, as that term is used in this section. 43 A.G. Op. 68 (1990).

17-5-1605. Board of investments to implement.

Compiler's Comments

1987 Amendment: Near beginning changed "Montana economic development board" to "board of investments".

1983 Amendment: Substituted reference to the Montana Economic Development Board for reference to the Board of Investments.

Administrative Rules

Title 8, chapter 97, subchapter 7, ARM Municipal finance consolidation program.

17-5-1606. Bonds, bond anticipation notes, and notes of the board.

Compiler's Comments

1995 Amendment: Chapter 208 in (1) substituted "eligible government units" for "local government units"; and made minor changes in style.

1985 Amendment: In (1) near middle, after "bonds", inserted "registered warrants, and tax or revenue anticipation notes and other".

Administrative Rules

ARM 8.97.717 Description of Municipal Finance Consolidation Act programs.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§11, 38, 46.

17-5-1607. Participation voluntary.

Compiler's Comments

1995 Amendment: Chapter 208 substituted "eligible government unit" for "local government unit"; and made minor changes in style.

17-5-1608. Limitations on amounts.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 562 at end increased bond debt limit from $80 million to $100 million. Amendment effective July 1, 2003, and terminates June 30, 2013. The amendment by Ch. 597 rendered the amendment by Ch. 562 void.

Chapter 597 increased amount of outstanding bonds to $120 million. Amendment effective May 9, 2003.

Termination Provision Repealed: Section 81, Ch. 477, L. 2003, repealed sec. 9, Ch. 394, L. 2001, which terminated amendments to this section June 30, 2011. Effective January 1, 2004.

Severability: Section 14, Ch. 597, L. 2003, was a severability clause.

Saving Clause: Section 15, Ch. 597, L. 2003, was a saving clause.

2001 Amendment: Chapter 394 at end substituted "$80 million" for "$75 million"; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2011.

1997 Amendment: Chapter 483 at end of section increased bond limit from $50 million to $75 million. Amendment effective May 1, 1997.

1987 Amendment: Increased outstanding indebtedness limit from $25 million to $50 million.

1985 Amendment: Deleted former (1) that read: "(1) make any loans to or purchase the bonds or notes of any single local government unit in an amount greater than $500,000 per single loan, bond issue, or note; or"; and near end of section after "notes", inserted "or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101".

17-5-1609. Purchase of anticipation notes.

Compiler's Comments

1995 Amendment: Chapter 208 in first and second sentences substituted "eligible government unit" for "local government unit"; and at end of first sentence substituted "eligible government unit securities" for "municipal securities".

Administrative Rules

ARM 8.97.720 Agreements.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §20.

17-5-1610. Refunding obligations.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§222 through 228.

17-5-1611. Additional powers of the board.

Compiler's Comments

1995 Amendment: Chapter 208 throughout section substituted "eligible government unit bonds" for "municipal bonds" and substituted "eligible government unit(s)" for "local government unit(s)"; inserted introductory clause of (4) concerning eligible local government unit; in (4)(a), after "required", deleted "of a local government unit"; and made minor changes in style.

1985 Amendment: Throughout section, after "bond anticipation notes", inserted "registered warrants, tax or revenue anticipation notes, or other".

Administrative Rules

ARM 8.97.715 Definitions.
ARM 8.97.716 Scope of subchapter 7.
ARM 8.97.717 Description of Municipal Finance Consolidation Act programs.
ARM 8.97.718 Application procedure.
ARM 8.97.719 Criteria for evaluation of applications.
ARM 8.97.720 Agreements.
ARM 8.97.722 General terms, interest rates, fees, and charges.
ARM 8.97.724 Closing requirements.

17-5-1612. Specific loan authorization.

Compiler's Comments

Preamble: The preamble attached to Ch. 399, L. 2005, provided: "WHEREAS, the Legislature has previously authorized various state agencies to borrow from the program authorized under the Municipal Finance Consolidation Act of 1983, Title 17, chapter 5, part 16, MCA, and commonly known as the INTERCAP program; and

WHEREAS, some of these previously authorized loans may constitute state debt; and

WHEREAS, the Legislature desires to establish parameters for the future use of the INTERCAP program by state agencies to ensure that loans are properly authorized."

Effective Date: Section 3, Ch. 399, L. 2005, provided that this section is effective on passage and approval. Approved April 25, 2005.

17-5-1621. Provisions of bond resolutions.

Compiler's Comments

1983 Amendment: Chapter 281, in (2), substituted "debt service funds" for "sinking funds".

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§172 through 182.

17-5-1623. Nonimpairment by state.

Compiler's Comments

1995 Amendment: Chapter 208 substituted "eligible government unit" for "local government unit".

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§46, 71.

17-5-1624. Trust indenture.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §177.

17-5-1626. Signatures of board members.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §§170, 171.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other pecuniary obligation. 94 ALR 768.

17-5-1628. Bonds or notes as legal investments.

Compiler's Comments

1983 Amendment: Chapter 281, near end of section, substituted "debt service funds" for "sinking funds".

17-5-1629. Tax exemption of bonds.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near end of first sentence deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

17-5-1630. Reserve fund.

Compiler's Comments

1987 Amendment: In (5), near beginning of first sentence after "board", deleted "of investments" and in second sentence, after "as the board considers proper", deleted "and as may be agreed upon between the board and the board of investments".

1983 Amendment: Chapter 281, in (2), substituted "debt service fund" for "sinking fund" in two places.

Administrative Rules

ARM 8.97.722 General terms, interest rates, fees, and charges.

17-5-1643. Sale or exchange of securities.

Compiler's Comments

1995 Amendment: Chapter 208 throughout section substituted "eligible government unit" for "local government unit"; in (1), in first sentence, substituted "eligible government unit securities" for "municipal securities"; and made minor changes in style.

Administrative Rules

ARM 8.97.720 Agreements.

ARM 8.97.722 General terms, interest rates, fees, and charges.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §119.

17-5-1644. Care and custody of bonds purchased by the board.

Compiler's Comments

1995 Amendment: Chapter 208 in three places, before "bonds", deleted "municipal"; and made minor changes in style.

17-5-1645. Insurance or guaranty.

Compiler's Comments

1995 Amendment: Chapter 208 deleted "municipal" before "bonds"; and substituted "eligible government units" for "local government units".

17-5-1646. Default in payment.

Compiler's Comments

1995 Amendment: Chapter 208 in two places substituted "eligible government unit" for "local government unit".

17-5-1647. Powers and duties of trustee on default.

Compiler's Comments

1995 Amendment: Chapter 208 in four places substituted "eligible government unit" for "local government unit"; and made minor changes in style.

17-5-1649. Annual audit.

Compiler's Comments

1987 Amendment: Deleted former (1) that read: "(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds."

1985 Amendment: Inserted (1) requiring annual examinations by Department's bank examiners of Board's loans and investments and requiring payment of costs from Board's funds.

17-5-1650. Annual report.

Compiler's Comments

1995 Amendment: Chapter 208 in third sentence substituted "eligible governmental securities" for "local governmental securities".

Chapter 545 in second sentence, after "two copies to the", substituted "legislative services division" for "office of the legislative fiscal analyst, two copies to the legislative council". Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1993 Amendment: Chapter 349 in first sentence, after "legislature", deleted "as provided in 5-11-210" and inserted second sentence regarding distribution to the Legislature; and made minor changes in style.

1991 Amendment: In first sentence inserted reference to 5-11-210. Amendment effective March 20, 1991.

1987 Amendment: Near beginning changed report date from September 1 to December 31.

17-5-1651. Limitations on board's power.

Compiler's Comments

2001 Amendment: Chapter 483 in (3) near middle after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 208 in (1), in two places, substituted "eligible government unit" for "local government unit".

Part 20
Procurement of Vehicles and Equipment

17-5-2001. Loans to state agencies.

Compiler's Comments

2005 Amendment: (Temporary version) Chapter 550 in (4)(b) at end deleted "from the administrative assessment provided for in 15-1-141"; deleted former (4)(c) that read: "(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue from the administrative assessment provided for in 15-1-141 must be sufficient to repay the indebtedness with respect to the replacement system over the proposed term of the loan"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 562 in (2)(a) increased loan limit to the department of justice for motor vehicle information technology system from $4.5 million to $22.5 million; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2013.

Chapter 597 inserted (4) concerning indebtedness for replacement system for POINTS computer system; and made minor changes in style. Amendment effective May 9, 2003, and terminates June 30, 2011.

Termination Provision Repealed: Section 81, Ch. 477, L. 2003, repealed sec. 9, Ch. 394, L. 2001, which terminated amendments to this section June 30, 2011. Effective January 1, 2004.

Severability: Section 14, Ch. 597, L. 2003, was a severability clause.

Saving Clause: Section 15, Ch. 597, L. 2003, was a saving clause.

2001 Amendment: Chapter 394 in (1) near beginning of first sentence after "vehicles" inserted "automated systems"; inserted (2) concerning financing of information technology system for vehicle title and registration records and driver's license records; inserted (3) concerning financing for acquisition of video gambling automated accounting and reporting system data collection units; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2011.

Deposit of Loan Proceeds — Capital Projects Appropriation: Section 5, Ch. 394, L. 2001, provided: "(1) The proceeds of any loan from the board of investments to the department of justice for creation of a new motor vehicle information technology system must be deposited in the capital projects fund.

(2) There is appropriated from the capital projects fund to the department of justice up to $4.5 million for the motor vehicle information technology system described in 17-5-2001.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the motor vehicle information technology system authorized by 17-5-2001 for agency current level operating expenses.

(4) The appropriation continues until the project is completed in accordance with 17-7-212."

Deposit of Loan Proceeds — Appropriation — Contractual Restrictions: Section 6, Ch. 394, L. 2001, provided: "(1) The proceeds of any loan from the board of investments to the department of justice for the acquisition of video gambling automated accounting and reporting system data collection units must be deposited in a state special revenue account.

(2) There is appropriated from the state special revenue account to the department of justice $1,120,000 for the purchase of video gambling automated accounting and reporting system data collection units. The department shall enter into contracts with the owners or operators of machines in which the units are placed that will encumber and allow the expenditure of the appropriation over the term of the loan from the board of investments for the purchase of the units.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the purchase of video gambling automated accounting and reporting system data collection units authorized by 17-5-2001 for agency current level operating expenses."

Effective Date: Section 5, Ch. 483, L. 1997, provided that this section is effective on passage and approval. Approved May 1, 1997.

Part 21
Crossover Refunding Bonds

17-5-2102. Crossover refunding bonds authorized.

Compiler's Comments

2003 Amendment: Chapter 277 in (4) inserted second and third sentences providing that the bonds do not count against any debt limitation until the crossover date and that after the crossover date, the bonds must be considered outstanding for purposes of any debt limitation; and made minor changes in style. Amendment effective July 1, 2003.

Part 22
Bond Fees

17-5-2201. Fee for issuance of bonds.

Attorney General's Opinions

Montana Higher Education Student Assistance Corporation Not State Bond Issuer — Bond Fee Inapplicable: A reasonable interpretation of 17-5-1312 is that it governs application of the audit fee for entities issuing private activity bonds, while this section governs application of the fee for all other types of bond issuance. The Montana Higher Education Student Assistance Corporation is not a state bond issuer as that term is used in this section; therefore, the fees in this section do not apply to bonds issued by the Corporation. 47 A.G. Op. 1 (1997).

CHAPTER 6
DEPOSITS AND INVESTMENTS

Part 1
Deposits

17-6-101. Deposit of funds in hands of state treasurer.

Compiler's Comments

1993 Amendments: Chapter 107 inserted (6) allowing the State Treasurer to contract with a financial institution to provide general depository banking services and statutorily appropriating contracting costs from the general fund; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 131 inserted (2) allowing the deposit of public money in out-of-state financial institutions under certain circumstances; and made minor changes in style.

1985 Amendment: In (1) and (2) inserted reference to credit unions and made minor changes in phraseology.

Case Notes

Insolvent Banks: Neither this section nor sections 6071 (repealed) and 6803 (repealed), R.C.M. 1921, requiring state banks to make report of their condition to the Superintendent of Banks and conferring upon the Superintendent of Banks visitorial powers with the right to examine books of bank, expressly or by implication waived the state's preference right over unsecured creditors of an insolvent bank to payment of its deposits. State ex rel. Rankin v. Madison St. Bank, 68 M 342, 218 P 652 (1923).

Collateral References

Depositaries *key* 6, et seq.

26B C.J.S. Depositaries §40, et seq.

17-6-102. Insurance on deposits.

Compiler's Comments

1993 Amendment: Chapter 10 in (1), in first sentence, deleted reference to Federal Savings and Loan Insurance Corporation; and made minor changes in style.

1985 Amendment: In (1) in first sentence, after "corporation", inserted "or national credit union administration", and after "association", inserted "or credit union"; in (2), in first sentence, after "association", inserted "or credit union" and in last sentence, in two places, after "depository", substituted "financial institution" for "bank"; and made minor changes in phraseology.

Collateral References

Depositaries *key* 6, et seq.

26B C.J.S. Depositaries §§62 through 90.

63A Am. Jur. 2d Public Funds §§7, 13.

17-6-103. Security for deposits of public funds.

Compiler's Comments

1999 Amendment: Chapter 158 in (3)(e) inserted reference to letter of credit from federal home loan bank. Amendment effective October 1, 1999.

1997 Amendment: Chapter 42 in (8), in second sentence, substituted "32-1-424(1)(a)" for "32-1-424(3)(a)". Amendment effective March 12, 1997.

1995 Amendment: Chapter 179 in (8), at beginning of second sentence, deleted "Subject to rules prescribed by the department of commerce"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendments: Chapter 137 in second sentence of (8) inserted reference to subsection (a) of 32-1-424(3); and made minor changes in phraseology.

Chapter 201 inserted (4) relating to investments in a qualifying investment company or investment trust; and made minor changes in style.

1987 Amendments: Chapter 57 inserted (15) referring to linked deposit loan obligations.

Chapter 370 in (11) inserted reference to part 42.

1985 Amendment: Inserted (3)(j) referring to federal home loan mortgage corporation.

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (7).

Collateral References

Depositaries *key* 7.

26B C.J.S. Depositaries §§62 through 90.

17-6-104. Interest on deposits — conformity with federal law.

Compiler's Comments

1993 Amendment: Chapter 10 near middle of (2) deleted reference to Federal Savings and Loan Insurance Corporation; and made minor changes in style.

1985 Amendment: In (1) near middle, after "savings and loan associations", inserted "credit unions"; in (2) near middle, after "federal savings and loan insurance corporation", inserted "national credit union administration" and near end, after "savings and loan associations", inserted "or credit unions"; and made minor changes in phraseology.

Collateral References

Depositaries *key* 6.

26B C.J.S. Depositaries §95.

Liability of public officer for interest or other earnings on public money in his possession. 5 ALR 2d 257.

17-6-105. State treasurer as treasurer of state agencies — deposits of money.

Compiler's Comments

1991 Amendment: At beginning of (6) inserted exception clause; and made minor changes in style. Amendment effective April 4, 1991.

1985 Amendment: In (2)(a) in two places and in (3), inserted reference to credit union(s); and made minor changes in phraseology.

Case Notes

State Board of Education: Nothing contained in this section or 17-2-202 and 17-3-1003, relative to the duties of the State Treasurer and state boards, is out of harmony with Ch. 94, L. 1929 (since repealed), concerning power of State Board of Education to erect and operate dormitories. Barbour v. St. Bd. of Educ., 92 M 321, 13 P2d 225 (1932).

Attorney General's Opinions

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and similar gifts to the School must be deposited with the State Treasurer. If the Board invests any

gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

University System — Funds — Deposit and Investment: The statutes relating to the deposit and investment of state money are applicable to the Board of Regents of Higher Education and the separate units of the Montana University System. 36 A.G. Op. 2 (1975).

University System — Deposit of Funds — State Treasurer: All money received or collected by the Montana University System from any source whatsoever is required to be deposited in the state treasury except as otherwise provided by statute. 34 A.G. Op. 2 (1971).

Educational Institutions — Extension Programs — Fees: All fees derived from extension programs authorized by the State Board of Education must be placed in the general fund. 28 A.G. Op. 7 (1959).

Collateral References

Depositaries *key* 6 through 9; States *key* 73.

26B C.J.S. Depositaries §§41, 47, 48; 81A C.J.S. States §135.

Part 2
Investments

Part Law Review Articles

Public Funds and Private Capital Markets: The Investment Practices and Performance of State and Local Pension Funds, Coronado, Engen, & Knight, 56 Nat'l Tax J. 579 (2003).

Smart Growth: Prioritizing State Investments, Fredrickson, 15 Nat. Resources & Env't 236 (2001).

How Risk-Prone Are Government Investment Managers?, 180 J. Acct. 17 (1995).

Part Collateral References

For a general discussion of the administration of the Trust Legacy Fund, see In re Montana Trust & Legacy Fund, 143 M 218, 388 P2d 366 (1964).

17-6-201. Unified investment program — general provisions.

Compiler's Comments

Contingent Effective Date: Section 13(2), Ch. 418, L. 2001, provided: "[Section 5] [17-6-201] is effective January 1, 2003, if Senate Bill No. 493 is approved by the electorate." Senate Bill No. 493 was not approved by the electorate, so the contingency did not occur.

2001 Amendment: Chapter 418 deleted former (2)(b) that read: "(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation"; and made minor changes in style. Amendment effective on occurrence of contingency.

1999 Amendments — Composite Section: Chapter 330 deleted (6)(d) that read: "(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in (2)(a) at end deleted "except that an investment may not be made at any time that would cause the book value of the investments in a retirement fund to exceed 50% of the book value of the fund or that would cause the stock of one corporation to exceed 2% of the book value of the retirement fund". Amendment effective April 27, 1999.

Saving Clause: Section 77, Ch. 471, L. 1999, was a saving clause.

Severability: Section 78, Ch. 471, L. 1999, was a severability clause.

1997 Amendments: Chapter 32 in (6)(a), in first clause after "transferring", deleted "all", after "through" deleted "foreclosure of any", and after "investments" deleted "purchased under the provisions of 17-6-211 when full payment has been received for the property" and inserted second sentence requiring an appraisal prior to transfer of real property; and made minor changes in style.

Chapter 422 in (6)(d) deleted former second sentence that read: "The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (6)(d), at end of second sentence after "board", deleted "and are statutorily appropriated, as provided in 17-7-502". Amendment effective July 1, 1997.

Chapter 549 deleted (8) that read: "(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering

programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305." Amendment effective July 1, 1999.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1995 Amendment: Chapter 18 near beginning of introductory clause of (1), before "Montana", deleted "1972"; and at beginning of second sentence of (4) deleted "Except as provided in this chapter".

1993 Special Session Amendment: Chapter 37 deleted (9) that read: "(9) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (9)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund, as defined in 17-2-102, must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

(b) A deduction for program costs, as provided in subsection (9)(a), may not be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202"; and made minor changes in style. Amendment effective January 5, 1994.

1993 Amendments — Composite Section: Chapter 46 inserted (2)(b) prohibiting investment in private corporate capital stock; inserted (3)(d) prohibiting a direct loan to an individual borrower; in (4), at end of second sentence, inserted "unless otherwise provided by law"; inserted (6)(d) allowing expenditure of funds needed to cover costs of necessary property repairs; and made minor changes in style.

Chapter 331 in (4), in first sentence before "authority", substituted "primary" for "sole" and at beginning of second sentence inserted exception clause; inserted (8) relating to Board reimbursement to the Department of administrative costs not covered by payback funds; in (9)(a) substituted "subsection (9)(b)" for "subsection (8)(b)"; in (9)(b) substituted "subsection (9)(a)" for "subsection (8)(a)"; and made minor changes in style. Amendment effective July 1, 1993.

Style changes in (1)(a), (1)(c), (2)(a), (3)(a), (5)(e), and (7) were slightly different in the two chapters. In each case, the codifier chose the more appropriate of the two.

Severability: Section 9, Ch. 331, L. 1993, was a severability clause.

1991 Amendment: In (7), after "therefrom", deleted "except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds". Amendment effective April 1, 1991.

1987 Amendments: Chapter 158 inserted (8) authorizing preparation of statewide cost allocation plan.

Chapter 335 in (3)(a), at end of introductory clause after "Montana", deleted "if the investment meets the standard of care required by this section"; and inserted (3)(b) referring to venture capital companies.

Chapter 581 in (1), in introductory clause after "board of investments", deleted "and the Montana economic development board" and after "in accordance with" deleted "Article VIII, section 13, of the Montana constitution and"; in (3)(c) substituted "board" for "board of investments and the Montana economic development board"; in (4), in first sentence after "board", deleted "of investments" and at end deleted "other than the Montana in-state investment fund"; and in (5) and (6), at beginning after "board", deleted "of investments".

1985 Amendments: Chapter 183 inserted (5)(e) requiring Board to keep total of each fund and investments of each fund and a record of participation of each fund account; and deleted former (6) that read: "The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund and of the participation of each treasury fund account therein and shall make from time to time such reports with reference thereto as may be directed by the board of investments."

Chapter 418 in (1) near beginning, after "The", substituted "unified" for "uniform"; in first sentence of (1), after "accordance with", inserted "Article VIII, section 13, of the Montana constitution and the prudent expert principle which requires any investment manager to:" and deleted remainder of former (1) that read: "the rules provided in this chapter and with that degree of judgment and care, under circumstances from time to time prevailing, which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived, and preservation of purchasing power of capital during periods of sustained high monetary inflation. Investments by the Montana economic development board are limited to those made from the Montana in-state investment fund and for the purposes set

forth in part 3"; deleted former (2) that read: "All state funds shall be invested and reinvested in securities enumerated in 17-6-211 to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes"; and inserted (1)(a), (1)(b), and (1)(c) explaining the prudent expert principle; inserted (2) allowing investment in corporate common stocks; and inserted (3) allowing investment in Montana business activity and urging investment in venture capital companies.

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

1983 Amendments: Chapter 281, in (7), changed "trust and legacy fund" to "nonexpendable trust funds".

Chapter 677, in middle of (1) following "funds shall be administered by the board of investments" inserted "and the Montana economic development board", and substituted "people of prudence" for "men of prudence"; inserted last sentence of (1) (deleted by 1985 amendment); in (3) inserted "other than the Montana in-state investment fund" after "The board of investments has the sole authority to invest state funds"; and in (4) substituted "board of investments" for "board".

1981 Amendment: Added "and preservation of purchasing power of capital during periods of sustained high monetary inflation" at the end of (1).

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

ARM 8.97.1705 False or misleading statements.

Attorney General's Opinions

Investment Earnings Not to Be Credited to Science and Technology Development Account: Investment earnings on funds earmarked to be loaned but not yet paid out to a loan recipient are not payback funds or loan repayments within the context of 90-3-305 (now repealed) or this section. Therefore, those earnings may not be credited to the science and technology development account to be used to cover costs of administering programs under the Montana Science and Technology Financing Act. 45 A.G. Op. 28 (1994).

Cost Deductions From Investment Earnings Allowed: Subsection (7) of this section allows for deduction of allocated program costs from investment earnings of the state special revenue accounts referred to in 81-1-104. 42 A.G. Op. 108 (1988).

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

University System — Funds — Deposit and Investment: The statutes relating to the deposit and investment of state money are applicable to the Board of Regents of Higher Education and the separate units of the Montana University System. 36 A.G. Op. 2 (1975).

Law Review Articles

Prudent Man Rule and Preservation of Trust Principal, Blair & Heggestad, 1978 U. Ill. L. F. 79 (1978).

Collateral References

63A Am. Jur. 2d Public Funds §§7, 8.

17-6-202. Investment funds — general provisions.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes

to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

Attorney General's Opinions

Foreclosure and Disposal of Real Property: Arguably, if the Board of Investments has the authority to invest in first mortgages, it should have the authority to foreclose and dispose of the real property involved. However, no such specific authority exists. Therefore, once title to real property passes to the state, its administration, control, and subsequent disposition come under the direction and supervision of the Board of Land Commissioners. (See 1997 amendments to 17-6-201, 77-1-101, and 77-1-701.) 36 A.G. Op. 104 (1976).

Law Review Articles

The Public Piggy Bank Goes to Market: Public Pension Fund Investment in Common Stock and Fund Trustees' Social Agenda, Martin, 29 San Diego L. Rev. 39 (1992).

Legal Standards Governing Investment of Pension Assets for Social and Political Goals, Hutchinson & Cole, 128 U. Pa. L. Rev. 1340 (June 1980).

Collateral References

States *key* 124.

81A C.J.S. States §225.

Power of board or officials to depart from literal requirements in respect of deposits or loans of public funds in their control. 104 ALR 623.

17-6-203. Separate investment funds.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 34 in (1) near beginning of first sentence and in second sentence substituted reference to permanent fund for reference to nonexpendable trust fund and near middle of second sentence after "subject to" substituted "deposit" for "payment"; in (2)(e) at beginning substituted "workers' compensation program" for "industrial accident insurance program"; in (6) near end substituted "the appropriation or investment" for "such liquidation"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 467 inserted (7) regarding establishment of the Montana tobacco settlement trust fund; and made minor changes in style. Amendment effective April 30, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Retroactive Applicability: Section 7, Ch. 467, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to proceeds from the tobacco settlement occurring on or after January 1, 2001."

1997 Code Commissioner Instruction — Name Change: Pursuant to sec. 12, Ch. 223, L. 1997, in (2)(c) the Code Commissioner has substituted "game wardens' and peace officers' retirement system" for "game wardens' retirement system". Amendment effective July 1, 1997.

1989 Amendment: In (2)(a) changed "patrolmen's" to "patrol officers'".

1987 Amendment: Inserted (4) referring to fish and wildlife mitigation trust fund.

1985 Amendment: In (5) after "permanent", deleted "and invested in the permissible investments enumerated in 17-6-211".

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

Code Commissioner Deletion: In (1) under authority of sec. 48, Ch. 281, L. 1983, the Code Commissioner deleted "and all money referred to in 17-2-102(8)" as an erroneous and redundant reference to former treasury fund structure.

1983 Amendment: Near beginning of (1), changed "trust and legacy fund" to "nonexpendable trust funds"; and in last sentence of (1), after "each and every", substituted "fund constituting the Montana nonexpendable trust fund type" for "subfund constituting the Montana trust and legacy fund" and near end, changed "subfund" to "fund".

Attorney General's Opinions

Foreclosure and Disposal of Real Property: Arguably, if the Board of Investments has the authority to invest in first mortgages, it should have the authority to foreclose and dispose of the real property involved. However, no such specific authority exists. Therefore, once title to real property passes to the state, its administration, control, and subsequent disposition come under the direction and supervision of the Board of Land Commissioners. (See 1997 amendments to 17-6-201, 77-1-101, and 77-1-701.) 36 A.G. Op. 104 (1976).

17-6-204. Investment of local government funds.

Attorney General's Opinions

Distribution of Interest Accrued on Protest Fund: Interest accrued on amounts held in a protest fund established under 15-1-402 must be distributed to the affected taxing units in the same proportion as the tax amounts in the fund are paid to those units. 41 A.G. Op. 60 (1986).

17-6-211. Preference to in-state investment firms — commitment agreement with board of housing.

Compiler's Comments

1985 Amendments — Composite Section: Chapter 418 deleted former (1) through (3) that read: "(1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (1)(b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of highest quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (1)(c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, savings and loan associations, and credit unions located in Montana; provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property as provided in this subsection (1)(f) and subsection (5), provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund; and

(g) any other investment in any business activity in the state, including activities that continue existing jobs or create new jobs in Montana, provided that investments which do not meet the requirements of subsections (1)(a) through (1)(f) may not, in the aggregate, exceed 10% of the fund from which each such investment is made.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund;

(d) subsection (3)(c) does not apply to funds provided for in 17-6-203(4)"; in first sentence of (1), after "and/or", substituted "financial institutions" for "banks"; at beginning of (2), deleted former first sentence that read: "The board may invest in mortgage loans financed by the board of housing if the mortgages are not in default and meet the requirements of subsection (1)(f)"; and deleted former (6) that read: "The Montana economic development board created in 2-15-1805 may invest the Montana in-state investment fund in any in-state investment authorized by its rules in addition to those investments authorized by this section."

Chapter 421 in (1) in first sentence, after "firms", inserted "credit unions".

Chapter 418 substituted "financial institutions" for "banks". Chapter 421 inserted "credit unions" before "banks". Because the term "financial institutions" includes credit unions, the Code Commissioner has not inserted "credit unions".

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

1983 Amendments — Composite: Chapter 358, near beginning of (1)(c) before "quality", changed "prime" to "highest"; and in (1)(c)(ii) after "reporting period," deleted "had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1 and".

Chapter 360, in (1)(f), inserted "as provided in this subsection (1)(f) and subsection (5)"; and inserted (5) authorizing commitment agreement with Board of Housing.

Chapter 387, in (1)(e), after "associations" inserted ", and credit unions"; inserted (1)(g) authorizing investment in any business activity that continues or creates jobs in Montana.

Chapter 677, in (4), following "to direct", inserted "its portion of"; and inserted (6) allowing Board to authorize in-state investments by rule.

1981 Amendment: Deleted former subsection (3)(c) restricting investments in common stock to stocks that have paid cash dividends in each of at least 5 years immediately preceding purchase and to stocks of corporations with aggregate earnings at least equal to aggregate dividends paid and limiting to 2% the assets of a retirement fund that may be invested in stocks that didn't qualify under the above restrictions; increased the percent of book value from 20% to 50% and the percent of one corporation's stock from 1% to 2% in subsection (3)(c).

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

17-6-212. State purchase of general fund warrants.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 42 in (5) substituted "state treasurer" for "state auditor". Amendment effective March 12, 1997.

Chapter 48 in (5) substituted "department" for "state treasurer" and after "orders" deleted "upon the proper funds addressed to the state auditor". Amendment effective July 1, 1997.

The Code Commissioner has codified the amendment in Ch. 48, because "department" is a broader reference than "state treasurer" and the Director of the Department is the ex officio State Treasurer.

1995 Amendments — Composite Section: Chapter 40 inserted last sentence of (2), (2)(a), and (2)(b) allowing the Board to set the rate of interest and providing criteria that the Board must consider in setting the interest rate; and made minor changes in style.

Chapter 325 deleted former last sentence in (2) that read: "It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts"; in (3) substituted "state treasurer" for "auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Collateral References

States *key* 124.

81A C.J.S. States §225.

17-6-213. Redemption of bonds before maturity.

Collateral References

Counties *key* 187; Municipal Corporations *key* 953; Schools and School Districts *key* 97(9); Waters and Water Courses *key* 230(6).

20 C.J.S. Counties §226; 64 C.J.S. Municipal Corporations §1705.

Right to call governmental bonds in advance of their maturity. 109 ALR 988.

17-6-225. Loans to petroleum tank release compensation board.

Compiler's Comments

Effective Date: Section 7, Ch. 115, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 3
Montana In-State Investment

Part Compiler's Comments

Statement of Intent: The statement of intent attached to Ch. 677, L. 1983, provided: "(1) A statement of intent is required for this bill because it grants rulemaking authority to the Montana economic development board [now the Board of Investments] in section 16. These rules will include definitions of small- and medium-sized businesses, a method of commitment of funds to financial institutions, setting service fees for loans, defining types of permissible investments, and procedural rules to govern the board's proceedings.

(2) It is the intent of the legislature that:

(a) the definitions of small- and medium-sized business be based on either the number of employees of the business, the level of capitalization of the business, or a combination of these factors;

(b) the method of committing funds to financial institutions be similar to the method utilized by the board of housing for committing funds for housing developments to financial institutions;

(c) the level of service fees be set to cover the costs associated with processing the investment and be similar to those charged by financial institutions;

(d) the permissible investments adopted by rules be based on the long-term benefit to the Montana economy and adhere to the prudent-man rule. The investments should be aimed at diversifying, strengthening, and stabilizing the Montana economy and increasing employment opportunities while maintaining and improving a clean and healthful environment; and

(e) the procedural rules be based on the Attorney General's model rules."

Part Law Review Articles

Special Issue on Economic Development, 17 Columbia J. L. & Soc. Prob. 351 (1983).

Alliance for Growth: Stimulating Urban Revitalization Through Corporate, Governmental, and Community Cooperation, Murphy, 9 Fordham L. J. 835 (1980-1981).

Legal Standards Governing Investment of Pension Assets for Social and Political Goals, Hutchinson & Cole, 128 U. Pa. L. Rev. 1340 (June 1980).

17-6-302. Definitions.

Compiler's Comments

2003 Amendment: Chapter 183 inserted definitions of intermediary loan and local economic development organization; and made minor changes in style. Amendment effective July 1, 2003.

1997 Amendment: Chapter 549 inserted definition of Department; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1991 Amendment: Deleted definition of Montana in-state investment fund; and made minor change in style. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1987 Amendments: Chapter 124 inserted definition of capital company; and at end of definition of loan participation inserted "and does not include the purchase of debentures issued by a capital company".

Chapter 370 in definition of Montana in-state investment fund changed "17-6-305" to "17-6-306".

Chapter 581 substituted definition of Board for "the Montana economic development board established in 2-15-1805".

1985 Amendment: Inserted definition of clean and healthful environment.

Incorrect Internal References: (1) Section 2(1), Ch. 677, L. 1983, provided: "(1) Board means the Montana economic development board established in [section 19]." The "Board", however, was created in section 17 because sections 17 and 18 of the bill as introduced were deleted, which resulted in section 19 being renumbered as section 17.

(2) Section 2(3), Ch. 677, L. 1983, provided: "(3) Committee means the Economic Development Oversight Committee created by [section 17]." The Economic Development Oversight Committee was deleted from the bill prior to passage and this definition was inadvertently left in the bill. The Code Commissioner therefore has not codified the subsection.

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

17-6-304. Use of the coal tax trust fund for economic development.

Administrative Rules

ARM 8.97.1502 Interest rate reduction for loans funded from the coal tax trust.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board.

Compiler's Comments

2001 Amendment: Chapter 307 in (1) in fourth sentence near middle after "development" deleted "and administered by the department pursuant to part 5 of this chapter". Amendment effective July 1, 2001.

1997 Amendment: Chapter 549 in (1), in last sentence after "trust fund", inserted "contained in portfolios formerly" and substituted "and administered by the department pursuant to part 5 of this chapter is included in the 25%" for "pursuant to 17-6-308(3) may not be included in the 25%". Amendment effective July 1, 1999.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1995 Amendments: Chapter 34 in (1) inserted third and fourth sentences clarifying the portion of the permanent coal tax trust fund that is available for the in-state investment program.

Chapter 477 in (1) inserted second sentence concerning investments not including investments pursuant to 17-6-309(2). Amendment effective April 14, 1995.

Preamble: The preamble attached to Ch. 34, L. 1995, provided: "WHEREAS, state law authorizes the Board of Investments to invest up to 25% of the permanent coal tax trust fund established in section 17-6-203(6), MCA, in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises; and

WHEREAS, state law also authorizes the Montana Board of Science and Technology Development to invest $23.6 million of the permanent coal tax trust fund established in section 17-6-203(6), MCA, in seed capital project loans and in research and development project loans; and

WHEREAS, the Legislature has established in section 17-5-703(1), MCA, several funds within the permanent coal tax trust fund; and

WHEREAS, it is unclear whether the Legislature intended these funds to be included in the total permanent coal tax trust fund for purposes of calculating the 25% available to the Board of Investments for the in-state investment program."

1993 Amendment: Chapter 349 in (4), after "shall", inserted "include a", after "report" deleted "biennially to the legislature", and after "section" inserted "as a part of the information required by 17-7-111".

1991 Amendments: Chapter 16 in (1) corrected citation to subsection of 17-6-203; and made minor changes in style.

Chapter 589 in (1), at beginning before "the permanent", substituted "Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of" for "Twenty-five percent of all revenue deposited after June 30, 1983, into", near middle changed subsection reference to 17-6-203, and after "17-6-203(6)" deleted "and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2) shall be invested"; inserted (4) concerning Board reporting biennially to Legislature on investments made under section; and made minor change in style. Amendment effective July 1, 1991.

Chapter 787 in (1), after "established in 17-6-203(6)", deleted "and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2)". Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1985 Amendments — Applicability: Chapter 338 in middle of (1) inserted "and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2)". Amendment effective April 3, 1985, and applies retroactively, within the meaning of 1-2-109, to appropriations on and after July 1, 1983. (See sec. 3, Ch. 338, L. 1985.)

Chapter 418 in (2) after "revenue" deleted "as required by 17-6-201(1)".

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

Administrative Rules

ARM 8.97.1502 Interest rate reduction for loans funded from coal tax trust.

Attorney General's Opinions

Board of Investments Allowed to Complete Grants Entered Between Board of Science and Technology Development and University System: In 1989, the Legislature created the Board of Science and Technology Development and allowed that Board to administer a statutorily allocated amount of money from the in-state investment fund for seed capital project loans. From 1989 to 1997, the Legislature continued to fund the Board of Science and Technology Development, which used the money to enter into research and development loans with different

units of the Montana University System. In 1997, the Legislature deleted the Board of Science and Technology Development's authority to make loans that had been authorized in previous sessions, effective July 1, 1999, but authorized the Board of Science and Technology Development to grant up to $2 million of interest and income from investments to university research and development projects during the interim between 1997 and 1999. Relying on that authority, the Board of Science and Technology Development entered into six separate grant agreements with the University System, and the various units relied on the grants to secure matching federal funds for the projects. In 1999, in an attempt to make the coal tax permanent trust fund whole, the Legislature dismantled the Board of Science and Technology Development and directed the Board of Investments to administer agreements entered into by the Board of Science and Technology Development that had been funded with coal tax permanent trust funds and, at the same time, eliminated the funds set aside for the completion of the agreements, creating an inherent statutory conflict. Nevertheless, the agreements were fully integrated, binding contracts. The Attorney General concluded that the 1999 elimination of the Board of Investment's ability to complete the grant obligations to the University System would constitute a substantial impairment of contracts. Further, without the funds, the University System would not be able to complete the projects and federal matching funds would be jeopardized. To harmonize the conflict and avoid a contract impairment, the Attorney General held that the Board of Investments could complete the payment of grants to the University System from interest and income derived from Board of Science and Technology Development loans. 49 A.G. Op. 2 (2001).

Law Review Articles

Economic Development Projects: A Perspective, Gold, 19 Urb. Law. 193 (1987).

Problems With State Aid to New or Expanding Businesses, Barrett, 58 S. Cal. L. Rev. 1019 (1985).

17-6-308. Authorized investments.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 137 in (4) in first sentence substituted "Montana facility finance authority" for "Montana health facility authority". Amendment effective July 1, 2001.

Chapter 307 in (3) deleted former fifth sentence that read: "Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the $915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201" and near beginning of fifth sentence after "made" substituted "by the former Montana board of science and technology development" for "pursuant to part 5 of this chapter". Amendment effective July 1, 2001.

Saving Clause: Section 18, Ch. 137, L. 2001, was a saving clause.

1999 Amendments — Composite Section: Chapter 66 throughout (3) changed "department" to "board", deleted former third and fourth sentences that read: "The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature", at end of third sentence inserted exception clause, inserted fourth sentence requiring board to administer instruments funded with coal tax permanent trust funds, and in sixth sentence substituted "the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest" for "the department may reinvest the principal in new loans pursuant to part 5 of this chapter"; and in (6) substituted "repayments of proceeds of investments made from the coal severance tax trust fund" for "repayments proceeds in excess of $4.395 million" and deleted last sentence that read: "In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system." Amendment effective July 1, 1999.

Chapter 160 near beginning of (1) substituted "(2) through (4)" for "(2) and (3)"; in (3) deleted former third and fourth sentences that read: "The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature"; inserted (4) authorizing health facility authority to administer $15 million of permanent coal tax trust fund for capital projects; in (6) at beginning substituted "All repayments proceeds pursuant to subsection (3)" for "Beginning July 1, 1999, all repayments proceeds" and deleted second sentence that read: "In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme

court to be used to fund the judges' retirement system"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: (Temporary version) Chapter 549 in (3) inserted second and third sentences relating to research and development grants to universities, in fourth sentence changed years to 1999 from 1997, inserted fifth through eighth sentences relating to seed money and Judges' Retirement System transfer, and at end of 10th sentence substituted "the proceeds of the seed capital portion of the Montana board of science and technology development loans must be deposited in the coal severance tax permanent fund until all loans have been repaid plus the amount of 7% simple interest for the years that the loans have been outstanding. The board shall calculate the amount of the interest charge. The board may use up to $25,000 of the repayments for administrative costs in the fiscal year ending June 30, 1997" for "the Montana board of science and technology development may reinvest the principal in new loans". Amendment effective May 7, 1997.

(Version effective July 1, 1999) In (3), at beginning, substituted "The department shall manage the seed capital and research and development loan portfolios created by the former Montana board" for "The board shall allow the Montana board", deleted the end of the first sentence and the former second sentence that read: "provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects", inserted second through fifth sentences relating to the repayment schedule, development of a business investment strategy, and the Department as successor in interest, in next-to-last sentence substituted "department" for "Montana board of science and technology development" and substituted "part 5 of this chapter, the $915,000 in funds" for "Title 90, chapter 3, the funds", and at beginning of last sentence after "As" deleted "seed capital and mezzanine financing", substituted "part 5 of this chapter are repaid, the department" for "this subsection are repaid, the Montana board of science and technology development", and at end inserted reference to part 5; and inserted (5) relating to Judges' Retirement System transfer. Amendment inserting subsection (5) effective May 7, 1997; all other amendments effective July 1, 1999.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

Coordination: Section 15, Ch. 549, L. 1997, provided: "(1) If House Bill No. 2 is vetoed, then the bracketed language in [section 7] [17-6-308, version effective May 7, 1997] is void.

(2) If the bracketed language in [section 7] is effective, then the $1 million for each fiscal year appropriated from the state special revenue account for university system research contained in House Bill No. 2 is void." The bracketed language was the second and third sentences in subsection (3) relating to research and development grants to universities. House Bill No. 2 was not vetoed.

Retroactive Applicability: Section 16(2), Ch. 549, L. 1997, provided "... [section 7] [17-6-308, version effective May 7, 1997] applies retroactively, within the meaning of 1-2-109, to investment payments received on or after April 1, 1997."

1995 Amendment: Chapter 559 in (3), in first sentence, substituted "$12.5 million" for "$15.5 million", inserted "mezzanine financing loans", substituted "$11.1 million" for "$8.1 million", and after "development project" substituted "matching funds for projects at Montana public universities" for "loans pursuant only to the provisions of Title 90, chapter 3", in second sentence substituted "1997" for "1995" and substituted "projects" for "project loans", and inserted last sentence regarding reinvestment of principal of repaid loans; and made minor changes in style. Amendment effective April 26, 1995.

1993 Amendment: Chapter 331 in (3), in first sentence, increased allowable seed capital loan money from $7.5 million to $15.5 million and increased allowable research and development loan money from $5.1 million to $8.1 million and in second sentence extended authority from June 30, 1994, to June 30, 1997, for seed capital loans and to June 30, 1995, for research and development loans. Amendment effective July 1, 1993.

1991 Amendments: Chapter 251 inserted (4) requiring Board to adopt rules allowing certain nonprofit corporations to qualify for in-state investments of state funds. Amendment effective March 29, 1991.

Chapter 589 in (1), (2), and (3) substituted "permanent coal tax trust fund" for "in-state investment fund"; in (1), near beginning after "provided in", substituted "subsections (2) and (3) and subject to the provisions of 17-6-201" for "subsection (4)" and deleted last sentence concerning definition of investment as including guaranty of loans or bonds for a fee; deleted

former (2) concerning Board using in-state investment fund to guarantee loans or bonds for a fee and subject to subrogation agreement, requiring Board to establish ratio between funds available and loans or bonds to be guaranteed, and establishing maximum amount of guaranty; in (2), in first sentence after "17-5-1515", deleted "and the guaranty fund created pursuant to 17-5-1520" and near end of third sentence, after "under", substituted "17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529" for "17-5-1501 through 17-5-1529"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 594 in (3), in first sentence, inserted allocation for research and development project loans and in second sentence, after "1994", inserted "for seed capital project loans and for research and development project loans"; and made minor changes in style. Amendment effective April 24, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

Allocation of Funds: Section 3, Ch. 594, L. 1991, provided: "Provided the loans contain the repayment requirements set forth in 90-3-522 [now repealed] and 90-3-524, the $5.1 million of the permanent coal tax trust fund to be used for research and development project loans is allocated as follows:

(1) $600,000 to meet state matching fund requirements for the national science foundation awards to the center for interfacial microbial process engineering;

(2) $3.5 million for loans relating to but not limited to the centers of excellence program and the Montana entrepreneurial center and to meet state matching fund requirements for the national science foundation's experimental program to stimulate competitive research; and

(3) $1 million for medical facility research and development project loans provided that:

(a) a loan may not be less than $200,000 or more than $500,000; and

(b) a dollar-for-dollar matching requirement from federal or private sources is required."

Coordination Instruction — Code Commissioner Change: Section 12, Ch. 594, L. 1991, a coordination section, provided: "If Senate Bill No. 26 is passed and approved, if it includes a section that amends 17-6-308, and if it includes amendments that replace references to the "in-state investment fund" with "permanent coal tax trust fund", then in [this act], the code commissioner shall make similar changes." Senate Bill No. 26 was approved April 24, 1991, as Ch. 589, L. 1991, and included amendments replacing references to the funds as contemplated in the coordination instruction. The Code Commissioner has therefore substituted "permanent coal tax trust fund" for "in-state investment fund" in this section.

Severability: Section 13, Ch. 594, L. 1991, was a severability clause.

1989 Amendment: At beginning of (1) inserted exception clause; and inserted (4) relating to seed capital project loans by the Montana Board of Science and Technology Development. Amendment effective March 24, 1989.

1985 Amendments: Chapter 418 in (1) after "invested" substituted "as" for "in the securities authorized as permissible investments under 17-6-211 and in any other type of in-state investment".

Chapter 640 in (1) inserted second sentence further defining "investment" for purposes of this section; inserted (2) authorizing guaranty of loans or bonds issued under Montana Economic Development Bond Act of 1983, Municipal Finance Consolidation Act of 1983, and Montana Health Facility Authority Act; and inserted (3) authorizing loans to establish balances and restore deficiencies in certain accounts.

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

Administrative Rules

ARM 8.97.1310 Loan program policies.

ARM 8.97.1502 Interest rate reduction for loans funded from coal tax trust.

Case Notes

Provisions Permitting Use of In-State Investment Fund to Guarantee Private Loans or Bonds Unconstitutional: The provisions of this section which permit the use of in-state investment fund money derived from taxation to guarantee loans or bonds of private individuals or private entities either directly or through the capital reserve account or through the economic development guaranty fund are unconstitutional from the viewpoint of Art. V, sec. 11(5), Art. VIII, sec. 1, and Art. VIII, sec. 13(1), Mont. Const. Hollow v. St., 222 M 478, 723 P2d 227, 43 St. Rep. 1435 (1986).

Attorney General's Opinions

Board of Investments Allowed to Complete Grants Entered Between Board of Science and Technology Development and University System: In 1989, the Legislature created the Board of Science and Technology Development and allowed that Board to administer a statutorily allocated amount of money from the in-state investment fund for seed capital project loans. From 1989 to 1997, the Legislature continued to fund the Board of Science and Technology Development, which used the money to enter into research and development loans with different units of the Montana University System. In 1997, the Legislature deleted the Board of Science and Technology Development's authority to make loans that had been authorized in previous sessions, effective July 1, 1999, but authorized the Board of Science and Technology Development to grant up to $2 million of interest and income from investments to university research and development projects during the interim between 1997 and 1999. Relying on that authority, the Board of Science and Technology Development entered into six separate grant agreements with the University System, and the various units relied on the grants to secure matching federal funds for the projects. In 1999, in an attempt to make the coal tax permanent trust fund whole, the Legislature dismantled the Board of Science and Technology Development and directed the Board of Investments to administer agreements entered into by the Board of Science and Technology Development that had been funded with coal tax permanent trust funds and, at the same time, eliminated the funds set aside for the completion of the agreements, creating an inherent statutory conflict. Nevertheless, the agreements were fully integrated, binding contracts. The Attorney General concluded that the 1999 elimination of the Board of Investment's ability to complete the grant obligations to the University System would constitute a substantial impairment of contracts. Further, without the funds, the University System would not be able to complete the projects and federal matching funds would be jeopardized. To harmonize the conflict and avoid a contract impairment, the Attorney General held that the Board of Investments could complete the payment of grants to the University System from interest and income derived from Board of Science and Technology Development loans. 49 A.G. Op. 2 (2001).

Collateral References

81A C.J.S. States §225.

63A Am. Jur. 2d Public Funds §9.

Power of board or officials to depart from literal requirements in respect of deposits or loans of public funds in their control. 104 ALR 623.

17-6-309. Investment preferences.

Compiler's Comments

1999 Amendment: Chapter 64 at end of (1)(a) inserted "including raising the per capita income of Montana jobholders"; in two places in (2) substituted "15 people" for "50 people" and at end inserted "or raise salaries, wages, and business incomes of existing employees and employers". Amendment effective March 15, 1999.

1995 Amendment: Chapter 477 in (1), at beginning, inserted "Subject to the provisions of subsection (2)"; inserted (2) concerning loan to enhance economic development that will create at least 50 jobs; and made minor changes in style. Amendment effective April 14, 1995.

1985 Amendment: Inserted (1) relating to employee-owned enterprises.

Administrative Rules

ARM 8.97.1310 Loan program policies.

ARM 42.4.3002 through 42.4.3004 Infrastructure user fee tax credits.

Collateral References

63A Am. Jur. 2d Public Funds §§13, 14, 64.

Encouragement or promotion of industry not in nature of public utility, carried on by private enterprise, as public purpose for which tax may be imposed or public money appropriated. 112 ALR 571.

17-6-311. Limitation on size of investments.

Compiler's Comments

2001 Amendment: Chapter 487 deleted former (1), (2), and (3) that read: "(1) Except as provided in subsections (2) through (4), an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund. This subsection does not apply to a loan made pursuant to 17-6-317.

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase"; inserted (1) prohibiting certain types of investments; and made minor changes in style. Amendment effective May 1, 2001.

2000 Amendment: Chapter 4 in (1) inserted second sentence excepting 17-6-317 from provisions of subsection (1); in (4) in first sentence inserted "or 17-6-317" and at beginning of second sentence inserted exception clause; and made minor changes in style. Amendment effective May 11, 2000.

1999 Amendment: Chapter 64 in first sentence in (4) increased total loan amount from $20 million to $50 million and decreased single loan amount from $500,000 to $250,000; in second sentence in (4) increased per job loan amount from $10,000 to $16,666; inserted (4)(d) requiring board in determining size of loan to consider the amount of salaries, wages, and business income of existing jobholders and businesses; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendment: Chapter 98 deleted former second sentence in (4) that read: "Loans must be made in $250,000 increments"; and in (4)(a), after "project", inserted "within a 4-year period from the time that the loan is made".

1995 Amendments: Chapter 2 in (1), in exception clause, extended reference to subsection (4); inserted (4) limiting size of a loan made pursuant to 17-6-309(2) to $20 million; and made minor changes in style. Amendment effective January 20, 1995.

Chapter 477 in (1), in exception clause, extended reference to subsection (4); inserted (4) limiting loan to not less than $500,000 or more than $20 million and enumerating factors to consider; and made minor changes in style. Amendment effective April 14, 1995.

1991 Amendment: Near end of (1) substituted "permanent coal tax trust fund" for "Montana in-state investment fund" and after "exceeds" substituted "1% of the permanent coal tax trust fund" for "10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund"; in (2), after "authority to", deleted "guarantee loans or bonds or", after "account" deleted "and guaranty fund", and at end deleted reference to 17-6-308(3); and near end of (3) substituted "1% of the Montana permanent coal tax trust fund" for "10% of the Montana in-state investment fund". Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1987 Amendment: In (1), at beginning, inserted exception for subsection (3); and inserted (3) referring to debentures issued by a capital company.

1985 Amendment: In (1) at beginning inserted exception clause; and inserted (2) providing exception for Board's authority to guarantee loans or bonds or to make certain loans.

17-6-312. State participation in loans.

Compiler's Comments

2001 Amendment: Chapter 487 in (1) near beginning after "Subject to" substituted "17-6-311" for "17-6-311(4)". Amendment effective May 1, 2001.

2000 Amendment: Chapter 4 in (1) in middle of first sentence inserted reference to 17-6-317. Amendment effective May 11, 2000.

1995 Amendments: Chapter 2 at beginning of (1) inserted reference to 17-6-311(4). Amendment effective January 20, 1995.

Chapter 477 in (1), at beginning, inserted "Subject to 17-6-311(4)"; and inserted (3) concerning loans to nonprofit corporations. Amendment effective April 14, 1995.

1987 Amendment: Inserted (2) referring to debentures issued by a capital company.

Attorney General's Opinions

When Environmental Impact Statement Required in Conjunction With Loan Participation Agreement: A determination by the Montana Board of Investments to enter into a loan participation agreement constitutes a major action of state government under the Montana Environmental Policy Act (MEPA). Therefore, the Board must comply with the environmental impact statement requirements of MEPA when considering whether to enter into a loan participation agreement when the underlying project benefiting from the agreement may significantly affect the quality of the human environment. 43 A.G. Op. 62 (1990).

17-6-313. Prior commitment of funds.

Compiler's Comments

1987 Amendment: Near beginning, after "financial institutions", inserted "and capital companies" and at end inserted "or the capital company and the board".

Administrative Rules

ARM 8.97.1309 Authorized applicants.

17-6-314. Rate of return.

Compiler's Comments

2000 Amendment: Chapter 4 at beginning inserted exception clause. Amendment effective May 11, 2000.

1991 Amendment: Near beginning, before "investment", inserted "Montana", near middle substituted "permanent coal tax trust fund" for "Montana in-state investment fund", and at end inserted language concerning additional service fee discount. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

Collateral References

63A Am. Jur. 2d Public Funds §12.

17-6-316. Economic development loan — infrastructure tax credit.

Compiler's Comments

1995 Amendment: Chapter 477 in (1), in first sentence, substituted "must" for "may" and after "infrastructure" inserted reference to 7-15-4288(4), in second sentence substituted "must" for "may", and inserted last sentence concerning qualifying for interest rate reduction; in (3), in first sentence near beginning after "created", inserted "or expanded" and inserted reference to Title 15, chapter 30, and inserted last sentence concerning carryforward and carryback; and made minor changes in style. Amendment effective April 14, 1995.

Effective Dates: Section 7, Ch. 2, L. 1995, provided that this section is effective on passage and approval. Approved January 20, 1995.

Section 8, Ch. 477, L. 1995, provided that this section is effective on passage and approval. Approved April 14, 1995.

Administrative Rules

ARM 42.4.3002 through 42.4.3004 Infrastructure user fee tax credits.

17-6-317. Participation by private financial institutions — rulemaking.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 26 in (2)(g) in first and third sentences substituted "state's average weekly wage" for "average weekly salary". Amendment effective July 1, 2005.

Chapter 452 in (5)(a) at beginning inserted exception clause; inserted (5)(b) regarding payment of dividends and bonuses; and made minor changes in style. Amendment effective April 28, 2005.

Effective Date — Applicability: Section 12, Ch. 26, L. 2005, provided that this section is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

2001 Amendment: Chapter 289 in (1)(a)(i) and (1)(a)(ii) before "people" substituted "10" for "15"; inserted (1)(a)(iii) allowing joint participation in making loans if a loan will prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business; in (2)(a)(ii) after "require" inserted "the business to have an equity position greater than 50% of the total loan amount"; deleted former (2)(a)(ii)(A) and (2)(a)(ii)(B) that read: "(A) the business enterprise to have an equity position greater than 25% of the total loan amount; or

(B) additional security or guarantees to cover its exposure, but this does not preclude federal guarantees"; inserted (2)(a)(iii) requiring that any necessary additional security or guarantees be proportional to the amount loaned by all participants; in (2)(d) in introductory clause after "following" inserted "annual"; in (2)(d)(i) after "5 years" inserted "if 15 or more jobs are created or retained"; inserted (2)(d)(ii) requiring an annual rate of 4% for the first 5 years if 10 to 14 jobs are created or retained; in (2)(d)(iv) at beginning substituted "the board's posted interest rate for the third 5 years" for "for the third 5 years, an amount equal to the national prime interest rate, adjusted annually on January 1 of each year"; inserted (2)(e) regarding

interest rates that apply upon certification that the required number of jobs has been created or the elimination of jobs has been prevented; inserted (2)(f) allowing application of a graduated scale if a business reduces the number of required jobs; inserted (2)(g) establishing a formula to be used by the board in calculating job creation or retention requirements; inserted (2)(h)(ii) allowing a borrower to request the lead lender to change the national prime interest rate to an adjustable or fixed rate; and made minor changes in style. Amendment effective April 20, 2001.

Effective Date: Section 7, Ch. 4, Sp. L. May 2000, provided: "[This act] is effective on passage and approval." Approved May 11, 2000.

17-6-318. Job credit interest rate reduction for business loan participation.

Compiler's Comments

2005 Amendment: Chapter 26 in (2)(a) in three places substituted "state's average weekly wage" for "average weekly wage"; and in (2)(b) near beginning substituted "state's average weekly wage" for "average weekly wage" and at end substituted "state's average weekly wage" for "average wage". Amendment effective July 1, 2005.

Effective Date — Applicability: Section 12, Ch. 26, L. 2005, provided that this section is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

2001 Amendment: Chapter 487 in (1) in first sentence near end after "for each job created" deleted "over a 2-year period" and in second sentence at end after "each job created" deleted remainder of sentence and former third and fourth sentences that read: "in the 4-year period provided for in 17-6-311(4)(a). The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last-completed fiscal year"; in (5) near middle after "shall make a written application" inserted "to the board", and after "through its financial institution" substituted "or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board" for "to the board when the loan is delivered to the board or not later than 45 days after the applicable anniversary dates of the loan"; and made minor changes in style. Amendment effective May 1, 2001.

1999 Amendment: Chapter 64 in first sentence in (1) before "business" deleted "small"; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendment: Chapter 98 inserted second sentence in (1) providing that a borrower who uses loan proceeds to create jobs is entitled to a rate reduction for each job created during the 4-year period; at end of (5) substituted "applicable anniversary dates" for "first and second anniversary dates"; and made minor changes in style.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

Effective Date: Section 23, Ch. 589, L. 1991, provided: "[This act] is effective July 1, 1991."

17-6-319. Incentive to financial institution for small business loan participation.

Compiler's Comments

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

Effective Date: Section 23, Ch. 589, L. 1991, provided: "[This act] is effective July 1, 1991."

17-6-321. Audits.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 483 in (1) near middle after "department" inserted "of administration". Amendment effective July 1, 2001. The amendment by Ch. 487 rendered the amendment by Ch. 483 void.

Chapter 487 deleted former (1) that read: "(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds"; near beginning after "books and records" inserted "related to in-state investments"; and made minor changes in style. Amendment effective May 1, 2001.

1985 Amendment: Substituted language requiring annual examination by Department's bank examiners of Board's loans and investments, requiring payment of costs from Board's funds, and requiring audits of Board's books and records for: "(1) The board shall contract for an annual independent financial audit of the board and the Montana in-state investment fund.

(2) The board shall contract for biennial independent operational and performance evaluations of the board and the Montana in-state investment fund."

17-6-322. Report.

Compiler's Comments

1991 Amendment: Near beginning, after "operations of the", substituted "investment in the Montana economy from the permanent coal tax trust fund as required in 17-6-305" for "in-state investment fund"; and in (3) substituted "performance of the investments in the Montana economy" for "Montana in-state investment fund's performance". Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1989 Amendment: Substituted entire section regarding Board's annual report for former section that read: "(1) By December 31 of each year, the board shall publish a report for distribution to the governor, the legislature, and the public. The report must be written in easily understandable language. The report must include:

(a) financial statements audited by independent auditors;

(b) a statement of the amount of money received by the Montana in-state investment fund from each investment during the period covered;

(c) a statement of investments of the Montana in-state investment fund, including an appraisal at market value;

(d) a description of investment activity during the period covered by the report;

(e) a comparison of the Montana in-state investment fund's performance in relation to intended goals contained in 17-6-303;

(f) an examination of the impact of the investment criteria of 17-6-308 and 17-6-309;

(g) recommendations of any needed changes; and

(h) any other information the board believes would be of interest to the governor, the legislature, and the public.

(2) The annual income statement and balance sheet of the Montana in-state investment fund must be published in at least one newspaper in each judicial district of the state by December 31 of each year." Amendment effective July 1, 1989.

1987 Amendment: At beginning of (1) substituted "December 31" for "September 30"; and near end of (2) substituted "December 31" for "October 30".

17-6-324. Rulemaking authority.

Compiler's Comments

2000 Amendment: Chapter 4 in (1)(b) at end inserted language concerning guidelines for lead private financial institutions participating in consortium loans; inserted (1)(c) referring to guidelines for graduation clauses and early payment of loans; and made minor changes in style. Amendment effective May 11, 2000.

1985 Amendment: At end of first sentence substituted "17-6-211(2)" for "17-6-211(5)".

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

Administrative Rules

ARM 8.97.1101 Board of Investments — organizational rule.

ARM 8.97.1201 Citizen participation rules.

ARM 8.97.1202 Procedural rules.

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

ARM 8.97.1502 Interest rate reduction for loans funded from coal tax trust.

Title 8, chapter 97, subchapter 16, ARM Bonds and notes of Board, loan loss reserve account, purchase of Montana capital company debentures.

ARM 8.97.1705 Economic development bond program — false or misleading statements.

17-6-325. Preference of Montana labor.

Compiler's Comments

1987 Amendment: Deleted reference to subsection (4) of 18-2-401.

17-6-331. Establishment of a Montana economic development fund.

Compiler's Comments

1987 Amendment: Substituted reference to 17-6-203(6) for 17-6-203(5).

17-6-340. Purchase of permanent fund mineral estate.

Compiler's Comments

Coal Severance Tax Loan — Agreement: Sections 8 and 9, Ch. 418, L. 2001, provided: "Section 8. Coal severance tax loan — rate of interest — appropriation. (1) There is appropriated to the department of natural resources and conservation from the coal severance tax permanent fund an amount not to exceed $75 million for the biennium ending June 30, 2003, for the purpose of purchasing mineral production rights as provided in [section 4] [17-6-340]. The department shall deposit the appropriated loan proceeds in the guarantee account provided for in [section 3] [20-9-622].

(2) The interest to be paid on the loan authorized under subsection (1) must be at the long-term investment rate. The interest is payable as of the date of the transfer of the loan proceeds from the coal severance tax permanent fund to the department.

Section 9. Loan agreement. (1) In order to make the loan authorized in [section 8] [not codified], the board of investments shall enter into a contract with the department of natural resources and conservation pledging the percentage of mineral royalties to the repayment of the loan over a period of 30 years. The loan agreement may not require a payment on the loan until fiscal year 2004. In fiscal years 2004 and 2005, 20% of the mineral royalties deposited in the guarantee account provided for in [section 3] [20-9-622] must be pledged to the loan repayment. In fiscal years 2006 through 2011, not less than 25% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment, and in succeeding fiscal years, not less than 34% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment until the loan is fully paid.

(2) The contract must provide that the loan repayment proceeds be deposited in the coal severance tax permanent fund. To the extent possible, the board of investments shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool. The loan authorized in [section 8] [not codified] may not be made until the contract required by this section has become effective."

Effective Date: Section 13(1), Ch. 418, L. 2001, provided that this section is effective July 1, 2001.

Case Notes

State Loan in Exchange for Full Market Value of Future Stream of Mineral Royalties Without Appraisal Not Violative of Fiduciary Duty to Preserve State Land Trust — Valuation of Future Stream Affirmed: Senate Bill No. 495 (2001) authorized the Department of Natural Resources and Conservation to borrow up to $75 million from the coal trust severance tax permanent fund for 30 years to buy mineral production royalties owned by the school trust in order to enhance short-term distributable revenue from the permanent fund for the benefit of public schools. Plaintiff asserted that this statutory scheme violated the state's school trust duties by using an arbitrary method of determining the appropriate discount rate and by not requiring an independent appraisal to determine full market value of the future royalty stream. The District Court concluded that the state's method of determining the appropriate discount rate was neither arbitrary nor a breach of the duty to obtain fair market value, and on appeal, the Supreme Court affirmed that the discount rate was reasonable and reflected the full market value of the future stream of mineral royalties. Additionally, an independent appraisal was not necessary because when the state sells only an estate or interest in land, the state has ample power to determine the method by which to ascertain the full market value of the estate or interest. The State Board of Land Commissioners bears the task of ensuring that the trust receives full market value for state land interests, and the Supreme Court declined to substitute its opinion for that of the Land Board unless the Land Board's action is arbitrary. Plaintiff failed to show that the Senate Bill No. 495 financing scheme was unconstitutional beyond a reasonable doubt, and the Supreme Court affirmed that the state, by balancing the interests of present and future beneficiaries of the school trust through Senate Bill No. 495, fully complied with the Montana Constitution, The Enabling Act, and state statutes and thus did not violate its trust duties. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), following Toomey v. St. Bd. of Land Comm'rs, 106 M 547, 81 P2d 407 (1938), and State ex rel. Hughes v. St. Bd. of Land Comm'rs, 137 M 510, 353 P2d 331 (1960).

17-6-345. Intermediary relending program.

Compiler's Comments

Effective Date: Section 6, Ch. 183, L. 2003, provided: "[This act] is effective July 1, 2003."

17-6-346. Interest rates and repayment of intermediary loan — terms.

Compiler's Comments

Effective Date: Section 6, Ch. 183, L. 2003, provided: "[This act] is effective July 1, 2003."

17-6-347. Purchase of seasoned or mature loans by board.

Compiler's Comments

Effective Date: Section 6, Ch. 183, L. 2003, provided: "[This act] is effective July 1, 2003."

Part 4
Microbusiness Development Act

Part Compiler's Comments

Repeal of Audit and Evaluation of Microbusiness Finance Program: Section 4, Ch. 88, L. 1993, repealed sec. 9, Ch. 602, L. 1991, which required an audit and evaluation of the microbusiness finance program and a report to the Legislature. Repealer effective March 10, 1993.

1991 Statement of Intent: The statement of intent attached to Ch. 602, L. 1991, provided: "A statement of intent is required for this bill because [sections 4 and 7] [17-6-406 and 17-6-411, now repealed] authorize the department of commerce to adopt rules for the administration of the microbusiness finance program and for the nomination of candidates to the microbusiness advisory council. [This act] [Title 17, ch. 6, part 4] is intended to provide a significant portion of the capital for a network of institutions that will, taken together, provide access throughout Montana to small loans for economically sound and feasible microbusiness projects that because of the high costs and diseconomies of scale of small lending or unconventional collateral are unlikely to receive financing from conventional public or private sources. The rules must ensure that a certified microbusiness development corporation receiving funds under this program:

(1) is prepared and qualified to provide or furnish access to management training and technical assistance to loan applicants and to conduct credit investigation and analysis and revolving loan fund administration in a prudent and professional manner;

(2) has identified adequate sources of operating income and sufficient prospective business clients; and

(3) includes in the membership of its board of directors representation of minorities, women, and low-income persons.

Ensuring management training capability, prudent revolving loan fund administration, and adequate operating income and market base must be balanced against the requirement to achieve geographic and rural-to-urban equity and equity for minorities, women, and low-income persons.

The rules must require that applicants to be certified as microbusiness development corporations submit cooperative proposals that propose to serve a multicounty region of the state and incorporate as partners or have the explicit approval of a significant number of development institutions and service providers within the communities to be served, including but not limited to local governments, certified community lead organizations, financial institutions, business incubators, business assistance groups, women, and representatives of low-income and minority populations.

Interest rates paid to the department by certified microbusiness development corporations receiving development loans must be at least sufficient, when the development loan fund is fully invested in development loans, to cover the department's administrative costs of the microbusiness finance program. Rates generally must be kept at the minimum necessary to provide for the department's administrative costs in order to provide the corporations with an interest earnings spread to be used for their own operating expenses.

Development loans generally must be interest-only loans, renewable at terms not to exceed 8 years. When the department chooses not to renew an interest-only development loan that has come to term and the corporation receiving the loan has administered its funds according to the program's criteria, the department shall attempt to negotiate an amortization schedule for repaying the loan that does not disrupt the operations or earnings of the corporation.

For maximum interest rates that certified microbusiness development corporations may charge on microbusiness loans, the rules must attempt to ensure that microbusiness

development corporations comply with federal and state usury laws and other federal and state statutes and regulations regarding maximum rates to be charged by financial institutions. The department shall develop guidelines designed to reflect prevailing market conditions and specific loan risk and portfolio risk and may establish specific rate limits based on standard industry benchmarks, such as the New York prime rate, with the objective of allowing modest interest premiums, on the order of 1% to 3% above prevailing market rates, to be charged.

For minimum interest rates on microbusiness loans, the rules must consider prevailing market conditions and established industry benchmarks, such as the New York prime rate, in attempting to ensure that microbusiness development corporations are charging at least a prevailing market rate for loans of similar nature, term, and risk."

Audit and Evaluation of Microbusiness Finance Program — Report to Legislature: Section 9, Ch. 602, L. 1991, provided: "An audit, an analysis of costs and benefits, and an evaluation of the microbusiness finance program must be conducted by the office of the legislative auditor, beginning October 1, 1994, and the findings of this audit, analysis, and evaluation must be reported to the legislature no later than January 15, 1995." Effective April 24, 1991.

Appropriation — Approval of Three-Fourths of Members Required — Severability: Section 11, Ch. 602, L. 1991, provided: "(1) (a) Notwithstanding the provisions of 17-6-308 and 17-6-309 and recognizing that the provisions of [sections 1 through 9] [Title 17, ch. 6, part 4] are consistent with 17-6-304 and 17-6-305 and that [sections 1 through 9] [Title 17, ch. 6, part 4] will result in long-term benefits to the economy of the state, there is appropriated, subject to the provisions of subsections (1)(b) and (1)(c), to the department of commerce from the in-state investment fund [now permanent coal tax trust fund] in 17-6-306 [now repealed] during the biennium beginning July 1, 1991, $3,250,000 for the microbusiness finance program established in [section 4] [17-6-406]. Funds appropriated from the in-state investment fund [now permanent coal tax trust fund] must be deposited in the microbusiness development loan account and are appropriated to the department for the purpose of making development loans pursuant to [sections 1 through 9] [Title 17, ch. 6, part 4].

(b) The funds appropriated in subsection (1)(a) from the in-state investment fund [now permanent coal tax trust fund] to the department of commerce must remain in the in-state investment fund [now permanent coal tax trust fund] until the department has decided to make a loan to a certified microbusiness development corporation under the provisions of [section 5] [17-6-407]. When the department has made the decision to make a loan to a certified microbusiness development corporation under the provisions of [section 5] [17-6-407], the director of the department shall notify the state treasurer of the decision and direct him to transfer an amount equal to the amount of the loan from the in-state investment fund [now permanent coal tax trust fund] to the microbusiness development loan account created in [section 5] [17-6-407].

(c) Funds may not be transferred from the in-state investment fund [now permanent coal tax trust fund] to the microbusiness development loan account for the purposes of [sections 1 through 9] [Title 17, ch. 6, part 4] except as provided in subsection (1)(b).

(2) Because subsection (1) appropriates money from the principal of the permanent coal tax trust fund, the appropriation requires a vote of three-fourths of the members of each house of the legislature. If [this act] is approved by a vote of less than three-fourths of the members of each house, this section is void and the remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment." The final vote requirement necessary to implement the provisions of this appropriation was met; therefore, the appropriation is valid. Section 13, Ch. 602, L. 1991, a coordination section, provided: "If Senate Bill No. 26 is passed and approved and if it includes provisions eliminating the in-state investment fund, the code commissioner is instructed to substitute "permanent coal tax trust" for "in-state investment fund" where it appears in [this act], unless the context requires otherwise." Senate Bill No. 26 was approved April 24, 1991, as Ch. 589, L. 1991; therefore, the references in this appropriation to the in-state investment fund are construed to mean the permanent coal tax trust fund. Section 14(2), Ch. 602, L. 1991, provided that this appropriation is effective July 1, 1991.

Appropriation: Section 12, Ch. 602, L. 1991, provided: "There is appropriated to the microbusiness finance program administrative account created in [section 5] [17-6-407] from the general fund $64,600 for the fiscal year ending June 30, 1992." Section 14(2), Ch. 602, L. 1991, provided that this appropriation is effective July 1, 1991.

Effective Date: Section 14(1), Ch. 602, L. 1991, provided that this part is effective on passage and approval. Approved April 24, 1991.

Part Administrative Rules

Title 8, chapter 99, subchapter 4, ARM Microbusiness Advisory Council.

Part Attorney General's Opinions

No Encumbrance of Unexpended Microbusiness Development Funds After End of Fiscal Year: The Department of Commerce entered into contracts with several microbusiness development corporations in June 1997, contingent upon matching funds being provided by September 30, 1997. However, when the matching funds were not received by that date, the Department amended the contracts to extend the time for providing matching funds to September 30, 1999. The Legislative Auditor conceded that Department rules allowed a valid encumbrance through September 30, 1997 (see ARM 8.99.505(3)), but maintained that after that time, the funds were no longer validly encumbered and should have reverted to the coal tax trust fund from which they were appropriated. The Attorney General agreed. In light of the balanced budget requirement in Art. VIII, sec. 9, Mont. Const., 17-7-304 contemplates that an appropriation for a specific purpose will revert to the fund or account from which it was appropriated after the expiration of the time for which it was appropriated, and appropriations for an unspecified period of time must revert at the end of the biennium. In this case, the appropriation was subject to reversion on June 30, 1997. The Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to 17-7-302; thus any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997. 48 A.G. Op. 26 (2000). See also 40 A.G. Op. 4 (1983).

17-6-403. Definitions.

Compiler's Comments

2003 Amendments — Coordination — Composite Section: Chapter 351 deleted former definition of certified community lead organization that read: ""Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department"; deleted former definition of council that read: ""Council" means the microbusiness advisory council established in 17-6-411"; and made minor changes in style. Amendment effective April 16, 2003.

Section 15, Ch. 405, L. 2003, a coordination section, in (7)(b) at end substituted "15-6-225" for "90-4-102".

Chapter 405 in definition of qualified microbusiness at end of (b) substituted "15-6-225" for "90-4-102"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 591 in definition of qualified microbusiness inserted (b) concerning alternative renewable energy source; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

17-6-406. Microbusiness finance program — powers and duties of department.

Compiler's Comments

Extension of Termination Date: Sections 3 and 4, Ch. 460, L. 2005, amended sec. 19, Ch. 512, L. 1999, and sec. 5, Ch. 69, L. 2001, by extending the termination date imposed by Ch. 512 to June 30, 2009. Effective April 28, 2005.

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

1999 Amendment: Chapter 512 in second sentence of (8) inserted "or within an Indian reservation". Amendment effective April 28, 1999, and terminates June 30, 2001.

Severability: Section 15, Ch. 512, L. 1999, was a severability clause.

1993 Amendment: Chapter 88 in (4), at end, deleted "However, the rate of interest may not be less than 3% a year." Amendment effective March 10, 1993.

Administrative Rules

ARM 8.99.401 Definitions.

ARM 8.99.404 Certification of regional microbusiness development corporations.

Title 8, chapter 99, subchapter 5, ARM Microbusiness finance program.

17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in (1)(a) after "into which" substituted "funds allocated for that purpose" for "the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 204 inserted (1)(c) relating to depositing interest from the development loan account into the administrative account; inserted (2)(d) relating to the deposit of interest of the two accounts; and made minor changes in style. Amendment effective July 1, 2005.

Extension of Termination Date: Sections 3 and 4, Ch. 460, L. 2005, amended sec. 19, Ch. 512, L. 1999, and sec. 5, Ch. 69, L. 2001, by extending the termination date imposed by Ch. 512 to June 30, 2009. Effective April 28, 2005.

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

1999 Amendments — Composite Section: Chapter 512 in (5)(c) substituted "including urban, rural[, and tribal] communities" for "including both urban and rural communities". Amendment effective April 28, 1999, and terminates June 30, 2001.

Chapter 521 in (1) in second sentence after "account" deleted "in amounts not to exceed $250,000 a loan"; at end of (2) inserted "must be deposited"; at end of (2)(a) inserted "received directly from microbusiness development corporations"; at end of (2)(c) after "income" deleted "must be deposited"; substituted (10) concerning annual audit for former text that read: "(a) Unless subject to federal law or rule, each certified microbusiness development corporation that receives a development loan under this part shall pay the cost of an audit of its operations to be conducted at least once every 2 years. The department shall designate an auditor to conduct the audit.

(b) If an audit is performed under a requirement of federal law or rule, the department shall waive the audit required in subsection (9)(a) with respect to all issues addressed by the federal audit report. However, the department may require an audit of matters that are not, in the department's judgment, addressed by the federal report—for example, verification of compliance with requirements specific to the program, such as job-generation standards and reporting"; in (11) in second sentence after "lien on" substituted "all funds and all receivables administered under the authority of the microbusiness development act by" for "the receivables of"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 15, Ch. 512, L. 1999, was a severability clause.

1995 Amendment: Chapter 413 in (1), after "1991", inserted "money appropriated pursuant to section 3, Chapter 413, Laws of 1995"; and throughout (5)(b) and (5)(c) substituted "$35,000" for "$20,000". Amendment effective July 1, 1995.

1993 Amendment: Chapter 88 in (3), near middle after "additional loan", deleted "after 1 year following approval of the previous loan"; in (5)(a), near beginning after "private", substituted "funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses" for "grants"; in (7), in first sentence before "development", substituted "contribute cash from other sources to leverage and secure" for "match" and after "program" deleted "with contributions to their revolving loan fund from other sources" and at beginning of second sentence inserted "contributions provided by the corporation must be" and increased ratio amount of $1 to $3 to ratio amount of $1 to $6; and made minor changes in style. Amendment effective March 10, 1993.

Administrative Rules

Title 8, chapter 99, subchapter 5, ARM Microbusiness finance program.

Attorney General's Opinions

No Encumbrance of Unexpended Microbusiness Development Funds After End of Fiscal Year: The Department of Commerce entered into contracts with several microbusiness development corporations in June 1997, contingent upon matching funds being provided by September 30, 1997. However, when the matching funds were not received by that date, the Department amended the contracts to extend the time for providing matching funds to September 30, 1999. The Legislative Auditor conceded that Department rules allowed a valid encumbrance through September 30, 1997 (see ARM 8.99.505(3)), but maintained that after that time, the funds were no longer validly encumbered and should have reverted to the coal tax trust fund from which

they were appropriated. The Attorney General agreed. In light of the balanced budget requirement in Art. VIII, sec. 9, Mont. Const., 17-7-304 contemplates that an appropriation for a specific purpose will revert to the fund or account from which it was appropriated after the expiration of the time for which it was appropriated, and appropriations for an unspecified period of time must revert at the end of the biennium. In this case, the appropriation was subject to reversion on June 30, 1997. The Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to 17-7-302; thus any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997. 48 A.G. Op. 26 (2000). See also 40 A.G. Op. 4 (1983).

17-6-408. Certification of microbusiness development corporations.

Compiler's Comments

Extension of Termination Date: Sections 3 and 4, Ch. 460, L. 2005, amended sec. 19, Ch. 512, L. 1999, and sec. 5, Ch. 69, L. 2001, by extending the termination date imposed by Ch. 512 to June 30, 2009. Effective April 28, 2005.

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

1999 Amendment: Chapter 512 at end of (2)(a) inserted "or within at least four Indian reservations in Montana". Amendment effective April 28, 1999, and terminates June 30, 2001.

Severability: Section 15, Ch. 512, L. 1999, was a severability clause.

1993 Amendment: Chapter 88 in (2) substituted "subsections (1)(a) and (1)(c)" for "subsection (1)"; deleted former (2)(c) that read: "(c) obtains written indications of support from local development organizations in the communities in which it plans to offer its services"; and made minor changes in style. Amendment effective March 10, 1993.

Administrative Rules

ARM 8.99.401 Definitions.

ARM 8.99.404 Certification of regional microbusiness development corporations.

17-6-409. Authority to accept funds — funding authorization.

Compiler's Comments

1995 Amendment: Chapter 509 in (2), after "account", substituted "may be appropriated" for "is statutorily appropriated to the department, as provided in 17-7-502". Amendment effective July 1, 1995.

Part 6
Montana Tobacco Settlement Trust Fund

Part Compiler's Comments

Effective Date: Section 6, Ch. 467, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 467, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to proceeds from the tobacco settlement occurring on or after January 1, 2001."

17-6-602. Definitions.

Compiler's Comments

2002 Amendment by Initiative: Section 1, I.M. No. 146, in definition of "programs for tobacco disease prevention" in (a) after "exposure" inserted "to secondhand tobacco smoke" and inserted (b) enumerating programs included in the definition. Amendment effective November 5, 2002.

17-6-606. Tobacco settlement accounts — purpose — uses.

Compiler's Comments

2003 Amendment: Chapter 608 inserted (1)(e) relating to funding human services programs; in (2) in second sentence at end inserted reference to funding for human services programs; inserted (3)(c) relating to matching funds to secure the maximum amount of federal funds for the medicaid program; in (5) after "this section" deleted "for tobacco disease prevention"; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2005.

Effective Date: Section 7, I.M. No. 146, provided that this section is effective upon approval by the electorate. Approved November 5, 2002.

17-6-610. Tobacco prevention advisory board.

Compiler's Comments

Effective Date: Section 7, I.M. No. 146, provided that this section is effective upon approval by the electorate. Approved November 5, 2002.

CHAPTER 7
BUDGETING AND APPROPRIATIONS

Part 1
Budget Systems and Program Plans

Part Attorney General's Opinions

Appropriations to Community Colleges: The budget for community college districts must be approved by the Board of Regents and fit into the Budget Act procedure of 17-7-101, et seq. It is a budget request which may be altered by the chief budget officer and which is ultimately subject to legislative approval. While 65% of state funding of community colleges is the goal, the Legislature may or may not appropriate an amount equal to 65% of the districts' proposed budgets. If it does not, an additional levy, which must be approved by the voters in the district, is authorized to make up the deficiency. The General Appropriations Act of 1979 does no more than reflect this entire statutory scheme, especially the requirements of 20-15-301, et seq. The General Appropriations Act of 1979 properly appropriates state funds to the community colleges. 38 A.G. Op. 54 (1979).

Part Law Review Articles

Balanced Budgets and Business Cycles: Evidence From the States, Levison, 51 Nat'l Tax J. 715 (1998).

17-7-101. Short title.

Collateral References

For a general discussion of the budgetary powers of the executive and legislative branches, see Veto Case, 69 M 325, 222 P 428 (1924).

17-7-102. Definitions.

Compiler's Comments

2003 Amendment: Chapter 607 in definition of base budget in second sentence inserted "for the state general fund and state special revenue funds". Amendment effective October 1, 2003.

1997 Amendment: Chapter 347 inserted definition of funds subject to appropriation; deleted definitions of approved long-range building program budget amendment, effectiveness measure, priority listing, program size, and program size indicator (see 1997 Session Law for text); substituted definition of agency for former definition that read: "means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government, except for purposes of capital projects administered by the department of administration, for which institutions are treated as one department and university units as one system"; substituted definition of base budget for former definition that read: "means that level of funding authorized by the previous legislature"; substituted definition of budget amendment for former definition that read: "means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund, contingent on total compliance with all budget amendment procedures"; in definition of present law base, near beginning after "means that", deleted "additional"; substituted definition of program for former definition that read: "means a combination of resources and activities designed to achieve an objective or objectives"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in definition of university system unit substituted "university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls" for former language that read: "university of Montana at Missoula, Montana state university at Bozeman, Montana

college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon" and near end, after "Great Falls", deleted "the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 12 inserted definitions of base budget, present law base, and new proposals; deleted definition of current funding level that read: ""Current funding level" means that level of funding required to maintain operations and services at the level authorized by the previous legislature, after adjustment for inflation"; deleted definition of modified funding level that read: ""Modified funding level" means the current funding level as adjusted to reflect workload increases, the provision of new services, or changes in authorized funding"; and made minor changes in style. Amendment effective December 23, 1993.

1991 Amendment: In introductory clause, after "as used in", deleted "parts 1 through 3 of"; and inserted definitions of additional services, agency, approved long-range building program budget amendment, approving authority, budget amendment, emergency, necessary, requesting agency, and university system unit. Amendment effective July 1, 1991.

1983 Amendment: Inserted definitions of current funding level and modified funding level.

Attorney General's Opinions

Water Adjudication Program Not Void Given Sufficient Line Item Appropriations to Avoid Voidness: A contingent voidness clause attached to legislation establishing the water adjudication account required that at least $2 million each fiscal year be appropriated to the water adjudication account by line item appropriation. Although the line item appropriations were directed to two agencies instead of being included in a single programmatic line item, the Attorney General concluded that more than $2 million had been appropriated from state sources other than the water adjudication account to avoid the contingent voidness provision. 51 A.G. Op. 3 (2005).

17-7-111. Preparation of state budget — agency program budgets — form distribution and contents.

Compiler's Comments

2005 Amendment: Chapter 106 in (4)(b) substituted "statewide project budget summary as provided in 2-17-526" for "statewide summary of recommendations for information technology projects and new initiatives. Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified in 2-17-526". Amendment effective October 1, 2005.

2003 Amendment: Chapter 332 in (3)(f) inserted third sentence to exempt certain items from the 5% target amounts. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 313 inserted (3)(g) relating to new information technology proposals; inserted (4)(b) relating to a statewide summary of recommendations for information technology projects; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 569 in (3)(b) near middle after "each" deleted "accounting entity within each"; deleted former (3)(f) that read: "(f) a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program"; in (3)(f) near beginning of first sentence after "reduce the proposed" substituted "base budget for the general appropriations act and the proposed state pay plan to 95%" for "budget to 85%" and at end inserted "or lower if directed by the budget director" and inserted second sentence requiring each agency plan to include base budget reductions; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 20 in (3)(a) near beginning after "appropriation" inserted "or enterprise funds that transfer profits to the general fund or to an account subject to appropriation". Amendment effective February 17, 1999.

Chapter 332 inserted (3)(g) requiring agency program budgets for agencies with more than 20 FTE to contain a plan to reduce base budgets by 15% and containing a prioritized list of services to be eliminated or reduced; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 5, Ch. 20, L. 1999, provided: "[This act] applies to fiscal years beginning on or after July 1, 2001."

1997 Amendment: Chapter 347 inserted (1) indicating that certain information is necessary to prepare the state budget and requiring the Budget Director and Legislative Fiscal Analyst to establish standards for information sharing between agencies and to provide for the collection of certain budgetary and financial information; in (2), in first sentence near beginning, substituted "not later than the date specified in 17-7-112(1)" for "not later than July 1 in the year preceding the convening of the legislature", after "all" substituted "agencies" for "state offices and departments, including the judicial branch and the legislative branch", after "forms" inserted "and instructions", and at end inserted "by the budget director" and inserted third and fourth sentences providing that forms submitted to the Budget Director must be submitted by a certain date or are subject to preparation based upon estimates as provided in 17-7-112(5) and providing that the Budget Director may refuse forms that do not comply with certain requirements; in (3), near beginning after "budget", substituted "request" for "requests, when completed by the budget office"; in (3)(a), near beginning after "summary", inserted "of funds subject to appropriation", after "expenditures" inserted "including statutory appropriations", and after "each" substituted "present law adjustment and new proposal" for "modification" and deleted second sentence that read: "The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained in the summary by fund and, when applicable, organizational unit"; in (3)(b), near end, substituted "current biennium and estimated for the subsequent biennium" for "current and subsequent biennium"; deleted former (3)(c) that read: "(c) a detailed schedule of receipts, by accounting entity within each fund, including classification and source of funds"; deleted former (3)(d) that read: "(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented must include the following"; in (3)(c), near beginning, substituted "agency mission" for "agency goals and objectives" and deleted third sentence that read: "The goals and objectives must contain a list of duties prioritized by the department director to reflect the director's opinion concerning the importance of the duties assigned to the agency by law"; in second sentence of (4)(a), after "presented by", deleted "department"; near beginning of (4)(b), after "employees", inserted "at the program level by fund"; inserted (4)(c) requiring the inclusion of agency proposals for the use of cultural and aesthetic project grants, the renewable resource grant and loan program, the reclamation and development grants program, and the treasure state endowment program; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1993 Special Session Amendment: Chapter 13 in (2)(d)(i) deleted last sentence that read: "Any discretionary programs established by the agency that are not required by law must also be enumerated"; inserted (2)(e) requiring agency, when submitting budget request, to specify whether operation of each agency program is discretionary or whether program operation, administration, or management is required by federal or state law; and made minor changes in style. Amendment effective December 23, 1993.

Code Commissioner Instruction: Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (2)(a), near beginning, substituted "the current base budget" for "current level". Amendment effective December 23, 1993.

1993 Amendment: Chapter 20 inserted (5) regarding provision of individual income tax data to the Budget Director; and made minor changes in style.

1992 Special Session Amendment: Chapter 5, Sp. L. July 1992, in (2)(d)(i) inserted last two sentences concerning prioritized list of duties and discretionary programs. Amendment effective July 24, 1992.

1985 Amendment: Inserted second sentence of (2)(d)(i) clarifying required contents of statement; and inserted (4) requiring report on University System bonded indebtedness and related finances.

1983 Amendment: At end of (1) substituted "required by subsection (2)" for "as the budget director shall, in his discretion, feel is necessary for the preparation of a budget, including budget estimates, to include estimates of receipts, actual receipts, estimates of disbursements, actual disbursements, and other information classified and grouped as requested by the budget director and covering such period or periods of time as specified by the budget director"; inserted (2) requiring and explaining balanced financial plan; inserted (3) requiring submission of detailed recommendations for long-range building program and proposed pay plan for Executive Branch employees; and changed phraseology.

Case Notes

Legislative Mandate of Budget Inclusion: The mandatory language in the Housing Act of 1975 that the Governor include the Housing Board's appropriation request in his budget creates

no constitutionally prohibited invasion of the executive's power. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

Law Review Articles

The Judiciary's Inherent Power to Compel Funding: A Tale of Heating Stoves and Air Conditioners, Robertson & Brown, 20 St. Mary's L.J. 863 (1989).

Collateral References

States *key* 73, 131.

81A C.J.S. States §§123, 233 through 235.

17-7-112. Submission deadlines — budgeting schedule.

Compiler's Comments

2001 Amendment: Chapter 313 in (8) near beginning inserted reference to the information technology summary. Amendment effective July 1, 2001.

Effective Date: Section 10, Ch. 507, L. 2001, provided that subsection (2)(b) of this section is effective May 1, 2001.

1997 Amendment: Chapter 347 at beginning inserted "The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year"; inserted (1) requiring certain forms needed for budget estimates to be distributed by August 1; in (2), at beginning of first sentence, substituted "By September 1, each agency shall submit" for "It is the duty of each department, agency, and office, including the Montana university system, to submit" and at end, after "director", deleted "on or before September 1 in the even year preceding the convening of the legislature"; in (3), at beginning of first sentence, substituted "By September 1, the budget director" for "Between August 15 and September 30 in the year preceding the convening of the legislature, the director" and substituted "17-7-111(3)" for "17-7-111(2)" and near end of second sentence, after "information", deleted "during the month of September and"; inserted (4) requiring the Budget Director to furnish the Legislative Fiscal Analyst with a preliminary budget reflecting the base budget by October 10; in (5), at beginning of first sentence, deleted "If any department, institution, university unit, or agency fails to present the information within the time specified in this section, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare and submit to the legislative fiscal analyst and the governor", after "request" substituted "must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency" for "on behalf of the department, institution, university unit, or agency", and at end inserted "that did not present the information required by this section" and at beginning of second sentence inserted "The budget request must be" and after "needs of the" deleted "department"; inserted (6) requiring the Budget Director to furnish the Legislative Fiscal Analyst with a present law base for each agency in a form agreed upon by November 1, including documents reflecting the means of financing the base budget and present law base for the ensuing biennium; inserted (7) requiring the Budget Director to furnish by November 12 the documents reflecting expenditures to the second level by funding source and detailed by accounting entity; in (8) substituted language concerning statutory requirements for former language that read: "The proposed pay plan schedule required by 17-7-111(3) must be submitted to the legislative fiscal analyst no later than November 15 in the year preceding the convening of the legislature"; inserted (9) requiring the Budget Director to submit a preliminary budget to the Governor and Governor-Elect if there is one, by December 15; inserted (10) requiring that budget changes recommended by a Governor-Elect be transmitted to the Legislative Fiscal Analyst and Legislature by January 7; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 332, in (1) inserted last sentence that read: "The department of justice shall submit information received from counties concerning the state's share of county attorney salaries"; and made minor changes in style.

1983 Amendment: In (1), inserted "including the Montana university system" and substituted "the information required under 17-7-111 to" for "information requested by the budget director"; inserted (2) requiring submission of agency budget requests to Legislative Fiscal Analyst; in (3) inserted two references to "university unit", and in middle inserted "and submit to the legislative fiscal analyst and the governor by October 30"; and inserted (4) establishing deadline for submission of proposed pay plan schedule.

1981 Amendment: Deleted "Except as provided in this subsection" at the beginning of (1); substituted "September 1" for "August 15" in (1); deleted "The Montana university system, the department of institutions, and the department of highways shall submit such information on or before September 1 of such year" from the end of (1).

Case Notes

Legislative Mandate of Budget Inclusion: The mandatory language in the Housing Act of 1975 that the Governor include the Housing Board's appropriation request in his budget creates no constitutionally prohibited invasion of the executive's power. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

Collateral References

States *key* 73, 131.

81A C.J.S. States §§123, 233 through 235.

17-7-121. Preliminary budget preparation and submission to governor and governor-elect.

Compiler's Comments

1997 Amendment: Chapter 347 in (1), near middle after "on or before", substituted "the date established in 17-7-112" for "December 15 in the year preceding the convening of the legislature"; in (2), in first sentence near middle after "to make, and", inserted "by the date established in 17-7-112" and near end, after "legislature", inserted "and the legislative fiscal analyst"; and made minor changes in style. Amendment effective July 1, 1997.

17-7-122. Preparation of budget.

Compiler's Comments

1997 Amendment: Chapter 347 in (1), near middle, substituted "17-7-112" for "5-12-303". Amendment effective July 1, 1997.

1995 Amendment: Chapter 545 at end of (1) substituted "the legislative fiscal analyst in accordance with 5-12-303 for inclusion in the combined governor's budget and budget analysis report" for "each member of the legislature at the time of the convening of the legislature"; and near beginning of (2) and (3) substituted "budget proposals" for "requests". Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

Code Commissioner Instruction: Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (3) substituted "the current base budget" for "current level funding". Amendment effective December 23, 1993.

1991 Amendment: Inserted (3) relating to Judicial Branch budget requests; and made minor changes in style.

Case Notes

Legislative Mandate of Budget Inclusion: The mandatory language in the Housing Act of 1975 that the Governor include the Housing Board's appropriation request in his budget creates no constitutionally prohibited invasion of the executive's power. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

Collateral References

States *key* 131.

81A C.J.S. States §§234, 235.

17-7-123. Form of executive budget.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 313 inserted (1)(e)(iii) relating to a summary of budget requests; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 569 in (1)(c) near end after "objectives for" deleted "each program of"; inserted (2) providing that the statement of departmental goals and objectives and the schedule for each fund need not be printed but must be available in the office of budget and program planning and on the internet; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 20 in introduction in first sentence near middle inserted "and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation"; in (6)(a) near beginning after "funds" inserted "not subject to the requirements of subsections (1) through (5)"; and made minor changes in style. Amendment effective February 17, 1999.

Applicability: Section 5, Ch. 20, L. 1999, provided: "[This act] applies to fiscal years beginning on or after July 1, 2001."

1997 Amendment: Chapter 347 in first sentence, near middle after "plan", inserted "of funds subject to appropriation" and after "for" inserted "each accounting entity and for" and at beginning of second sentence inserted "The base level"; in (1), at end of second sentence, deleted "classifying receipts and disbursements contained therein by fund and, when applicable, organizational unit"; substituted language in (2) requiring the base level plan to consist of budget and full-time equivalent personnel comparisons, language in (3) requiring the base level plan to consist of the departmental mission and statement of goals and objectives for each program of the department, language in (4) requiring the base level plan to consist of base budget disbursements, estimated comparable disbursements and the proposed present law base budget plus new proposals for each department and department program, and language in (5) requiring the base level plan to consist of a statement containing recommendations of the Governor, including explanations of appropriation and revenue measures and matters not included as part of the budget bill but as part of the executive budget for former language in (2), (3), and (4) that read: "(2) an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(3) a detailed analysis of receipts by accounting entity within the fund indicating classification and source of funds;

(4) a departmental analysis summarizing past and present spending plans by agency and the means of financing the proposed plan. Information presented must include the following:

(a) a summary of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the current base budget and the current base budget plus new proposals, if any, for each department and each program of the department;

(c) a reference for each program as required under 17-7-111(2)(e); and

(d) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category and other matters considered necessary"; substituted language in (6) requiring the base level plan to include a report on enterprise funds and fees and charges in the internal service fund type for former language that read: "detailed recommendations for the state long-range building program. Each recommendation must be presented by the department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure must be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended"; inserted (7) requiring the base level plan to include any other budgetary material agreed to by the Budget Director and the Legislative Fiscal Analyst; and made minor changes in style. Amendment effective July 1, 1997.

1993 Special Session Amendment: Chapter 13 inserted (4)(c) requiring executive budget to specify whether agency program is discretionary or mandated by federal or state law; and made minor changes in style. Amendment effective December 23, 1993.

Code Commissioner Instruction: Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (4)(b) substituted "base budget and the current base budget plus new proposals" for "funding level and the modified funding level". Amendment effective December 23, 1993.

1993 Amendment: Chapter 349 at beginning of (4)(a) substituted "summary" for "statement"; at beginning of (4)(b) inserted "actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and" and at end, after "department", deleted remainder of former (4) through (4)(d) that read: "The funding levels must

show the number of employees who were given a pay grade change under the pay schedule adopted pursuant to 2-18-303 and the net cost to the agency for such grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;

(ii) grade assigned prior to the completed fiscal year;

(iii) grade assigned during the completed fiscal year;

(iv) grade assigned during the current fiscal year;

(v) recommended grade for the ensuing biennium;

(vi) dollar difference for the upgrade or downgrade for each position; and

(vii) net cost to the agency for grade changes;

(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;

(d) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category"; in (4)(c), after "containing", deleted "further" and after "governor" substituted "for the ensuing biennium by program and disbursement category and other matters considered" for "should he deem it"; deleted (6) that read: "(6) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state"; and made minor changes in style.

1983 Amendment: Inserted (4)(b) referring to current and modified funding levels and pay grade changes.

Case Notes

Legislative Mandate of Budget Inclusion: The mandatory language in the Housing Act of 1975 that the Governor include the Housing Board's appropriation request in his budget creates no constitutionally prohibited invasion of the executive's power. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

Collateral References

States *key* 131.

81A C.J.S. States §§234, 235.

17-7-124. Additional budget data.

Compiler's Comments

1997 Amendment: Chapter 347 near middle, after "request", inserted "a detailed analysis of receipts by accounting entity within each fund type indicating classification and source of funds"; and deleted (1), (2), and (3) that read: "(1) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information available must include the following:

(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department; and

(b) schedules showing the number of employees who were given a pay grade change under the pay schedule implemented pursuant to 2-18-303 and the net cost to the agency for the grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;

(ii) grade assigned prior to the completed fiscal year;

(iii) grade assigned during the completed fiscal year;

(iv) grade assigned during the current fiscal year;

(v) recommended grade for the ensuing biennium;

(vi) dollar difference for the upgrade or downgrade for each position; and

(vii) net cost to the agency for grade changes.

(2) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions by department, institution, or agency of the state; and

(3) information submitted by agencies as required by 17-7-111." Amendment effective July 1, 1997.

17-7-131. Legislative action — ending fund balance.

Compiler's Comments

2003 Amendment: Chapter 607 in (1) in second sentence at end inserted "at the request of the governor"; inserted (2) requiring a positive ending general fund balance at the end of the biennium; and made minor changes in style. Amendment effective October 1, 2003.

Attorney General's Opinions

Applicability of Budget Amendment Process to Statutory Appropriations: Legislative history and case law support the conclusion that the scope of the budget amendment process is restricted to the expenditure of funds by state agencies in excess of their appropriations. The budget amendment process does not apply to "statutory appropriations", which are those appropriations accomplished by legislative enactment, either with or without specific appropriation laws. (See Title 17, ch. 7, part 5.) 40 A.G. Op. 25 (1983).

17-7-132. Right to appear on consideration of budget.

Compiler's Comments

1997 Amendment: Chapter 347 at beginning substituted "The budget director and representatives of agencies" for "The department of administration and representatives of the executive officers, agencies, and institutions of the state and other state agencies"; and made minor changes in style. Amendment effective July 1, 1997.

17-7-138. Operating budget.

Compiler's Comments

2005 Amendment: Chapter 58 in (1)(a) inserted third sentence concerning submitting explanation of significant change to interim committee with program evaluation and monitoring functions. Amendment effective July 1, 2005.

2003 Amendment: Chapter 547 in (2) in first sentence substituted "board of regents, on behalf of the university system units" for "commissioner of higher education for distribution by the board of regents to the university system units" and inserted second through fourth sentences relating to operating budgets and transfers. Amendment effective July 1, 2003.

Applicability: Section 3, Ch. 547, L. 2003, provided: "[This act] applies to university fiscal years beginning on or after July 1, 2003."

2001 Amendments — Composite Section — Coordination: Chapter 255 in (1)(a) in second sentence near middle after "conformity to" inserted "the conditions contained in the general appropriations act and to", inserted fourth sentence that read: "A significant change may not conflict with a condition contained in the general appropriations act", and in last sentence at end inserted "and conditions contained in the general appropriations act"; and in (3) inserted second sentence that read: "The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation" and inserted last sentence requiring that the forms be signed. Amendment effective April 16, 2001.

Chapter 569 in (1)(b)(i) and (1)(b)(ii) at beginning substituted "the operating budget" for "the expenditure"; in (2) near beginning after "appropriations act to" inserted "the commissioner of higher education for distribution by the board of regents to" and after "approval of" substituted "a comprehensive operating" for "an operating" and deleted former second sentence that read: "All other requirements in this section apply to the university system"; in (3) in third sentence after "operating budget" inserted "for all funds, other than higher education funds" and after "accounting" inserted "state financial", inserted fourth sentence requiring that documents implementing approved changes be signed, deleted former fourth sentence that read: "Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget", and inserted fifth and sixth sentences requiring that the operating budget for higher education funds be recorded on the university financial system and allowing state sources and university sources of funds to be combined; and made minor changes in style. Amendment effective July 1, 2001.

Section 13, Ch. 569, L. 2001, a coordination section, provided: "If House Bill No. 533 and [this act] are both passed and approved, then the sentence "The forms must be signed." added to section 17-7-138(3) by House Bill No. 533 is void." House Bill No. 533 was approved as Ch. 255, L. 2001; therefore, the sentence added by amendment to section 17-7-138(3) by House Bill No. 533 is void.

1997 Amendments: Chapter 11 in (1), at end of last sentence, deleted "and any statement of intent adopted as part of a bill". Amendment effective February 7, 1997.

Chapter 347 in (1)(a), in first sentence after "compliance with", substituted "the budget approved by the legislature" for "an operating budget approved by an approving authority", deleted second sentence that read: "Substantial compliance means that a first level category in the operating budget may not be exceeded by more than 5%", and inserted six sentences concerning determination of substantial compliance, requiring the submission to the Legislative Fiscal Analyst and Legislative Finance Committee for review and explanation of any significant

changes in agency program scope, objectives, activities, or expenditures, and providing a procedure for an approving authority to certify that a change is time-sensitive and to obtain approval for the change by the Legislative Finance Committee; inserted (1)(b) providing guidelines for determining what is considered a significant change in an agency's scope, objectives, activities, or expenditures; and made minor changes in style. Amendment effective July 1, 1997.

1992 Special Session Amendment: Chapter 8, Sp. L. July 1992, in (1), in third sentence, substituted "approved by an approving authority within 45 days after the effective date of the general appropriations act or a revision of the general appropriations act" for "by August 1 of each fiscal year". Amendment effective August 6, 1992, and terminates June 30, 1993.

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-139. Program transfers.

Compiler's Comments

2005 Amendment: Chapter 58 in (1) inserted third sentence concerning submitting explanation of significant transfer to interim committee with program evaluation and monitoring functions. Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 255 in (1) in first sentence near beginning after "law" inserted "or a condition contained in the general appropriations act", inserted second sentence that read: "The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation", and in 10th sentence after "approval of the transfer" inserted "in writing". Amendment effective April 16, 2001.

Chapter 569 in (1) at end of last sentence after "retransferred" inserted "except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred". Amendment effective July 1, 2001.

1999 Amendment: Chapter 6 in (1) inserted 10th sentence prohibiting the subsequent transfer of money transferred to another fiscal year. Amendment effective July 1, 1999.

1997 Amendment: Chapter 347 in (1) deleted former second sentence that read: "The transfer may not exceed 5% of the total agency appropriation, excluding statutory appropriations, administrative authorizations, and budget amendments" and inserted five sentences requiring the submission to the Legislative Fiscal Analyst and Legislative Finance Committee for review and explanation of any transfer that involves significant changes in agency program scope, objectives, activities, or expenditures and providing a procedure for an approving authority to certify that a change is time-sensitive and to obtain approval for the change by the Legislative Finance Committee; inserted (2) providing guidelines for determining what is considered a significant change in an agency's scope, objectives, activities, or expenditures; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-140. Reduction in spending.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 114 in (4) in first sentence substituted "5-5-227" for "5-18-107". Amendment effective October 1, 2003.

Chapter 169 inserted (2)(f) prohibiting governor from directing reduction in spending for Montana school for the deaf and blind; and made minor changes in style. Amendment effective March 28, 2003.

Chapter 607 in (3)(a)(i) at end inserted "prior to October of the year preceding a legislative session"; inserted (3)(a)(ii) through (3)(a)(iv) relating to percentages for certain time periods; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date — Applicability: Section 2, Ch. 169, L. 2003, provided: "[This act] is effective on passage and approval [approved March 28, 2003] and applies to fiscal years beginning on or after July 1, 2003."

1999 Amendment: Chapter 19 throughout (3)(b) substituted "revenue and taxation [now revenue and transportation] interim committee" for "revenue oversight committee"; and made minor changes in style. Amendment effective February 17, 1999.

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

1992 Special Session Amendment: Chapter 5, Sp. L. July 1992, substituted current language (see July 1992 Special Session Law for text) for former text providing for reduction of appropriations by up to 15% in the event of a shortfall in revenue. Amendment effective July 24, 1992.

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-141. Audit costs.

Compiler's Comments

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-142. Calculation of reversions for funded resident enrollment growth in Montana university system and community colleges.

Compiler's Comments

2003 Amendment: Chapter 23 near end of (1) after "university system" inserted "or a community college". Amendment effective February 14, 2003.

Effective Date: This section is effective October 1, 2001.

17-7-150. Definitions.

Compiler's Comments

2001 Amendment: Chapter 34 in definition of state resources in (b)(viii) substituted "private purpose trust funds" for "expendable trust funds" and in (b)(ix) substituted "permanent funds" for "nonexpendable trust funds". Amendment effective July 1, 2001.

17-7-160. Montana highway patrol exempt from vacancy savings — report to audit committee.

Compiler's Comments

Preamble: The preamble attached to Ch. 421, L. 2005, provided: "WHEREAS, it is in the best interests of the citizens of Montana to travel safely on the streets and highways of Montana; and

WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the population of the State of Montana has increased by 223,412 persons (by 32%) in the past 30 years; and

WHEREAS, the total number of vehicles registered in the State of Montana has increased from 668,717 to 1,059,565 (by 53%) in the past 30 years; and

WHEREAS, economic loss to the citizens of the State of Montana associated with motor vehicle crashes increased from $106.6 million in 1973 to $780 million in 2003 (by 732%); and

WHEREAS, the Montana Highway Patrol had 220 uniformed officers 30 years ago and has only 206 today, despite an increase of 5 billion highway miles a year driven over that same period and despite being given additional statutory law enforcement obligations; and

WHEREAS, the standing House and Senate State Administration Committees of the 58th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Attorney General to report to the State Administration and Veterans' Affairs Interim Committee on recruitment and retention efforts, to conduct a salary survey, and to develop draft legislation to implement recommendations; and

WHEREAS, in addition to the salary survey conducted by the Attorney General, the Montana Legislative Audit Division conducted a separate salary survey of the Sheriff departments in the eight counties where the Montana Highway Patrol district offices are located, including the headquarters in Helena; and

WHEREAS, an entry-level officer for the Montana Highway Patrol is paid $4.50 an hour ($9,360 a year) less than the average entry-level officer in those eight county Sheriff's departments; and

WHEREAS, the Montana Highway Patrol continues to lose officers to other law enforcement agencies after absorbing the cost of training those officers, which places additional hardships on the patrol; and

WHEREAS, in the past 11 years, 62 of the 80 officers (78%) that left the Montana Highway Patrol for nonretirement purposes went to other law enforcement agencies for higher salaries; and

WHEREAS, Montana Highway Patrol officer positions have been placed into the alternative pay and classification plan, which allows market-based salary survey adjustments, to recruit and retain officers; and

WHEREAS, market-based salary information from county Sheriff departments, which are recruiting and hiring Montana Highway Patrol officers because of higher salaries, is readily available to establish market-based salary rates to compensate Montana Highway Patrol officers and reduce attrition in these positions; and

WHEREAS, this act is intended to allow the Montana Highway Patrol to be in a position to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers."

Effective Date: Section 10(1), Ch. 421, L. 2005, provided that this section is effective on passage and approval. Approved April 26, 2005.

Part 2
Long-Range Building Program and Budget

Case Notes

No Conflict Between Long-Range Building Statutes and Lease-Option Limitations: The long-range building statutes are not exclusive; therefore, there is no conflict between the long-range building program and the lease-option arrangement for the acquisition of personal property. Cornwall v. St., 231 M 58, 752 P2d 135, 45 St. Rep. 429 (1988).

17-7-201. Definitions of building and construction.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

17-7-204. Long-range building program.

Compiler's Comments

1997 Amendment: Chapter 347 in first sentence, after "presented", substituted "in order of importance by fund type" for "in a priority listing" and near beginning of second sentence, after "presented by", deleted "department, institution"; and made minor changes in style. Amendment effective July 1, 1997.

Collateral References

64 Am. Jur. 2d Public Securities and Obligations §256.

Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 ALR 2d 1414.

17-7-205. Long-range building program account.

Compiler's Comments

Effective Date: Section 8, Ch. 456, L. 1995, provided that this section is effective July 1, 1995.

17-7-206. Maintenance for state buildings.

Compiler's Comments

Severability: Section 17, Ch. 547, L. 1995, was a severability clause.

Effective Date: Section 18, Ch. 547, L. 1995, provided: "[This act] is effective on passage and approval." Approved April 26, 1995.

17-7-211. Expansion to be authorized — budget amendment.

Compiler's Comments

1997 Amendment: Chapter 347 in (1), near end after "authorized by", substituted "a" for "an approved" and at end inserted "approved by the budget director"; inserted (2) requiring a long-range building program budget amendment to be submitted to the Budget Director and allowing the Budget Director to authorize certain excess fund transfers or project expansion financing; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-212. Reappropriation of capital projects.

Compiler's Comments

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

Part 3
Supplemental Appropriations, Encumbrances, and Reversions

17-7-301. Authorization to expend during first year of biennium from appropriation for second year — proposed supplemental appropriation defined — limit on second-year expenditures.

Compiler's Comments

1997 Amendment: Chapter 347 throughout section substituted references to approving authority for references to Governor; in (1), at beginning of first sentence, substituted "An agency may make" for "A state department, institution, or agency of the executive branch desiring authorization to make" and at end, after "biennium", deleted "shall submit" and inserted "if authorized by the general appropriations act", at beginning of second sentence inserted "An agency that is not authorized in the general appropriations act to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of" and at end deleted "through the budget director", and in fourth sentence, near middle after "maintenance of the", deleted "department, institution, or" and near end, after "recommendation", inserted "for executive branch proposals"; in (4), at beginning, substituted "The agency" for "The department, institution, or agency"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 357 inserted second sentence of (1) requiring the proposal to include a plan for reducing second-year expenditures; inserted (2) clarifying when the plan is not required; inserted second sentence of (3) requiring implementation of the plan; inserted (7) prohibiting certain supplemental appropriations; and made minor changes in style.

1992 Special Session Amendment: Chapter 11 in (1), near end of first sentence, substituted "submit a proposed supplemental appropriation" for "make application for such authorization", at end of second sentence inserted requirement of submission to Legislative Fiscal Analyst, and at beginning of third sentence inserted reference to recommendation of Legislative Finance Committee; and inserted (4) defining proposed supplemental appropriation. Amendment effective January 21, 1992.

17-7-302. Encumbrance of fiscal yearend obligations.

Compiler's Comments

1987 Amendment: In (1), at beginning of second sentence, inserted exception clause; at beginning of (2) substituted "An appropriation may be encumbered by" for "For the purposes of encumbering appropriations under subsection (1), a valid obligation includes"; at end of (2) inserted second sentence requiring unencumbered appropriations to revert to fund of original appropriation; and deleted former (3) requiring unexpended encumbered appropriations to revert to fund of original appropriation.

1985 Amendment: At end of (1) deleted "except construction contracts which, upon approval of the department of administration, may be encumbered for only that portion of the contract for which services or materials have been received by the fiscal year's end"; inserted (2) permitting encumbrances for alteration, repair, maintenance, or renovation of a building; and inserted (3) requiring unexpended encumbered appropriations to revert to fund of original appropriation.

Attorney General's Opinions

No Encumbrance of Unexpended Microbusiness Development Funds After End of Fiscal Year: The Department of Commerce entered into contracts with several microbusiness development corporations in June 1997, contingent upon matching funds being provided by September 30, 1997. However, when the matching funds were not received by that date, the Department amended the contracts to extend the time for providing matching funds to September 30, 1999. The Legislative Auditor conceded that Department rules allowed a valid encumbrance through September 30, 1997 (see ARM 8.99.505(3)), but maintained that after that time, the funds were no longer validly encumbered and should have reverted to the coal tax trust fund from which they were appropriated. The Attorney General agreed. In light of the balanced budget requirement in Art. VIII, sec. 9, Mont. Const., 17-7-304 contemplates that an appropriation for a

specific purpose will revert to the fund or account from which it was appropriated after the expiration of the time for which it was appropriated, and appropriations for an unspecified period of time must revert at the end of the biennium. In this case, the appropriation was subject to reversion on June 30, 1997. The Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to this section; thus any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997. 48 A.G. Op. 26 (2000). See also 40 A.G. Op. 4 (1983).

Encumbrance of Funds — Valid Obligation: The Coal Board may encumber funds at the close of a fiscal year only by incurring a "valid obligation" against them under 17-7-302. The Coal Board does not incur a valid obligation against its appropriation by inviting a full application for a grant after screening a preapplication since it is not legally bound to approve the application. 40 A.G. Op. 4 (1983).

17-7-304. Disposal of unexpended appropriations.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 565 in (1) near middle of first sentence after "subsection (2)" inserted "or state money appropriated for the state children's health insurance program provided for in Title 53, chapter 4, part 10"; and made minor changes in style. Amendment effective May 2, 2005.

Chapter 581 in (4)(a) at beginning inserted "Subject to subsection (4)(b)"; inserted (4)(b) providing for deposit of certain unexpended and unencumbered money in the legislative branch reserve account; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 565, L. 2005, provided: "[This act] applies to contracts offered, issued, or renewed after [the effective date of this act]." Effective May 2, 2005.

Retroactive Applicability: Section 6, Ch. 581, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to appropriations made after January 1, 2003."

2001 Amendment: Chapter 569 in (4) at beginning of first sentence substituted "After" for "For the 2 years following" and near end before "for any purpose" substituted "reappropriated to be spent during the following 2 years" for "spent". Amendment effective July 1, 2001.

1997 Amendments: Chapter 361 in (1), at end of second sentence, inserted "or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year". Amendment effective July 1, 1997.

Chapter 532 in (4), near middle of first sentence after "equipment", inserted "by fund type". Amendment effective July 1, 1997.

Repeal of Termination Date: Section 13, Ch. 23, Sp. L. November 1993, provided that the 1993 amendments to this section terminated July 1, 1997. Section 40(2), Ch. 532, L. 1997, repealed sec. 13, Ch. 23, Sp. L. November 1993. The effect of the 1997 repealer was to make the 1993 amendments to 17-7-304 permanent.

1995 Amendment: Chapter 308 in temporary version in (2), in first sentence, substituted "university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls" for former language that read: "university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon" and after "offices in Butte" deleted "and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula"; and made minor changes in style. Amendment effective July 1, 1995.

Termination Removed: Chapter 128 removed the termination dates formerly applicable to this section found in sec. 5, Ch. 5, Sp. L. July 1992, and sec. 23, Ch. 787, L. 1991, making permanent the provisions allowing the Board of Regents to retain unspent appropriations for long-term maintenance. Amendment effective March 13, 1995.

1993 Special Session Amendment: (Temporary version) Chapter 23 in (1), after "subsection (2)", inserted "and except as provided in subsection (4)"; and inserted (4) concerning agency retention of 30% of the money appropriated to an agency for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year to be spent for any purpose that is consistent with the goal and objectives of the agency. Amendment effective December 23, 1993.

(Version effective July 1, 1996) At beginning of (1) inserted exception clause; and inserted (2) concerning agency retention of 30% of the money appropriated to an agency for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year to be spent for any purpose that is consistent with the goal and objectives of the agency. Amendment effective December 23, 1993, and terminates July 1, 1997.

Note: This amendment was rendered inapplicable by Ch. 128, L. 1995.

Termination: Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

1993 Amendment: Chapter 10 in 1996 version, in first sentence after "purpose", deleted "except those appropriated for the university system units listed in subsection (2)"; and made minor changes in style. Amendment effective June 30, 1996.

Note: This amendment was rendered inapplicable by Ch. 128, L. 1995.

1992 Special Session Amendment: Chapter 5, Sp. L. July 1992, near beginning of (2) inserted reference to subsection (3); inserted (3) concerning reversions that result from a reduction in spending directed by the Governor; and made minor changes in style. Amendment effective July 24, 1992, and terminates June 30, 1996.

1991 Amendment: In (1) added exception for money appropriated for University System units; and inserted (2) relating to appropriations to University System units. Amendment effective July 1, 1991.

Applicability: Section 21, Ch. 787, L. 1991, provided: "[Section 6(2)] applies to reversions due from fiscal year 1991."

Termination: Section 23, Ch. 787, L. 1991, provided: "[Section 6(2)] terminates June 30, 1996."

Attorney General's Opinions

No Encumbrance of Unexpended Microbusiness Development Funds After End of Fiscal Year: The Department of Commerce entered into contracts with several microbusiness development corporations in June 1997, contingent upon matching funds being provided by September 30, 1997. However, when the matching funds were not received by that date, the Department amended the contracts to extend the time for providing matching funds to September 30, 1999. The Legislative Auditor conceded that Department rules allowed a valid encumbrance through September 30, 1997 (see ARM 8.99.505(3)), but maintained that after that time, the funds were no longer validly encumbered and should have reverted to the coal tax trust fund from which they were appropriated. The Attorney General agreed. In light of the balanced budget requirement in Art. VIII, sec. 9, Mont. Const., this section contemplates that an appropriation for a specific purpose will revert to the fund or account from which it was appropriated after the expiration of the time for which it was appropriated, and appropriations for an unspecified period of time must revert at the end of the biennium. In this case, the appropriation was subject to reversion on June 30, 1997. The Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to 17-7-302; thus any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997. 48 A.G. Op. 26 (2000). See also 40 A.G. Op. 4 (1983).

General Fund Responsible for Payment of Airport Loan Program Shortfall: Proceeds from bonds issued under the long-range building program were appropriated for use by the airport improvement program. As bond retirement occurred, a deficit shortfall was created between the bond payments and the repayment of the loans. Although the Legislature in 1993 established a different loan program with imposition of a 1-cent tax on aviation fuel pursuant to 67-1-301, there was no suggestion that proceeds from that tax were to be used for payment of bond proceeds under the previous loan program. Despite the fact that a legislative audit recommended that payment of the shortfall on the bonds should be paid from either of two special revenue accounts of the Aeronautics Division, the Attorney General held that both the bond instrument and the appropriation of bond proceeds clearly showed that the general fund was the proper source for payment on the bond shortfall. 47 A.G. Op. 7 (1997).

Reversion of Coal Board Funds: The provision of 17-7-304, requiring the reversion of unexpended and unencumbered portions of appropriations at the close of the fiscal year, applies to the appropriations to the Coal Board from the local impact and education trust fund. The Legislature appropriates money to the Coal Board as a discretionary matter under 90-6-207. There is no constitutional impediment to the reversion of the funds, nor is there any indication of

legislative intent to except the Coal Board grant money from the operation of 17-7-304. The Board must follow the legislatively created financial requirements. 40 A.G. Op. 4 (1983).

17-7-311. Proposed fiscal year transfer supplemental appropriation — procedure.

Compiler's Comments

2001 Amendment: Chapter 569 throughout section in 15 places after "proposed" inserted "fiscal year transfer"; and in (1) near beginning of first sentence after "appropriation" inserted "to transfer appropriations between fiscal years of a biennium". Amendment effective July 1, 2001.

1993 Amendment: Chapter 357 at end of first sentence of (2) inserted "and to determine the expenditures that will be reduced in order to contain spending within legislative appropriations"; and made minor changes in style.

Effective Date: Section 4, Ch. 11, Sp. L. January 1992, provided that this section is effective January 21, 1992.

Part 4
Budget Amendments

Part Compiler's Comments

Severability: Section 10, Ch. 536, L. 1983, was a severability section.

Attorney General's Opinions

Applicability of Budget Amendment Process to Statutory Appropriations: Legislative history and case law support the conclusion that the scope of the budget amendment process is restricted to the expenditure of funds by state agencies in excess of their appropriations. The budget amendment process does not apply to "statutory appropriations", which are those appropriations accomplished by legislative enactment, either with or without specific appropriation laws. (See Title 17, ch. 7, part 5.) 40 A.G. Op. 25 (1983).

Failure to Deduct Carryover Balance — Not Subject to Appropriation: In determining the amount of the fee, the Department of Revenue failed to deduct the carryover balance from the previous year. This unappropriated balance was not available to the office of Consumer Counsel for expenditure under a budget amendment. Rather, the balance inures to the benefit of the regulated companies in the form of a corresponding lower fee for the succeeding year. 39 A.G. Op. 59 (1982).

17-7-402. Budget amendment requirements.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 182 inserted (1)(a)(xi) to allow a budget amendment to expend revenue generated from fees collected by the department of justice for dissemination of criminal history record information; inserted (1)(c)(ii) allowing expenditures from the state special revenue fund that are authorized under subsection (1)(a); and made minor changes in style. Amendment effective March 31, 2003.

Chapter 332 inserted (1)(a)(viii) through (1)(a)(x) relating to water pollution fund revenue, drinking water fund revenue, and adjustments for certain leave time; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 569 in (1)(f) at end inserted "except that budget amendments for federal funds may extend to the end of the federal fiscal year"; in (3) at beginning inserted "Subject to subsection (1)(f)"; in (4) deleted former second sentence that read: "The proposed expenditure of money from nonstate or nonfederal sources that is restricted by law must be submitted to the legislative fiscal analyst"; in (6) at beginning of first sentence after "An appropriation" inserted "for a nonrecurring item" and at end after "session" inserted "between January 1 and the senate hearing on the budget amendment bill" and at beginning of second sentence substituted "The bill may include authority to spend money in the current fiscal year and in both fiscal years" for "may not include authority to spend money beyond the first fiscal year"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 11 inserted (2) providing that a general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendments: Chapter 76 inserted (1)(a)(vii) providing authority for a budget amendment to spend revenue collected for the administration of the state grain laboratory; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (1)(c), at end, inserted "or the expenditure is exempt under subsection (4)"; and in (3) inserted second sentence requiring the proposed expenditure to be submitted to the Legislative Fiscal Analyst. Amendment effective July 1, 1997.

Severability: Section 23, Ch. 76, L. 1997, was a severability clause.

1995 Amendments: Chapter 36 inserted (1)(a)(vi) granting an exception for approval of a budget amendment to spend revenue resulting from the sale of goods from an institutional industries program; and made minor changes in style. Amendment effective February 8, 1995.

Chapter 545 in (1)(a)(v), at end, deleted "or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter"; in (3), after "budget director and the", deleted "office of the"; in (4), after "donation", deleted "is subject to the review process provided in 17-7-114 and"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 556 in (1)(a)(v), at end, deleted "or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter"; in (1)(e) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1993 Amendment: Chapter 433 at beginning of (1) inserted exception clause; near beginning of (1)(a), after "spend", substituted present list of excepted budget amendment revenue for former language that read: "funds which were not available for legislative consideration"; inserted (4) clarifying that certain nonstate and nonfederal money is subject to review and exemption; inserted (5) disallowing spending authority beyond the first fiscal year of the next biennium; inserted (6) exempting a budget amendment required for matching funds; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

81A C.J.S. States §241.

63A Am. Jur. 2d Public Funds §45.

17-7-403. Budget amendment certification.

Compiler's Comments

1993 Amendment: Chapter 433 in second sentence of (1)(c), after first "existing", substituted "appropriations" for "personnel because of the present required workload of existing personnel" and after second "existing" substituted "appropriations" for "funding"; deleted former (2) that read: "The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated and shall state a specific followup date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date"; near beginning of (2), after "fund", inserted "except money from nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation"; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

63A Am. Jur. 2d Public Funds §46.

17-7-404. Budget amendment procedures.

Compiler's Comments

1995 Amendment: Chapter 545 in (3) deleted second sentence and (3)(a) and (3)(b) that read: "The approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:

(a) the report is not received within 90 calendar days from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or

(b) there has been a waiver of review and report as provided in subsection (6)"; deleted former (4) that read: "(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the approving authority"; deleted first sentence of former (5) that read: "Upon receipt of the legislative finance committee's written report, the approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information"; deleted (6) that read: "(6) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive his written review and the legislative finance committee's written report required by this section. Upon receipt of such waiver, the approving authority may approve the budget amendment on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review"; and made minor changes in style. Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1985 Amendment: In (1) near beginning, after "amendment", deleted "from a requesting agency"; and throughout section, before "approving authority", deleted "executive branch".

Attorney General's Opinions

Disaster and Emergency Payments — Budget Amendment Process Inapplicable: The budget amendment process was not applicable to a request to pay the costs associated with the suppression of forest fires. The budget amendment process is not intended to permit a loan from the state's general fund when the only anticipated revenue for repayment is the possibility of a subsequent appropriation of funds from the general fund. 42 A.G. Op. 123 (1988).

Part 5
Statutory Appropriations

Part Compiler's Comments

Severability: Section 35, Ch. 703, L. 1985, which chapter enacted this part, was a severability section.

17-7-502. Statutory appropriations — definition — requisites for validity.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 223 in (3) deleted "2-15-151" from list of statutory references and inserted "90-1-115" in list of statutory references. Amendment effective December 31, 2006.

Chapter 314 in (3) inserted "23-4-105", "23-4-202", "23-4-204", "23-4-302", and "23-4-304" in list of statutory references. Amendment effective July 1, 2007.

Chapter 324 in (3) deleted "16-11-404" from list of statutory references and inserted "16-11-509" in list of statutory references. Amendment effective July 1, 2005.

Chapter 327 in (3) deleted "23-5-631" from list of statutory references. Amendment effective July 1, 2005.

Chapter 421 in (3) inserted "44-1-504" in list of statutory references. Amendment effective January 1, 2006.

Chapter 464 in (3) inserted "19-6-404" and "19-6-410" in list of statutory references. Amendment effective July 1, 2005.

Chapter 482 in (3) inserted "41-5-2011" in list of statutory references. Amendment effective April 28, 2005.

Chapter 524 in (3) inserted "15-70-601" in list of statutory references. Amendment effective July 1, 2005.

Chapter 525 in (3) inserted "15-70-369" in list of statutory references. Amendment effective April 28, 2005.

Chapter 581 in (3) inserted "5-11-407" in list of statutory references. Amendment effective July 1, 2005.

Chapter 588 in (3) inserted "90-1-205" in list of statutory references. Amendment effective July 1, 2005.

Chapter 593 in (3) inserted "15-31-906" in list of statutory references. Amendment effective May 6, 2005, and terminates January 1, 2010.

Chapter 600 in (3) inserted "10-2-603" in list of statutory references. Amendment effective July 1, 2005.

Chapter 602 in (3) inserted "60-11-115" in list of statutory references. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 421, L. 2005, provided: "WHEREAS, it is in the best interests of the citizens of Montana to travel safely on the streets and highways of Montana; and

WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the population of the State of Montana has increased by 223,412 persons (by 32%) in the past 30 years; and

WHEREAS, the total number of vehicles registered in the State of Montana has increased from 668,717 to 1,059,565 (by 53%) in the past 30 years; and

WHEREAS, economic loss to the citizens of the State of Montana associated with motor vehicle crashes increased from $106.6 million in 1973 to $780 million in 2003 (by 732%); and

WHEREAS, the Montana Highway Patrol had 220 uniformed officers 30 years ago and has only 206 today, despite an increase of 5 billion highway miles a year driven over that same period and despite being given additional statutory law enforcement obligations; and

WHEREAS, the standing House and Senate State Administration Committees of the 58th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Attorney General to report to the State Administration and Veterans' Affairs Interim Committee on recruitment and retention efforts, to conduct a salary survey, and to develop draft legislation to implement recommendations; and

WHEREAS, in addition to the salary survey conducted by the Attorney General, the Montana Legislative Audit Division conducted a separate salary survey of the Sheriff departments in the eight counties where the Montana Highway Patrol district offices are located, including the headquarters in Helena; and

WHEREAS, an entry-level officer for the Montana Highway Patrol is paid $4.50 an hour ($9,360 a year) less than the average entry-level officer in those eight county Sheriff's departments; and

WHEREAS, the Montana Highway Patrol continues to lose officers to other law enforcement agencies after absorbing the cost of training those officers, which places additional hardships on the patrol; and

WHEREAS, in the past 11 years, 62 of the 80 officers (78%) that left the Montana Highway Patrol for nonretirement purposes went to other law enforcement agencies for higher salaries; and

WHEREAS, Montana Highway Patrol officer positions have been placed into the alternative pay and classification plan, which allows market-based salary survey adjustments, to recruit and retain officers; and

WHEREAS, market-based salary information from county Sheriff departments, which are recruiting and hiring Montana Highway Patrol officers because of higher salaries, is readily available to establish market-based salary rates to compensate Montana Highway Patrol officers and reduce attrition in these positions; and

WHEREAS, this act is intended to allow the Montana Highway Patrol to be in a position to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers."

Retroactive Applicability: Section 6, Ch. 482, L. 2005, provided "[This act] applies retroactively, within the meaning of 1-2-109, to unexpended funds in the accounts established under 41-5-130(6) on June 30, 2004."

Section 6, Ch. 581, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to appropriations made after January 1, 2003."

Severability: Section 14, Ch. 593, L. 2005, was a severability clause.

2003 Amendments — Composite Section: Chapter 43 in (3) inserted "69-3-870" in list of statutory references. Amendment effective February 26, 2003.

Chapter 140 in (3) inserted "53-24-108" in list of statutory references. Amendment effective July 1, 2003.

Chapter 353 in (3) inserted "53-1-109" in list of statutory references. Amendment effective October 1, 2003.

Chapter 355 in (3) inserted "77-2-362" in list of statutory references. Amendment effective April 17, 2003.

Chapter 397 in (3) inserted "16-11-404" in list of statutory references. Amendment effective April 17, 2003.

Chapter 481 in (3) deleted "90-6-710" from list of statutory references. Amendment effective July 1, 2005.

Chapter 522 in (3) substituted "15-36-332" for "15-36-324" in list of statutory references. Amendment effective April 26, 2003.

Chapter 533 in (3) inserted "61-3-415" in list of statutory references. Amendment effective July 1, 2003.

Modification of Termination Date: Section 135, Ch. 114, L. 2003, amended sec. 17, Ch. 414, L. 2001, by changing the termination of the reference to 2-15-151 from December 31, 2006, to June 30, 2005.

Severability: Section 20, Ch. 355, L. 2003, was a severability clause.

Section 17, Ch. 397, L. 2003, was a severability clause.

Retroactive Applicability: Section 21, Ch. 397, L. 2003, provided: "The legislature intends that [section 13 and 15] [16-11-404 and 17-7-502] apply to all pending actions in which a final judgment has not been entered prior to [the effective date of this act]." Effective April 17, 2003.

Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

2002 Amendments — Composite Section: Chapter 10 in (3) inserted "20-9-622" in list of statutory references. Amendment effective August 16, 2002.

Chapter 13 in (3) deleted "23-5-136" from list of statutory references. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

2001 Amendments — Composite Section: Chapter 7 in (3) deleted "15-34-115" from list of statutory references. Amendment effective October 1, 2001.

Chapter 414 in (3) inserted "2-15-151" in list of statutory references. Amendment effective April 28, 2001, and terminates December 31, 2006.

Chapter 500 in (3) inserted "15-1-113" in list of statutory references. Amendment effective January 1, 2002.

Chapter 554 in (3) inserted "20-9-534" in list of statutory references and deleted "81-5-111" from list of statutory references. Amendment effective July 1, 2001.

Chapter 567 in (3) inserted "80-5-510" in list of statutory references. Amendment effective October 1, 2001.

Chapter 574 in (3) inserted "15-1-121" in list of statutory references and deleted "15-31-702", "16-1-404", "16-1-406", "16-1-411", "19-6-709", "23-5-610", "67-3-205", and "77-1-505" from list of statutory references. Amendment effective July 1, 2001.

Chapter 585 in (3) deleted "3-5-901" from list of statutory references. Amendment effective July 1, 2002.

Chapter 594 in (3) inserted "17-3-241" in list of statutory references. Amendment effective January 1, 2002.

Applicability: Section 16, Ch. 414, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Saving Clause: Section 14, Ch. 567, L. 2001, was a saving clause.

2000 Amendment: Chapter 10 in (3) inserted "15-35-108" and "90-6-710" in list of statutory references; and made minor changes in style. Amendment effective May 22, 2000, and terminates June 30, 2005.

1999 Amendments — Composite Section: Chapter 51 in former temporary version in (3) deleted "20-8-111" from list of statutory references and inserted "77-1-505".

In former July 1, 2008, version in (3) substituted "16-1-406" for "[16-1-406]" and deleted "15-30-195", "17-5-404", "17-5-804", "19-19-205", "20-9-361", "32-1-537", "50-5-232", "50-40-206", "53-6-150", "60-2-220", "82-11-136", "85-1-220", "90-7-220", and "90-7-221" from list of statutory references; and made minor changes in style. Amendment effective March 15, 1999.

Chapter 83 inserted "80-11-518" in list of statutory references. Amendment effective March 16, 1999.

Chapter 360 in (3) inserted "19-20-604" in list of statutory references. Amendment effective July 1, 1999.

Chapter 389 in (3) deleted "15-30-195", "16-11-308", "20-8-111", "39-71-907", "39-71-2321", "77-1-131", "80-2-103", "85-20-402", "90-3-301", "90-4-215", and "90-6-331" from list of statutory references and in former temporary version inserted "77-1-505". Amendment effective July 1, 1999.

Chapter 497 in (3) deleted "15-38-202" from list of statutory references. Amendment effective July 1, 2014.

Chapter 554 in (3) deleted "15-36-325" from list of statutory references. Amendment effective January 1, 2000.

Chapter 563 in (3) inserted "15-34-115" and "90-3-1003" in list of statutory references. Amendment effective July 1, 1999.

1999 Purported Amendments: Section 22, Ch. 285, L. 1999, purported to insert references in (3) to sec. 1 and sec. 26, but sec. 1 and sec. 26 were voided by sec. 170(2), Ch. 584, L. 1999, a coordination section.

Chapter 426 purported to insert a reference in (3) to sec. 20, but sec. 20 was voided by sec. 170(1)(a)(i), Ch. 584, L. 1999, a coordination section.

Chapter 556 purported to insert a reference in (3) to sec. 15, but sec. 15 was voided by sec. 170(1)(b), Ch. 584, L. 1999, a coordination section.

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Section 36, Ch. 556, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

1997 Amendments: Chapter 42 in (3) deleted "17-5-424" from list of statutory references. Amendment effective March 12, 1997.

Chapter 276 in (3) deleted "39-71-2504" from list of statutory references. Amendment effective July 1, 1997.

(Temporary version) Chapter 422 in (3) deleted "16-1-410", "17-5-404", "17-5-424", "17-5-804", "17-6-201", "19-19-205", "20-9-361", "32-1-537", "50-5-232", "50-40-206", "53-6-150", "60-2-220", "76-12-123", "82-11-136", "85-1-220", "90-3-301", "90-7-220", and "90-7-221" from list of statutory references and inserted "16-1-406". Amendment effective July 1, 1997.

(Version effective July 1, 2008) In (3) deleted "15-1-111", "20-8-111", and "76-12-123" from list of statutory references and inserted "77-1-505". Amendment effective July 1, 2008.

Chapter 445 in (3) deleted "19-9-1007" from list of statutory references. Amendment effective July 1, 1997.

Chapter 461 in (3) inserted "77-1-131" in list of statutory references. Amendment terminates October 1, 2003.

Chapter 466 in (3) inserted "15-36-324" and "15-36-325" in list of statutory references. Amendment effective July 1, 1997.

Chapter 469 in (3) inserted "22-3-1004" in list of statutory references. Amendment effective May 1, 1997.

Chapter 480 in (3) inserted "42-2-105" in list of statutory references.

Chapter 523 in (3) inserted "87-1-513" in list of statutory references.

Chapter 532 in (3) deleted "2-9-202", "2-18-812", "17-6-201", and "19-2-502" from list of statutory references and inserted "15-36-324", "15-36-325", "17-3-222", "19-3-319", "19-9-702", "19-13-604", and "19-13-1006 (deleted pursuant to sec. 39(2)(b), Ch. 532, L. 1997.)". Amendment effective July 1, 1997.

Chapter 549 in (3) deleted "90-3-301" from list of statutory references. Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 276, L. 1997, provided: "WHEREAS, it is the intent of the state compensation insurance fund to assist all Montanans by reducing the unfunded liability of the old fund, terminating the old fund liability tax when the old fund is adequately funded, which is currently estimated to occur as early as June 30, 1999, providing for the payment of dividends to policyholders, and maintaining a viable state compensation insurance fund; and

WHEREAS, there was an unfunded liability of $355 million as of June 30, 1996, for claims for workers' compensation injuries occurring before July 1, 1990, in the old fund, which included $129 million in outstanding bond debt; and

WHEREAS, the old fund is funded with the old fund liability tax paid by employers, employees, and self-employed persons, generating as much as $50 million each year; and

WHEREAS, the surplus of $231 in the new fund as of June 30, 1996, allowed the Board of Directors of the State Fund to declare a dividend of up to $109 million to retire the outstanding bond debt in the old fund; and

WHEREAS, the unfunded liability in the old fund will be an estimated $200 million deficit by June 30, 1997, and the surplus or the excess of assets above the reserves that are set aside to meet the claim liability in the new fund will be an estimated $127 million by June 30, 1997; and

WHEREAS, current state law requires the State Fund to use dividends to be applied first to old fund outstanding liability rather than paying dividends directly to policyholders, the State Fund shall, no later than June 30, 1998, transfer $63.8 million to the old fund account to pay old fund claims to allow direct payment of dividends to policyholders; and

WHEREAS, the $20 million appropriation received by the State Fund from the general fund during the June 1989 Special Session partially addressed the unfunded liability issue existing at that time in the old fund and canceled a planned 22% rate increase; and

WHEREAS, the State Fund now agrees to repay the $20 million appropriation to the general fund by June 30, 1999, in lieu of transferring additional funds to the old fund account to provide the general fund with additional revenue and to remove any perception that the State Fund remains a burden on the general fund; and

WHEREAS, because decreases in premium rates totaled 35% in fiscal years 1996 and 1997 and legislative changes in benefit levels have resulted in the return of private carriers, the 15% limitation on administration expenses as a percent of the prior year's premium will significantly impact the State Fund's ability to provide service to policyholders and their injured workers; and

WHEREAS, the State Fund seeks to improve the level of services provided to customers without increasing existing State Fund staffing levels by working with private sector-licensed insurance producers; and

WHEREAS, in response to *Haag v. Montana Schools Group Insurance Authority*, 274 M 109, 906 P.2d 693 (1995), in which the Montana Supreme Court ruled that an insurer's failure to comply with the time limitations for accepting or denying a workers' compensation claim constituted acceptance of the claim, current law needs to be clarified to provide that the failure to comply with the time limitations does not constitute acceptance of the claim."

Severability: Section 32, Ch. 276, L. 1997, was a severability clause.

Section 21, Ch. 469, L. 1997, was a severability clause.

Section 172, Ch. 480, L. 1997, was a severability clause.

Code Commissioner Corrections: (1) Chapter 422 (version effective July 1, 2008) in (3) the Code Commissioner inserted the bracketed cite to 16-1-406 and deleted the reference to 16-1-410. The cite to 16-1-406 was amended into the temporary version of this section and the reference to 16-1-410 was deleted from the temporary version but apparently through error 16-1-406 was not amended into the permanent version and 16-1-410 was not deleted.

(2) Chapter 532 repealed 19-18-513 and 19-18-606. The citations to the sections were inadvertently not stricken from this section. Pursuant to the authority contained in sec. 314, Ch. 42, L. 1997, the Code Commissioner has deleted the references to the repealed sections.

Termination: Section 5, Ch. 461, L. 1997, provided: "[This act] terminates October 1, 2003."

Applicability: Section 173, Ch. 480, L. 1997, provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 7, and Title 52, chapter 8, part 1] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Coordination: Section 39(1)(b), Ch. 532, L. 1997, provided: "If House Bill No. 170 is passed and approved ... [section 15 of this act], amending 17-7-502, shall include in the list of sections with a statutory appropriation, [section 4 of House Bill No. 170]." House Bill No. 170 was approved as Ch. 287, L. 1997, and included the enactment of section 4 of House Bill No. 170 as 19-3-319; therefore, a reference to 19-3-319 was included in the list of statutory references in subsection (3) of 17-7-502.

Section 39(2), Ch. 532, L. 1997, provided: "If either House Bill No. 173 or House Bill No. 430, is passed and approved, or if both are passed and approved, and if either or both repeal 19-13-1006, then:

(a) [section 28 of this act], amending 19-17-301, shall read:

"Section ~~27~~ 28. Section 19-17-301, MCA, is amended to read:

"19-17-301. Fire insurance premium tax to be paid into pension trust fund. The state auditor ~~and ex officio commissioner of insurance~~ shall annually ~~deposit in~~ pay from the general fund to the pension trust fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in ~~19-18-512~~ 50-3-109. The sum must be computed before the amounts provided for by 19-13-604 and 19-18-512 are deducted. The money must be used for the payment of claims, benefits, and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502."";

and

(b) the internal reference to 19-13-1006 in [section 15 of this act], amending 17-7-502, must be removed." Both House Bill No. 173 (Ch. 445, L. 1997) and House Bill No. 430 (Ch. 457, L. 1997) were passed and approved and House Bill No. 430 repealed 19-13-1006; therefore, both 17-7-502 and 19-17-301 were revised in Ch. 532, L. 1997, as directed.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1995 Amendments: Chapter 18 in (3) deleted "15-25-123" and "19-15-101" from list of statutory references.

Chapter 29 in (3) inserted "15-30-195" in list of statutory references. Amendment effective July 1, 1995, and terminates July 1, 2001.

Chapter 176 in (3) inserted "10-3-310" in list of statutory references.

Chapter 291 in (3) inserted "20-8-107" in list of statutory references. Amendment effective March 30, 1995.

Chapter 429 in (3) deleted "20-26-1403" from list of statutory references.

Chapter 439 in (3) inserted "16-11-308" in list of statutory references.

Chapter 442 in (3) deleted "17-5-704" from list of statutory references. Amendment effective July 1, 1995.

Chapter 446 in (3) deleted "15-25-123" from list of statutory references. Amendment effective January 1, 1996.

Chapter 451 in (3) deleted "15-36-112" from list of statutory references. Amendment effective January 1, 1996.

Chapter 502 in (3) inserted "53-6-703" in list of statutory references. Amendment effective July 1, 1995.

Chapter 509 in (3) deleted "15-25-123", "17-5-704", "17-6-409", "20-4-109", "23-2-823", "27-12-206", "61-2-107", "75-5-507", "77-1-808", and "80-11-310" from list of statutory references. Amendment effective July 1, 1995.

Chapter 526 in (3) inserted "50-4-623" in list of statutory references. Amendment effective April 25, 1995.

Chapter 553 in (3) inserted "75-6-214" in list of statutory references. Amendment effective April 27, 1995.

Chapter 557 in (3) inserted "90-7-221" in list of statutory references. Amendment effective April 26, 1995.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendments: Chapter 10 in (3) inserted "15-70-101" in list of statutory references. Amendment effective December 20, 1993.

Chapter 36 in (3) deleted "20-6-406" from list of statutory references. Amendment effective July 1, 1994.

Retroactive Applicability: Section 22, Ch. 10, Sp. L. November 1993, provided that this section applies retroactively to July 1, 1993.

Saving Clause: Section 5, Ch. 36, Sp. L. November 1993, was a saving clause.

1993 Amendments: Chapter 46 in (3) inserted "17-6-201" in list of statutory references.

Chapter 69 in (3) inserted "80-2-222" in list of statutory references. Amendment effective February 22, 1993.

Chapter 107 in (3) inserted "17-3-106" and "17-6-101" in list of statutory references. Amendment effective July 1, 1993.

Chapter 108 in (3) inserted "81-5-111" in list of statutory references.

Chapter 127 in (3) inserted "60-2-220" in list of statutory references.

Chapter 195 in (3) deleted "61-5-121" from list of statutory references.

Chapter 234 in (3) inserted "5-13-403" in list of statutory references. Amendment effective March 31, 1993.

Chapter 265 in (3) inserted "19-2-502" in and deleted "19-5-404", "19-8-504", "19-9-702", and "19-13-604" from list of statutory references. Amendment effective July 1, 1993.

Chapter 330 in (3) inserted "3-5-901" in list of statutory references. Amendment effective April 13, 1993.

Chapter 389 in (3) inserted "50-40-206" in list of statutory references.

Chapter 395 in (3) inserted "32-1-537" in list of statutory references.

Chapter 415 in (3) inserted "50-5-232" in list of statutory references.

Chapter 450 in (3) deleted "19-8-504" from list of statutory references. Amendment effective July 1, 1993.

Chapter 452 in (3) inserted "80-4-416" in list of statutory references. Amendment effective July 1, 1993.

Chapter 492 in (3) inserted "61-2-107" in list of statutory references. Amendment effective July 1, 1993.

Chapter 526 in (3) inserted "20-26-1403" in list of statutory references. Amendment effective April 24, 1993.

Chapter 534 in (3) inserted "90-14-107" in list of statutory references. Amendment effective April 24, 1993, and terminates July 1, 1995.

Chapter 555 in (3) inserted "39-71-503; 39-71-907" in list of statutory references. Amendment effective July 1, 1993.

Chapter 578 in (3) inserted "23-2-823" in list of statutory references.

Chapter 581 in (3) deleted "13-37-304" from list of statutory references. Amendment effective April 28, 1993.

Chapter 605 in (3) deleted "15-70-101" from list of statutory references. Amendment effective July 1, 1993.

Chapter 613 in (3) inserted "15-38-202" in list of statutory references. Amendment effective July 1, 1993.

Chapter 625 in (3) inserted "18-11-112" in list of statutory references. Amendment effective July 1, 1993.

Chapter 630 in (3) inserted "39-71-2321" in list of statutory references. Amendment effective July 1, 1993.

Chapter 635 in (3) inserted "85-2-707" (renumbered 85-10-402) in list of statutory references.

Purported 1993 Amendment — Coordination: Section 13(1), Ch. 352, L. 1993, provided: "If House Bill No. 92 is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void." House Bill No. 92 was approved as Ch. 625, L. 1993, and contained the provisions alluded to in the coordination instruction. Chapter 352 inserted references in the (3) list of statutory references to sections 4 and 5 of Ch. 352, L. 1993, which were enacted but subsequently rendered void by the enactment of Ch. 625, L. 1993. The effect was that this section, although purportedly amended by sec. 11, Ch. 352, was not actually amended by that chapter.

1993 Statement of Intent: The statement of intent attached to Ch. 450, L. 1993, provided: "A statement of intent is required for this bill because [section 2] [19-8-817(4)] gives the public employees' retirement board authority to adopt administrative rules to implement the cost-of-living adjustment provided in the bill.

It is the intent of the legislature to provide a one-time ad hoc cost-of-living adjustment to each member of the game wardens' retirement system [now game wardens' and peace officers' retirement system] who has been retired for 5 years or more, to the member's beneficiary, or to the member's contingent annuitant. The cost of the adjustment will be paid by increasing the amortization period of the system's unfunded liabilities.

It is further the intent of the legislature that the proposed statutory retirement committee established in House Bill No. 65 be assigned by the legislative council to develop legislation providing an equitable guaranteed annual benefit adjustment for each of Montana's statewide public retirement systems and that the legislation be presented to the 54th legislature for consideration. It is further the intent of the legislature that the cost of holding hearings and developing the legislation be paid by retirement systems and donations from public employee and retiree associations."

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

Severability: Section 12, Ch. 534, L. 1993, was a severability clause.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

Severability: Section 15, Ch. 630, L. 1993, was a severability clause.

Saving Clause: Section 16, Ch. 630, L. 1993, was a saving clause.

Preamble: The preamble attached to Ch. 10, Sp. L. January 1992, provided: "WHEREAS, Chapter 823, Laws of 1991, provided, among other things, for adjustment payments to retirees of state, local, and teacher retirement systems who are also Montana residents; and

WHEREAS, the first adjustment payments were intended to be made for the 1991 tax year and to be payable to retirees by June 1, 1992; and

WHEREAS, the language of section 5, Chapter 823, Laws of 1991, which provides for the payment of the retirement adjustments by June 1 of each year, read together with the May 24, 1991, effective date of Chapter 823 created confusion and a question of whether the adjustment payments were required to be paid beginning June 1, 1991, for the 1990 tax year, which was not the intended result; and

WHEREAS, the additional, unintended payments have not been made at this time; and

WHEREAS, the impact on the general fund of beginning the adjustment payments a year earlier than intended is estimated to be approximately $2.9 million; and

WHEREAS, this act is intended as a curative amendment to Chapter 823, Laws of 1991, to clarify that the intent of the 52nd Legislature in enacting Chapter 823, Laws of 1991, was to make the first adjustment payments beginning June 1, 1992.

THEREFORE, the Legislature of the State of Montana finds it is appropriate to amend the effective date and applicability date of Chapter 823, Laws of 1991."

Effective Date — Nonretroactive Applicability: Section 1, Ch. 10, Sp. L. January 1992, provided that the amendment to this section that inserted a reference to 19-15-101 in (3) was effective July 1, 1991, and removed the provision that made the section apply retroactively to tax years beginning after December 31, 1990. Amendment effective January 21, 1992.

1991 Amendments: Chapter 16 in (3) deleted reference to section 13, House Bill No. 861, Laws of 1985; and made minor changes in style.

Chapter 344 in (3) inserted reference to 19-5-404. Amendment effective April 4, 1991.

Chapter 370 in (3) inserted reference to 85-1-220. Amendment effective July 1, 1991.

Chapter 394 in (3) inserted reference to 20-26-1503. Amendment effective July 1, 1991.

Chapter 493 in (3) inserted reference to 37-43-204. Amendment effective April 20, 1991.

Chapter 495 in (3) inserted reference to 20-4-109. Amendment effective July 1, 1991.

Chapter 567 in (3) inserted reference to 19-6-709. Amendment effective July 1, 1991.

Chapter 571 in (3) deleted reference to 90-4-613. Amendment effective April 23, 1991.

Chapter 575 in (3) inserted reference to 80-11-310. Amendment effective July 1, 1991.

Chapter 600 in (3) inserted reference to 75-5-507. Amendment effective July 1, 1991.

Chapter 602 in (3) inserted reference to 17-6-409. Amendment effective July 1, 1991.

Chapter 609 in (3) inserted reference to 77-1-808. Amendment effective March 1, 1992.

Chapter 641 in (3) inserted reference to 15-23-706. Amendment effective July 1, 1991.

Chapter 647 in (3) inserted references to 23-5-136 and 23-5-631. Amendment effective July 1, 1991.

Chapter 690 in (3) inserted references to 44-12-206 and 44-13-102. Amendment effective July 1, 1991.

Chapter 701 in (3) deleted reference to 61-2-406. Amendment effective July 1, 1991.

Chapter 748 in (3) inserted reference to 22-3-811. Amendment effective May 15, 1991, and terminates June 30, 1993, pursuant to sec. 18, Ch. 748, L. 1991.

Chapter 787 in (3) inserted references to 17-5-704 and 17-7-304. Amendment effective July 1, 1991.

Chapter 819 in (3) inserted reference to 90-7-220. Amendment effective May 24, 1991.

Chapter 823 in (3) inserted reference to 19-15-101. Amendment effective July 1, 1991, pursuant to sec. 1, Ch. 10, Sp. L. January 1992.

Contingent Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account." The statutory appropriation contained in 19-6-709 was deleted by Ch. 574, L. 2001.

1989 Special Session Amendments: Chapter 10 in (3) inserted reference to 15-1-111. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

Chapter 11 in (3) inserted reference to 20-9-361. Amendment effective July 1, 1990.

1989 Amendments: Chapter 62 in (3) inserted reference to 61-5-121. Amendment effective March 10, 1989.

Chapter 262 in (3) inserted reference to 27-12-206. Amendment effective January 1, 1990.

Chapter 316 in (3) deleted references to 90-3-302 and 90-3-412. Amendment effective March 24, 1989.

Chapter 324 in (3) inserted reference to 61-2-406. Amendment effective July 1, 1989.

Chapter 408 in (3) inserted reference to 23-5-1016 (renumbered 23-7-301). Amendment effective April 3, 1989.

Chapter 473 in (3) inserted reference to 90-4-613. Amendment effective April 8, 1989.

Chapter 528 in (3) inserted reference to 75-11-313. Amendment effective July 1, 1989.

Chapter 530 in (3) inserted reference to 82-11-161. Amendment effective July 1, 1989.

Chapter 628 in (3) deleted references to 20-4-109, 33-31-212, 33-31-401, 75-7-305, 80-2-228, and 90-15-103. Amendment effective July 1, 1989.

Chapter 642 in (3) inserted references to 23-5-306, 23-5-409, and 23-5-612.

Chapter 672 in (3) inserted references to 15-37-117 and 90-6-331. Amendment effective May 16, 1989.

Chapter 678 in (3) inserted reference to 75-5-1108. Amendment effective July 1, 1989.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1987 Amendments: Inclusion of the following sections in subsection (3) was made by the cited 1987 session law chapters: 23-5-1027 (renumbered 23-7-402) by Ch. 161; 53-6-150 by Ch. 164; 82-11-136 by Ch. 265; 67-3-205 by Ch. 453; sec. 1, Ch. 454, L. 1987, by Ch. 454; 33-31-212 and 33-31-401 by Ch. 457; 76-12-123 by Ch. 460; 90-3-412 by Ch. 461; 20-4-109 by Ch. 465; 15-25-123 by Ch. 563; 23-5-610 by Ch. 603; 15-65-121 by Ch. 607; 39-71-2504 by Ch. 664; 90-9-306 by Ch. 665; and 90-4-215 by HB 621. Section 23-5-1027 (renumbered 23-7-402) was inserted to reflect codification instructed by sec. 28, Ch. 669, L. 1985. Chapter 603 deleted reference to 23-5-612.

Code Commissioner Correction: Section 21, Ch. 461, L. 1987, erroneously referred to sec. 7, Ch. 461, L. 1987, as the section of the chapter providing a statutory appropriation. The statutory appropriation is actually contained in sec. 12, Ch. 461, L. 1987, codified as 90-3-412 (now repealed). The Code Commissioner has inserted the correct reference in subsection (3) to reflect the chapter content.

Severability: Section 27, Ch. 401, L. 1987, was a severability section.

1985 Amendments: In (3) Ch. 244 inserted reference to 75-7-305; Ch. 395 inserted reference to 90-15-103; Ch. 635 inserted reference to 10-4-301; Ch. 688 inserted reference to 37-51-501; Ch. 701 inserted references to 90-3-301 and 90-3-302; Ch. 720 inserted reference to 23-5-612; HB 861 inserted references to 17-5-424 and Sec. 13, HB 861; HB 922 inserted reference to 75-1-1101.

Attorney General's Opinions

Transfer of Money Between State Treasury Accounts — Statutory Appropriation Not Required: Article VIII, sec. 14, Mont. Const., requires a statutory appropriation only when money is paid out of the state treasury, but neither the constitution nor state law requires a statutory appropriation when money is transferred between accounts within the state treasury. 44 A.G. Op. 43 (1992).

CHAPTER 8
DISBURSEMENT AND EXPENDITURE

Chapter Collateral References

72 Am. Jur. 2d States §§90, 91.

Inherent power of court to compel appropriation or expenditure of funds for judicial purposes. 59 ALR 3d 569.

Part 1
Limits on Disbursements and Expenditures

17-8-101. Appropriation and disbursement of money from treasury.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 34 in (2) near beginning of introductory clause after "internal service fund type" substituted "private purpose trust fund type" for "expendable trust fund type". Amendment effective July 1, 2001.

Chapter 569 in (2)(b) at end after "disbursement" inserted "if a subclass is established on the state financial system". Amendment effective July 1, 2001.

1999 Amendment: Chapter 20 in (8) inserted second sentence providing that an enterprise fund that transfers its ending balance to the general fund is subject to appropriation; and made minor changes in style. Amendment effective February 17, 1999.

Applicability: Section 5, Ch. 20, L. 1999, provided: "[This act] applies to fiscal years beginning on or after July 1, 2001."

1997 Amendments: Chapter 42 in (1), at beginning, deleted "Except as provided in subsection (5)"; at beginning of (2) inserted "Subject to the provisions of subsection (8)"; at beginning of former (3) deleted "Subject to the provisions of subsection (8)"; in (7), in first sentence after

"service fund", deleted "created after July 1, 1995"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 347 in (1), near end after "subsection (3)", substituted "may" for "must"; deleted former (6) that read: "The office of budget and program planning shall include in the budget submitted to the legislature a report on:

(a) enterprise funds, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(b) internal service fund type fees and charges, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Internal service fund type fees and charges must be approved by the legislature in the general appropriations act. Fees and charges in any biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (1), at beginning, substituted "For purposes of complying with Article VIII, section 14, of the Montana constitution" for "Except as provided in subsection (5)"; in (2), near middle after "expendable trust fund type", substituted "agency fund type, and" for "nonexpendable trust fund type, pension trust fund type" and near end, after "donation", deleted "and agency fund type"; inserted (2)(a) allowing payment by appropriation; inserted (3) regarding the pension trust fund type; in (4), at beginning, deleted "Subject to the provisions of subsection (8)"; in (7), at beginning of first sentence, substituted "The creation of" for "Any" and after "service fund" deleted "created after July 1, 1995"; in (8) inserted second sentence requiring that payment of funds into an internal service fund be authorized by law; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 556 in (1), at beginning, inserted exception clause and after "donation)" deleted "the enterprise fund type, the internal service fund type"; in (2) inserted "enterprise fund type, internal service fund type"; in (3) inserted "Subject to the provisions of subsection (8)"; inserted (5) regarding deposits in internal service fund type; inserted (6) regarding submissions to Legislature; inserted (7) regarding new accounts in enterprise fund or internal service fund; inserted (8) requiring appropriation of funds; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 433 near beginning of (1), after "fund type", inserted exception clause; in (2), near middle after "pension trust fund type", inserted "the state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation"; inserted (4) regarding interagency transfer authority to expend appropriated money; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: In (1), inserted "type" after "fund" in four places; and in (2) substituted "debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, and agency fund type" for "debt service fund and the trust and agency fund".

1981 Amendment: Substituted new names for treasury funds because of name changes in Ch. 28, L. 1981; deleted former subsection (2) relating to appropriations from the old revolving fund.

Attorney General's Opinions

Appropriations — Legislative Control Over Marketing Assessment Funds: Although the control of the Legislature over appropriations to state agencies is based upon broad constitutional provisions, certain money may either be exempt from the appropriation process or the purposes for which that money may be appropriated may be limited by statute. Thus, the Legislature may control appropriations from the Wheat Marketing and Research Account, but those appropriations are subject to the statutorily stated purposes of the Account. Any attempt by the Legislature in an appropriation bill to alter the purposes for which appropriations from the Account are made is subject to the constitutional restriction that the purpose of legislation must be clearly stated in the title of the bill. 39 A.G. Op. 3 (1981).

17-8-103. Expenditures in excess of appropriation unlawful — conditions in appropriation acts.

Compiler's Comments

1983 Amendments: Chapter 536, near middle of (1), substituted ", including any approved, authorized, and valid budget amendment," for "or authorized budget amendment"; and at end of (1) made similar change.

Subsection (2) was enacted by sec. 1, Ch. 693, L. 1983. The codification instruction was to include sec. 1, Ch. 693 as an integral part of Title 17, ch. 8. The Code Commissioner codified section as subsection (2) of this section because of close coherence of the subject matter.

Preamble: The preamble to Ch. 693, L. 1983, which enacted subsection (2) provided: "WHEREAS, Article VIII, Section 12, Constitution of Montana requires the legislature to insure by law the strict accountability of all revenue received and money spent by state and local governments; and

WHEREAS, Article VIII, Section 14, Constitution of Montana prohibits the payment of money, except for interest on the public debt, from the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer."

Case Notes

Additional Expenditures: Under former law, mandate was issued by the Supreme Court to compel State Board of Public Welfare to present to the state Board of Examiners forthwith written application setting forth the circumstances confronting it with reference to the need for money to carry out the relief program in Silver Bow County and requesting authorization for expenditures to meet the relief requirements in Silver Bow County. State ex rel. Kidder v. Fouse, 137 M 483, 353 P2d 755 (1960).

Collateral References

States *key* 131.

81A C.J.S. States §§233, 238.

17-8-104. Civil penalties and remedies for violation.

Compiler's Comments

1983 Amendment: In (1)(a), deleted from first sentence a provision that the listed persons violating 17-8-103 are guilty of a misdemeanor punishable by $50 to $500, 30 days to 6 months in jail, or both, and inserted second sentence listing how complaint may be brought; in second sentence of (1)(b) changed phraseology and inserted "the legislature by joint resolution"; inserted (2) allowing combining of certain complaints; and inserted (3) allowing single or combination remedies and penalties.

Collateral References

States *key* 52, 81.

81A C.J.S. States §§94 through 101, 129.

17-8-105. Definitions applicable to expenditure limitation.

Compiler's Comments

1983 Amendment: In introductory clause of (2), substituted "special revenue fund type" for "earmarked fund" and substituted "capital projects fund type" for "bond proceeds and insurance clearance fund".

17-8-106. Expenditure limitation — exception.

Attorney General's Opinions

Expenditure Limits Not Extended to Future Biennial Budget Cycles: A County Commissioner questioned whether this section (enacted 1981) limited the power of subsequent Legislatures to appropriate funds by establishing a cap on expenditures in the 1981 budget biennium and for future biennial budget cycles. The Attorney General noted that, consistent with constitutional design, the Legislature lacks the power to pass a law that purports to establish binding legislative spending policy for future Legislatures. Each Legislature is vested with full legislative power, and there is no cap on state spending in the Montana Constitution. Thus, the 1981 enactment of this section placed no enforceable limits on the spending power of subsequent Legislatures. 51 A.G. Op. 4 (2005).

17-8-107. Limitations on spending deferred revenue — exception.

Compiler's Comments

1987 Amendment: At beginning of (1) inserted exception clause; and inserted (2) exempting costs of publication of magazine of western history.

Part 2
Claims

Part Attorney General's Opinions

Penalties for Fraudulent Benefits Claim — Specific Remedy Controlling Over General Remedy: Although 17-8-231 (now repealed) appears to provide a penalty for fraudulent claiming of unemployment insurance benefits, that statute is a general one which provides a penalty in conflict with the more specific penalty provided under 39-51-3201. Because the more particular

statute must control to the extent of any inconsistency, the Department of Labor and Industry is limited to recovery of those amounts of benefits wrongfully received by the claimant. The Department may not sue a claimant for all benefits paid to the claimant or for the additional penalty provided in 17-8-231 (now repealed), but may disqualify the claimant under 39-51-3201 from receipt of future benefits. 40 A.G. Op. 21 (1983).

Part Collateral References

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. 40 ALR 4th 998.

17-8-201. Authorizations for disbursements — submission of claim to department of administration.

Compiler's Comments

1997 Amendment: Chapter 48 in (2), at end, substituted "the department shall notify the agency of any disapproved claim" for "all claims disapproved by the department shall be returned to the operating agency with an explanation in writing of why the claim was disapproved"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: At end of (1), after "administration", deleted "and must bear the signature of the authorizing officer or employee". Amendment effective March 14, 1989.

Retroactive Applicability: Section 3, Ch. 87, L, 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to claims submitted electronically to the department of administration on or after January 1, 1989."

17-8-202. Preaudit and transmittal of claims.

Compiler's Comments

1997 Amendment: Chapter 48 in (2), in second sentence, substituted "the agency shall transmit" for "the department shall audit it and, if it is a valid claim, transmit"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendments: Chapter 87 at beginning of second sentence of (1), after "However", deleted "all state agencies shall submit copies of all claims to", in third sentence, after "documents", inserted "that support claims", and made minor change in phraseology. Amendment effective March 14, 1989.

Chapter 353 at beginning of (2) substituted "An office or entity of the executive, legislative, or judicial branch of state government" for "The department".

Retroactive Applicability: Section 3, Ch. 87, L, 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to claims submitted electronically to the department of administration on or after January 1, 1989."

1985 Amendment: In second sentence of (2), before "claim", deleted "liquidated"; and deleted former (3) that read: "An unliquidated claim submitted to the department shall be transmitted to the board of examiners to be processed as provided by law."

17-8-203. Minimum refunds.

Administrative Rules

ARM 2.4.201 Minimum refund.

ARM 2.4.202 Exceptions to minimum refund rule.

Collateral References

States *key* 73, 76.

81A C.J.S. States §220.

17-8-211. Notice required for assignment of claims against state.

Compiler's Comments

1995 Amendment: Chapter 325 throughout section substituted "department of administration" or "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Case Notes

No Application of Statute to Leases — Time for Filing — Prejudice Required: Where the State executed a 6-year lease of certain communications equipment with the plaintiff's assignor in 1973 and, prior to notice of the assignment of the lease to the plaintiff, unilaterally terminated the lease in 1977, the court did not err in holding the State liable for damages for termination of the lease. The State cannot rely for a defense upon the failure of the assignor to give notice of the assignment to the State because: (1) 17-8-211(1) applies to assignments of "claims", not leases;

(2) the statute does not require filing within a time certain, and filing was eventually made prior to suit; and (3) the State can claim no prejudice, as it had actual notice of the assignment. Leaseamerica Corp. of Wis. v. St., 191 M 462, 625 P2d 68, 38 St. Rep. 378 (1981).

Collateral References

States *key* 171 ½.

For a general discussion of claims against the state and the assignment thereof, see Porter v. Hartley, 67 M 244, 216 P 344 (1923).

17-8-212. Effect of assignment.

Collateral References

States *key* 171 ½.

17-8-242. Interest assessed on amounts due.

Collateral References

81A C.J.S. States §§267, 268.

17-8-244. Exemptions.

Compiler's Comments

2001 Amendment: Chapter 181 in (2) at end inserted "brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404"; deleted former (4) that read: "(4) contracts entered into before October 1, 1983"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1995 Amendment: Chapter 530 inserted (2) providing that payment is timely if paid within 60 days after withdrawal of the product from bailment; and made minor changes in style. Amendment effective April 25, 1995, and terminates June 30, 1997.

Part 3
Warrants

Part Collateral References

States *key* 135, 136.

For a discussion of the extent of the Board of Examiners' authority concerning the expenditure of public funds, see State ex rel. Jones v. Erickson, 75 M 429, 244 P 287 (1926).

17-8-301. State money — how expended by treasurer.

Compiler's Comments

1995 Amendment: Chapter 325 throughout section substituted "state treasurer" for "state auditor"; in second sentence of (1), after "upon the", substituted "state treasury" for "state treasurer"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In (1), at end of first sentence and near middle of second sentence, inserted references to authorization of electronic funds transfer; enacted (2) defining electronic funds transfer; and made minor changes in grammar, phraseology, and form. Amendment effective March 15, 1989.

Collateral References

States *key* 130, 136.

81A C.J.S. States §§231, 242.

64 Am. Jur. 2d Public Securities and Obligations §§47 through 49.

17-8-302. Order in which warrants are drawn.

Compiler's Comments

Code Commissioner Correction: This section was not amended by Ch. 325, L. 1995. However, pursuant to the authority contained in sec. 73, Ch. 18, L. 1995, the Code Commissioner has substituted "treasurer's office" for "auditor's office" to conform to the function transfer contained in Ch. 325, L. 1995.

Collateral References

States *key* 138.

81A C.J.S. States §244.

17-8-303. Warrants — presentation and cancellation.

Compiler's Comments

2001 Amendment: Chapter 34 in (2) near end of first sentence after "separate" substituted "private purpose trust fund account" for "expendable trust fund account". Amendment effective July 1, 2001.

1997 Amendment: Chapter 124 in (3), at end of first sentence, substituted "Title 70, chapter 9, part 8" for "Title 70, chapter 9, parts 1 through 3" and at end of second sentence substituted "70-9-815" for "70-9-310". Amendment effective July 1, 1997.

Severability: Section 33, Ch. 124, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 5 in first sentence of (2), near end, substituted reference to expendable trust fund account for reference to agency fund account; and made minor changes in style. Amendment effective January 26, 1995.

Chapter 325 throughout section substituted "state treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(b) substituted "department of public health and human services" for "department of social and rehabilitation services"; at end of (2), after "warrant", deleted "in lieu thereof"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Retroactive Applicability: Section 11, Ch. 5, L. 1995, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 1994."

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Near end of (1)(a) substituted "6 months" for "1 year"; and near beginning of (3) inserted "and 6 months". Amendment effective March 15, 1989.

1987 Amendment: Inserted (1) requiring payment within specified time limits; in (1)(a), at beginning, inserted exception clause; inserted (1)(b) referring to warrants issued for Department of Social and Rehabilitation Services; and in (2) inserted reference to subsection (1).

Costs of Changes: Section 2, Ch. 84, L. 1987, provided: "The department of social and rehabilitation services [now department of public health and human services] is responsible for all costs associated with the changes to the existing warrant writing system and computer programs to implement the requirement that warrants funded to any extent with federal money be presented for payment within 180 days after the date of issue."

Collateral References

States *key* 138.

81A C.J.S. States §244.

17-8-304. Payment and registry.

Compiler's Comments

1995 Amendment: Chapter 40 in (1) deleted former second sentence that read: "All warrants so registered and endorsed on and after March 1, 1927, shall bear interest at the rate of 4% a year until called for payment, after date of which call interest shall cease"; and made minor changes in style.

Collateral References

States *key* 142.

81A C.J.S. States §248.

For a general discussion of the provisions of this section, see State ex rel. Toomey v. St. Bd. of Examiners, 74 M 1, 238 P 316 (1925).

17-8-305. Cost accounting for warrant.

Compiler's Comments

1995 Amendments: Chapter 325 near beginning substituted "state treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 473 deleted former second and third sentences that read: "No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the credit of the general fund"; in second sentence, after "collected for", substituted "operation of the state warrant system must" for "new or unforeseen programs may", after "credit of" substituted "an internal service fund" for "a state special revenue fund account", and at end substituted "state warrant system" for "new program"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Substituted reference to state special revenue fund for reference to revolving fund.

17-8-306. Issuance of duplicate warrant.

Compiler's Comments

1997 Amendments: Chapter 48 in (1) deleted third sentence that read: "A duplicate warrant may not be issued or delivered unless the person entitled to receive it deposits with the state treasurer a bond in double the amount for which the duplicate warrant is issued indemnifying the state and its officers and employees from any loss resulting from the issuance of the duplicate warrant"; deleted former (2) that read: "(2) A bond of indemnity is not required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer of the state;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the state treasurer has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;

(e) the amount of the lost or destroyed warrant is less than $300;

(f) it can be established that a crime has been committed and that as a result a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana;

(i) the payee is a recipient of public assistance under Title 53;

(j) the payee is a recipient of a monthly annuity under Title 19;

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26; or

(l) a state agency approves the issuance of the duplicate warrant and agrees to assume the risk of the original warrant being cashed"; in (2) substituted language concerning duplicate warrant and stop payment for "Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l), a stop-payment order must be placed on the original warrant by the state treasurer"; in (3), in first sentence after "applies", substituted "for the issuance of a duplicate warrant" for "under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l)" and at end of (3) inserted "An indemnity agreement is not required if"; inserted (3)(a) and (3)(b) providing for when an indemnity agreement is not required for governmental entities; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 243 in (2)(k), before "student loan program", deleted "guaranteed"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 throughout section substituted "state treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 5 inserted (2)(l) providing exemption from indemnity bond requirement for a state agency that approves the issuance of duplicate warrant and assumes the risk of cashing original warrant; in (3) and (4) inserted reference to subsection (2)(l); and made minor changes in style. Amendment effective December 16, 1993.

1991 Amendment: In (2)(e) increased amount from $100 to $300; inserted (2)(j) to require no indemnity bond of a public retiree; inserted (2)(k) to require no indemnity bond of a student financial aid recipient; and in (3) and (4) inserted references to subsections (2)(j) and (2)(k). Amendment effective March 20, 1991.

1987 Amendment: Inserted (2)(d) authorizing State Auditor to waive bond of indemnity in certain cases; and conformed internal references in (3) and (4).

1985 Amendment: Inserted (2)(h) exempting vendor or contractor doing business with state from indemnity bond requirement; and in (3) and (4) inserted reference to (2)(h).

Collateral References

States *key* 138, 141.

17-8-308. Payment of interest — land grant warrants.

Collateral References

States *key* 142.

81A C.J.S. States §248.

17-8-311. Payments to local government entities — notice.

Compiler's Comments

2005 Amendment: Chapter 432 in (2)(a) near beginning inserted reference to state treasurer; inserted (2)(b) allowing payment by electronic funds transfer at the discretion of the state agency or treasurer if the entity receiving the payment has the technology; in (3) inserted three references to the state treasurer; and made minor changes in style. Amendment effective April 28, 2005.

17-8-312. Charges for services or supplies among agencies — valid claim.

Compiler's Comments

Effective Date: Section 14, Ch. 569, L. 2001, provided: "[This act] is effective July 1, 2001."

Part 4
False Claims

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

Applicability: Section 14, Ch. 465, L. 2005, provided: "[This act] applies to causes of action arising after [the effective date of this act]." Effective October 1, 2005.

TITLE 18
PUBLIC CONTRACTS

CHAPTER 1
PUBLIC CONTRACTS GENERALLY

Chapter Case Notes

Cost of Overrun — Material Issue of Reliance on Plans: Kalispell argued that contract documents plainly advised all bidders to make their own determination as to the amount of material to be moved and not to rely on the figures on the city's plans and specifications. By entering into the contract, the bidders allegedly bound themselves to do the rough grading at the price bid and should get no additional compensation for overrun. However, the District Court rejected the city's argument that the plaintiffs' complaint, therefore, failed to state a claim and that there could be no issues of material fact before the District Court. Based on a recent line of cases from the Supreme Court, the District Judge determined that the fact finder had to hear the evidence in order to find whether or not the contractors justifiably relied on the plans. Stenerson v. Kalispell, 193 M 8, 629 P2d 773, 38 St. Rep. 938 (1981), followed in Clark Bros. Contractors v. St., 218 M 490, 710 P2d 41, 42 St. Rep. 1765 (1985).

Chapter Collateral References

72 Am. Jur. 2d States §§69, 71 through 74.

Part 1
Preferences and General Matters

Part Law Review Articles

Montana Legislative Summary: 1961 (Resident Preference in Awarding Contracts), 22 Mont. L. Rev. 125 (1961).

Alice in Preference Land: A Review of Affirmative Action in Public Contracts, Farris, 21 Construction Law. 28 (2001).

18-1-101. Definitions.

Compiler's Comments

2001 Amendment: Chapter 181 deleted definition of Montana-made that read: ""Montana-made" means manufactured or produced in this state and made with the:

(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or

(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401"; in definition of public agency inserted (ii) providing that a public agency does not include a political subdivision for the purposes of 18-1-102(1)(b); and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 inserted definition of written; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1987 Amendment: Inserted definitions of goods, Montana-made, nonresident bidder, public agency, and resident bidder.

18-1-102. State contracts to lowest bidder — reciprocity.

Compiler's Comments

2005 Amendment: Chapter 574 in (1) in introductory clause near end inserted exception clause. Amendment effective October 1, 2005.

2001 Amendment: Chapter 181 in (1) at beginning deleted "Except as provided in subsection (1)(b)"; in (1)(b) substituted language requiring a public agency to award a public contract without regard to residency unless a nonresident's state or country allows a preference for residents for former language that read: "a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:

(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;

(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or

(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.

(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and

(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:

(A) the equal and fair treatment of bids originating in the United States and in the foreign country;

(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;

(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and

(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.

(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:

(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and

(B) not more than 5% higher than that of the nonresident bidder.

(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1999 Amendment: Chapter 306 at beginning of (1) inserted exception clause; inserted (1)(b) prohibiting department of transportation and transportation commission from entering into contracts for highway construction projects with bidders not headquartered in United States unless reciprocity agreement in place; and made minor changes in style. Amendment effective April 14, 1999.

Contingent Voidness: Section 3, Ch. 306, L. 1999, provided: "Contingent voidness. (1) If the federal government notifies the state in writing that the enforcement of [this act] places at risk this state's eligibility to receive federal funds for highway projects, then the bracketed language in [this act] is void pursuant to subsection (2).

(2) The bracketed language in [this act] is void on the date that the director of the department of transportation certifies to the governor in writing that the director has received written notice of the federal government's intention to terminate allocation of highway funds to Montana because of the enforcement of [this act]." On April 13, 1999, the federal government notified the state that the provisions of Senate Bill No. 330 (Ch. 306, L. 1999) are contrary to federal highway laws. On March 3, 2000, the director of the department of transportation certified to the governor that the written notice was received.

1991 Amendment: In (1)(a)(i) deleted language that gave a resident bidder preference over nonresident bidders equal to the greater of 3% or the percentage of preference the nonresident bidder would receive against nonresident bidders in his state of residence and inserted language allowing no preference except against a nonresident bidder from any state or country enforcing a preference for resident bidders. Amendment effective February 19, 1991.

1987 Amendment: Substituted existing text (see 1987 Session Law) for former text that read: "(1) In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair, and public works of all kinds, it shall be the duty of each board, commission, officer, or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana

and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance.

(3) In awarding contracts for construction, repair, and public works of all kinds, bids received from nonresident bidders are subject to the 3% preference, or that percent that applies to a Montana bidder in the award of public contracts in the nonresident bidder's state of residence, whichever is greater.

(4) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."

1985 Amendment: Inserted (3) referring to preference percentage of nonresident bidder's state of residence.

Case Notes

Misapplication of State Law Not Basis for Claim of Denial of Equal Protection: ISC argued that its allegations that the Department of Administration had applied the Montana Procurement Act in a discriminatory fashion in not awarding ISC a contract supported its claim that it had been denied equal protection. The Supreme Court held that ISC's claim failed because at most, it amounted to an allegation that state law was misapplied in an individual case and did not constitute invidious discrimination in violation of the equal protection clause. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

No Property Right Created When Government's Award of Contract Is Discretionary: ISC argued that the Department of Administration had violated its right to due process when the Department did not award ISC a contract that had been put out for bid. The Supreme Court held that a property right that would support a due process claim is not created when a state agency is not required to award a contract on a sufficiently objective basis. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Contractor Not Allowed to Submit Bid — Inability to Show Bid Would Have Been Lowest: Petri attempted to submit a hand-carried, written bid to state officials for a painting contract at Montana State University (now Montana State University-Bozeman). Petri arrived at the site of the bid opening several minutes after the announced closing of the time for submitting bids. As a result, the bid was rejected. The Supreme Court held that Petri cannot prove a violation of MSU's statutory duty to accept the lowest bid because he could not prove that the bid would have been the lowest given the fact that it was rejected from consideration by MSU. Petri v. Mont. St. Univ., 260 M 392, 860 P2d 154, 50 St. Rep. 1133 (1993).

Janitorial and Maintenance Services: Although this section provides percentage preference for resident bidders, it also establishes a general policy of requiring competitive bidding, including contracts for janitorial services for Capitol complex, and such contracts must be let by competitive bidding. State ex rel. Great Falls Mr. Klean v. Bd. of Examiners, 153 M 220, 456 P2d 278 (1969).

"Responsible Bidder" Interpreted: The term "responsible bidder" as used in the phrase "lowest responsible bidder" does not refer to pecuniary responsibility only but includes judgment, skill, ability, capacity, and integrity. The officers entrusted with the duty of awarding a contract to the lowest responsible bidder must exercise official discretion in determining the question. They cannot be compelled by mandamus to award a contract to a particular bidder merely because he has offered the lowest bid or tendered a sufficient bond. State ex rel. Eaves v. Rickards, 16 M 145, 40 P 216 (1895).

Attorney General's Opinions

Acquisition of Resident Status for Preference Purposes: A joint venture may qualify for resident status as a partnership enterprise for purposes of the preference under this section, but 18-1-103 requires that a majority of the venture's partners must have been Montana residents for at least 1 year immediately prior to the involved bidding in order to acquire resident status. (See 2001 amendment.) 42 A.G. Op. 107 (1988).

Restriction of Competitive Bidding Process by Resident Bidder's Preference Prohibited: Both the federal circular A-102 (1981), incorporated into the regulations of the U.S. Department of Housing and Urban Development, and subsection (2)(b) of this section prohibit restriction of the competitive bidding process by resident bidder's preference for state and local contracts funded in part by grants-in-aid from that agency. 42 A.G. Op. 35 (1987), partially overruling 37 A.G. Op. 59 (1977).

Preference for Resident Bidder Construed: When a bid letting involves a resident using out-of-state materials, a resident using in-state materials, and a nonresident as the three lowest bidders, the resident bidder preference would not require awarding the bid to the resident using in-state materials if his bid was more than 3% higher than the lowest responsible nonresident bidder. (See 1991 and 2001 amendments.) 40 A.G. Op. 79 (1984).

Preference for Resident Contractors — Federal Funding: A county water and sewer district is required to apply a 3% preference to the lowest responsible resident bidder with respect to the entire contract cost regardless of the source of funds. (See 2001 amendment.) 37 A.G. Op. 59 (1977).

Service Contracts: Contracts for the preparation and service of meals need not be awarded by competitive bidding. 29 A.G. Op. 49 (1962).

Law Review Articles

Awarding Public Works Contracts: Granting Preference to Resident Bidders: Galesburg Construction Co. v. Board of Trustees, 641 P2d 745 (Wyo.), Metzke, 18 Land & Water L. Rev. 393 (1983).

Collateral References

States *key* 98.

73A C.J.S. Public Contracts §§22, 23; 81A C.J.S. States §§160 through 167.

64 Am. Jur. 2d Public Works and Contracts §§33, 36, 52 through 58, 66, 69, 70.

Validity, construction, and application of state "buy American" acts. 107 ALR 5th 673.

Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision. 56 ALR 4th 1042.

Contract for personal services as within requirement of submission of bids as condition of public contract. 15 ALR 3d 733.

Rights and remedies of bidder for public contract who has not entered into a contract, where bid was based on his own mistake of fact or that of his employees. 52 ALR 2d 792, superseded by 2 ALR 4th 991.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract. 27 ALR 2d 917.

Statute requiring competitive bidding for public contract as affecting validity of agreement, subsequent to the award of the contract, to allow the contractor additional compensation for extras or additional labor and material not included in the written contract. 135 ALR 1265.

Change in proposals for public contract after submission of bid as justification for withdrawal of bid or refusal to enter into contract. 104 ALR 1149.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law. 69 ALR 697.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

18-1-103. Resident defined.

Compiler's Comments

2001 Amendment: Chapter 181 in (1) near beginning after "18-1-102" deleted "18-1-111"; in (2) near beginning inserted "limited liability company"; deleted former (4) that read: "(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 42 in (1) and (4) substituted "18-1-111, and this section" for "18-1-103, and 18-1-111"; and made minor changes in style. Amendment effective March 12, 1997.

1987 Amendments: Chapter 284 in (1) and (4) inserted reference to 18-1-111.

Chapter 370 in (1) and (4) deleted reference to 18-1-112.

Chapter 512 in (4), after "purchase of", substituted "goods" for "products, materials, supplies, or equipment", after "offered" substituted "goods" for "materials, supplies, or equipment", and in middle of sentence substituted "Montana-made is" for "manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be".

Attorney General's Opinions

Acquisition of Resident Status for Preference Purposes: A joint venture may qualify for resident status as a partnership enterprise for purposes of the preference under 18-1-102, but this section requires that a majority of the venture's partners must have been Montana residents for at least 1 year immediately prior to the involved bidding in order to acquire resident status. (See 2001 amendment.) 42 A.G. Op. 107 (1988).

18-1-106. Department of labor and industry to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence.

Compiler's Comments

2001 Amendment: Chapter 483 throughout section substituted references to department of labor and industry for references to department of commerce; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 558 in (1), after "certain contractors", deleted "issued public contractor's licenses under the provisions of Title 37, chapter 71"; in (2), in two places, and in (3), before "public contractor", deleted "licensed"; and made minor changes in style. Amendment effective April 26, 1995.

1985 Amendment: In three places substituted "department of commerce" for "department of revenue"; and in first sentence substituted "Title 37, chapter 71" for "Title 15, chapter 50".

Case Notes

Challenge of Issuance of Certificate: Under 18-1-104 (repealed and replaced by this section), a resident contractor had standing to challenge, by original application for a Writ of Mandate, the validity of the residency certificate issued by Department of Revenue (now Department of Labor and Industry) to a nonresident contractor. Since the resident was not a party to or given notice of administrative proceedings awarding the certificate of residency, he had no administrative remedies to exhaust. State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973), distinguished in ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Insufficient Affidavit: Under 18-1-104 (repealed and replaced by this section), a foreign corporation which stated that it would use Montana products and materials "insofar as they are available" and that it would use Montana labor "except for selected supervisory personnel" did not qualify for certification as a resident contractor. State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973).

18-1-110. Hiring preference for residents of Indian reservations for state construction projects within reservation — rules.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 506, L. 1991, provided: "A statement of intent is required for this bill because [sections 1 and 2] [2-18-111 and 18-1-110] direct the commissioner of labor and industry to adopt rules to implement [sections 1 and 2] [2-18-111 and 18-1-110]. It is the intent of the legislature that the rules also be designed to assist the commissioner of labor and industry to enforce the provisions of [sections 1 and 2] [2-18-111 and 18-1-110] and to investigate complaints of any violations of law, as provided in [sections 1 and 2] [2-18-111 and 18-1-110]."

Applicability: Section 7, Ch. 506, L. 1991, provided: "[This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act] [effective October 1, 1991]."

Case Notes

Conditions of Tribal Affiliation Applicable to Indian Hiring Preference — Status of Individual Indian Not Controlling: Schmasow claimed that the Native American Center (NAC) should have hired her as executive director pursuant to an Indian employment preference provision, 25 U.S.C. 450e(b), that was contained in the NAC's contract with the Indian Health Service. The NAC instead hired Shield, another Indian, but Schmasow contended that Shield did not qualify for the employment preference because he was a member of the Little Shell Chippewa Tribe, which is not a federally recognized tribe listed by the U.S. Secretary of the Interior under

25 U.S.C. 479a-1. The District Court concluded that Shield was eligible for the preference, and Schmasow appealed. In affirming the District Court, the Supreme Court held that in order to satisfy the definitions of Indian and Indian tribe in the preference law, one must establish that the hired person's tribe is itself eligible for the health care benefits and that the status of an individual Indian is not controlling. The Little Shell Chippewa Tribe fits the definition of Indian tribe because it is part of an Indian community that receives federal Indian funding for special programs and services, even though it is not a federally recognized tribe. Because Shield was an enrolled member of the Little Shell Chippewa Tribe, he satisfied the definition of Indian and was eligible for the hiring preference. Schmasow v. Native Am. Center, 1999 MT 49, 293 M 382, 978 P2d 304, 56 St. Rep. 198 (1999).

18-1-111. Impartiality to be shown in letting contracts.

Compiler's Comments

2001 Amendment: Chapter 181 near middle inserted "not provided for by law" and at end deleted "and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders." Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1987 Amendment: At end of section, after "resident bidders", substituted "as defined in 18-1-103" for "of the state".

Law Review Articles

A Case for Fairness in Public Works Contracting, Lee, 65 Fordham L. Rev. 1075 (1996).

Awarding Public Works Contracts: Granting Preference to Resident Bidders: Galesburg Construction Co. v. Board of Trustees, 641 P2d 745 (Wyo.), Metzke, 18 Land & Water L. Rev. 393 (1983).

Collateral References

States *key* 98.

73A C.J.S. Public Contracts §§22, 23; 81A C.J.S. States §§160 through 167.

64 Am. Jur. 2d Public Works and Contracts §§29, 62 through 64.

Bribery: validity of state statute prohibiting award of government contract to person or business entity previously convicted of bribery or attempting to bribe state public employee. 7 ALR 4th 1202.

18-1-114. Rules.

Compiler's Comments

1987 Statement of Intent: The statement of intent attached to Ch. 512, L. 1987, provided: "A statement of intent is required for this bill because section 7 [18-1-114] authorizes the department of administration to adopt rules necessary to administer the preferences provided in Title 18, chapter 1, part 1. The legislature intends that the rules should prevent bidders from circumventing the preference provisions by creating business entities specifically to obtain residency status or to gain an award of a public contract for goods after being disqualified for submitting a false affidavit. The rules should also specify the contents of an affidavit to be submitted by a bidder as required under section 6 [18-1-113]."

Administrative Rules

ARM 2.5.502 Bid, proposal, and contract performance security.

18-1-118. Access to records of contracting entities.

Compiler's Comments

1997 Amendment: Chapter 377 inserted (2) regarding conditions for transfer of public money or property to a private foundation or organization; and inserted (3) clarifying that the Legislative Auditor is not permitted to audit the financial records of private donors. Amendment effective July 1, 1997, and terminates July 1, 2001.

Termination Date: Section 4, Ch. 377, L. 1997, provided: "[This act] terminates July 1, 2001."

1995 Amendment: Chapter 545 in first sentence, near middle after "auditor", deleted "and the legislative fiscal analyst" and at end of second sentence, after "Title 5", substituted "chapter" for "chapters 12 and". Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

Part 2
Bid Security

Part Collateral References

64 Am. Jur. 2d Public Works and Contracts §§59, 60.

18-1-201. Requirement for bidder's security.

Compiler's Comments

1985 Amendment: At beginning of (2) inserted exception clause.

Administrative Rules

ARM 2.5.502 Bid and performance security.

Case Notes

No Standing to Challenge to Award of Public School Transportation Contract on Statutory Grounds: Plaintiff provided bus service to a school district for about 24 years, but in 2001, the district elected to accept bids for the service. Plaintiff submitted the lowest bid, but the district decided to reject the bid on grounds that plaintiff was not a responsible bidder. The contract was awarded to another bidder, and plaintiff challenged the contract on statutory grounds, claiming that the district violated 20-9-204, 20-10-125, and this section. The Supreme Court declined to address any statutory violations because plaintiff lacked standing to bring the complaint under the criteria in Debcon, Inc. v. Glasgow, 2001 MT 124, 305 M 391, 28 P3d 478 (2001). Hickey v. Baker School District No. 12, 2002 MT 322, 313 M 162, 60 P3d 966 (2002), distinguishing State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973), and E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Competitive Bidding — Contract Formed by Execution of Written Instrument, Not by Award of Project — No Requirement That State Be Notified of Bidding Error Prior to Award of Project: After E.H. Oftedal and Sons, Inc. (Oftedal), submitted a bid on a highway project, but before the actual contract was signed, Oftedal notified the state that $789,000 in errors had been discovered. Oftedal requested that the bid be withdrawn or that the contract amount be adjusted upward, but the requests were denied. Oftedal appealed, but the District Court held that Oftedal did not give timely notice of the mistakes prior to the acceptance of the bid, so equitable relief was unavailable under 28-2-1611. The Supreme Court disagreed and reversed. As a matter of law, no contract for performance of the highway project was formed by the award of the project, prior to execution of the written contract, so there could be no requirement that the state have knowledge of Oftedal's unilateral mistake prior to the award of the project. No notice of the mistake was necessary at that time to obtain equitable relief under 28-2-1611. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002), distinguishing Baker v. St., 218 M 235, 707 P2d 20 (1985).

Equitable Relief Available to Correct Inadvertent Bidding Errors in Revising Highway Construction Project: Contractor E.H. Oftedal and Sons, Inc. (Oftedal), submitted a bid on a

Montana highway project. Because Oftedal's was the lowest bid, the state awarded the contract to Oftedal, but upon later investigation, Oftedal determined that the bid contained several errors amounting to $789,000, and requested that the bid be withdrawn. The request was denied, so Oftedal requested an upward revision of the bid to reflect the mistakes. Even if the contract amount was revised upward to reflect the errors, Oftedal's bid would still have been lowest. Although the state recognized that Oftedal had made an unintended mistake, the request for upward revision was also denied, in part because the Federal Highway Administration would not allow any federal money to be used to cover any state cost over Oftedal's original bid. To avoid losing its substantial bid bond, Oftedal signed the contract under protest for the original amount and petitioned the District Court for equitable relief under 28-2-1611 through an upward revision of the contract sum. The District Court denied relief and granted summary judgment to the state. Oftedal appealed to the Supreme Court, seeking an upward revision to reflect the amount of the error and an order for specific performance of the revised contract. The Supreme Court found that equitable relief was appropriate because of mistake, and remanded to the District Court with instructions to reform the contract to reflect the true intentions of the parties. The mistakes in this case were inadvertent, and even though some negligence might have been inherent in the mistakes, they could not be said to preclude equitable relief when viewed in light of the parties' agreed assessment of the nature of the errors. Negligence of the party creating the mistake is not necessarily a bar to judicial reformation of a contract. Under 28-2-1612, for the purpose of revising a contract, a court must presume that all parties intended to make an equitable and conscientious agreement, and it could not be presumed that either party intended Oftedal to incur the hardship of supplying $789,000 of work and material to the state without compensation. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Public Contracts Subject to Fundamental Contract Analysis — Public Bidding and Contract Modification Statutes Not Inherently Inconsistent: Public contracts are not necessarily exempt from fundamental contract analysis because competitive bidding statutes were established for the benefit of the public rather than to establish the rights of bidders. Nothing in the competitive bidding statutes places public contracts out of reach of remedies at law or the equitable relief provided under 28-2-1611 if a party is otherwise qualified for relief under the terms of the statute. Further, public bidding statutes and contract modification statutes are not inherently inconsistent, so 28-2-1611 may be applied to public contracts. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Collateral References

Indemnity *key* 4.

42 C.J.S. Indemnity §5; 73A C.J.S. Public Contracts §§42, 43.

Surety's liability on bid bond for public works. 70 ALR 2d 1370.

18-1-202. Advertisement for bid to specify required security.

Compiler's Comments

1995 Amendment: Chapter 51 in (1)(b), near beginning, substituted "security" for "money or bank instrument"; in (3), near end after "distinctly specify that", substituted "a bid bond or other form of security specified in 18-1-203 constitutes" for "lawful moneys of the United States or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor shall constitute"; and made minor changes in style. Amendment effective February 9, 1995.

Case Notes

Competitive Bidding — Contract Formed by Execution of Written Instrument, Not by Award of Project — No Requirement That State Be Notified of Bidding Error Prior to Award of Project: After E.H. Oftedal and Sons, Inc. (Oftedal), submitted a bid on a highway project, but before the actual contract was signed, Oftedal notified the state that $789,000 in errors had been discovered. Oftedal requested that the bid be withdrawn or that the contract amount be adjusted upward, but the requests were denied. Oftedal appealed, but the District Court held that Oftedal did not give timely notice of the mistakes prior to the acceptance of the bid, so equitable relief was unavailable under 28-2-1611. The Supreme Court disagreed and reversed. As a matter of law, no contract for performance of the highway project was formed by the award of the project, prior to execution of the written contract, so there could be no requirement that the state have knowledge of Oftedal's unilateral mistake prior to the award of the project. No notice of the mistake was necessary at that time to obtain equitable relief under 28-2-1611. E.H. Oftedal & Sons, Inc. v. St.,

2002 MT 1, 308 M 50, 40 P3d 349 (2002), distinguishing Baker v. St., 218 M 235, 707 P2d 20 (1985).

Collateral References

Indemnity *key* 4.

42 C.J.S. Indemnity §5; 73A C.J.S. Public Contracts §§17 through 19.

18-1-203. Form of security.

Compiler's Comments

2003 Amendment: Chapter 203 inserted (1)(b) excluding requirement for bid bond, guaranty bond, or surety bond; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 51 in (1), at beginning, deleted "Except as provided in subsection (4)" and deleted reference to subsection (a) of 18-1-202(1); in (1)(b) substituted "federally chartered or state-chartered bank insured by the federal deposit insurance corporation" for "a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana"; in (1)(c), near beginning, substituted "guaranty bond, or surety bond" for "or bonds" and inserted second sentence requiring the carrying of an investment grade rating of one or more nationally recognized independent rating agencies; deleted former (2) that read: "(2) Except as provided in subsection (4), in all cases under 18-1-202(1)(b) the bidder shall accompany the bid with the security described in (1)(a) or (1)(b) above"; near middle of (2), after "bid bonds", inserted "financial guaranty bonds, or surety bonds"; deleted (4) that read: "(4) The provisions of this section do not apply to bonds issued under Title 17, chapter 5, part 8"; and made minor changes in style. Amendment effective February 9, 1995.

1983 Amendment: In (1) and (2), inserted exception at beginning; and inserted (4) exempting general obligation bonds.

Collateral References

Indemnity *key* 4.

42 C.J.S. Indemnity §5; 72 C.J.S. Supp. Public Contracts §42.

18-1-204. Forfeiture — bidder's liability — waiver.

Compiler's Comments

1987 Amendment: In (1), at beginning, inserted exception clause; and inserted (3) allowing Department to waive forfeiture of bid security in construction contracts.

Collateral References

Indemnity *key* 4.

42 C.J.S. Indemnity §5; 73A C.J.S. Public Contracts §§42 through 62.

18-1-205. Return of bid security.

Collateral References

73A C.J.S. Public Contracts §§21, 42.

64 Am. Jur. 2d Public Works and Contracts §82.

Part 3
Prepayment of Public Contractors

Part Law Review Articles

Recovery of Project Overhead on Changed Work: A Significant Dilemma for Government Contractors, Smith & Gray, 21 Construction Law. 8 (2001).

18-1-301. Contractor withdrawals — deposit of obligations.

Compiler's Comments

1999 Amendment: Chapter 222 in (1) in two places substituted "state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district" for "state of Montana or any department, agency, or political subdivision thereof"; inserted (3) requiring accrued interest in accounts of deposit to be paid to contractors; inserted (4) allowing subcontractors to participate in making required deposit obligations and to receive pro rata share of earned interest; and made minor changes in style. Amendment effective July 1, 1999.

Applicability: Section 5, Ch. 222, L. 1999, provided: "[This act] applies to contracts entered into after July 1, 1999."

1985 Amendment: In (1) at end of lead-in, substituted "the contracting agency" for "the treasurer of the state of Montana".

18-1-302. Servicing of deposited obligations.

Compiler's Comments

1985 Amendment: Near beginning substituted "the contracting agency" for "the treasurer of the state of Montana".

18-1-303. Interest or income on deposits to contractor.

Compiler's Comments

1985 Amendment: At beginning of (1) substituted "The contracting agency" for "The treasurer of the state of Montana"; and in (2) after "bonds", substituted "the contracting agency or the designated custodian, pursuant to 18-1-302" for "the treasurer of the state of Montana".

18-1-304. Priority of deductions from retained payments and proceeds of deposited obligation.

Collateral References

Contractual provision for per diem payments for delay in performance as one for liquidated damages or penalty. 12 ALR 4th 891.

Part 4
Contract Actions Against the State

18-1-401. Jurisdiction.

Case Notes

Waiver of State Immunity — Applies Only to Express Contracts: Although 18-1-404 appears to provide a specific waiver of the state's immunity as to all contract actions, express or implied, the section is ambiguous when read and construed in conjunction with other provisions in part 4, specifically this section which expressly grants District Courts jurisdiction over only express contract actions. Legislative history demonstrates that the Legislature intended to waive only the state's immunity as to express contracts. Section 18-1-404 does not subject the state to liability on implied contracts. Peretti v. St., 238 M 239, 777 P2d 329, 46 St. Rep. 1235 (1989).

Collateral References

States *key* 191(1.9).

81A C.J.S. States §297, et seq.

18-1-402. Administrative procedures — exhaustion — time limitations.

Case Notes

Implied Warranty — Plans and Specifications: A contractor can rely on plans and specifications and need not verify them. The owner warrants and is responsible for the accuracy of the descriptions in the plans and specifications of the contract. The contract impliedly warrants that the plans are suitable and accurate. The implied warranty is as much a part of the contract as the express terms and is subject to the statute of limitations pertaining to the contract. Lutey Constr. v. St., 257 M 387, 851 P2d 1037, 50 St. Rep. 321 (1993).

Commencement of Period of Limitations: A claim or dispute arises at the time the state submits a final estimate to the contractor for his approval or rejection. Zook Bros. Constr. Co. v. St., 171 M 64, 556 P2d 911 (1976), followed in Lutey Constr. v. St., 257 M 387, 851 P2d 1037, 50 St. Rep. 321 (1993).

Estoppel: The state led the contractor to believe that his claim would receive timely attention and would be reviewed by the state pending an administrative decision on its merits. The contractor relied on the assurances, and the state is therefore foreclosed from raising a Statute of Limitations defense. Zook Bros. Constr. Co. v. St., 171 M 64, 556 P2d 911 (1976), followed in Lutey Constr. v. St., 257 M 387, 851 P2d 1037, 50 St. Rep. 321 (1993).

Attorney General's Opinions

Application of One-Year Statute of Limitations in Contract Actions Against the State: Three separate periods of limitation apply to disputes arising from express contracts with state agencies. (1) A contractor who fails to submit his claim to an agency having an administrative procedure for resolving contract disputes within the time limits prescribed in the contract or, if no time is specified, within 90 days after the dispute arises, is barred from thereafter submitting his claim to the agency or litigating the question in District Court. (2) A contractor who timely submits his dispute to an agency having an administrative procedure but who fails to bring an

action in District Court within 1 year after a final adverse decision by the agency is barred from litigating his claim in District Court. (3) In cases where no settlement procedure is provided by a contracting agency, a 1-year Statute of Limitations, commencing at the time the cause of action arises, applies. 37 A.G. Op. 40 (1977).

Collateral References

73A C.J.S. Public Contracts §§29, 30, 36, 37.

18-1-403. Stipulations restricting enforcement void.

Case Notes

Contract Forum Selection Clauses Void: A Montana distributor sued an out-of-state manufacturer in Montana court for tort and contract claims arising from their agreement which provided that Minnesota would be the sole forum for such disputes. The District Court denied defendant's motion to dismiss. The Supreme Court affirmed and held that the forum selection clause was void under 28-2-708 because it restricted the parties from enforcing their contract rights. State ex rel. Polaris Indus., Inc. v. District Court, 215 M 110, 695 P2d 471, 42 St. Rep. 220 (1985), followed in Keystone, Inc. v. Triad Sys. Corp., 1998 MT 326, 292 M 229, 971 P2d 1240, 55 St. Rep. 1321 (1998).

18-1-404. Liability of state — interest — costs.

Compiler's Comments

2001 Amendment: Chapter 181 in (1)(b) at beginning of third sentence substituted "If the contract is subject to a good faith dispute brought before a government agency or before a court" for "For the purposes of this section" and at end substituted "decision by the government agency or court" for "judgment", in fourth sentence near middle substituted "decision" for "judgment", and inserted fifth sentence providing that a contract not subject to a good faith dispute is subject to an interest rate governed by 17-8-242. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1999 Amendment: Chapter 413 in (1)(b) and (2) inserted sentence providing for retroactive applicability. Amendment effective April 21, 1999.

1997 Amendment: Chapter 508 in (1)(a), near end after "is not liable", deleted "for interest prior to or after judgment or"; inserted (1)(b) concerning liability of state for interest on contract payment; in third sentence of (2), after "The costs must", deleted "not"; inserted (3) concerning contracts governed by Title 19; and made minor changes in style. Amendment effective May 1, 1997.

Case Notes

Moratory Interest on Borrowed Funds Not Recoverable: Relying upon the accuracy of plans supplied by the state, Martel Construction (Martel) contracted with the state to construct a new highway bridge to replace one originally built in 1936. In preparing its plans, the state had relied on plans used to construct the 1936 bridge, incorrectly believing that those plans represented the elevation and dimensions needed for the new bridge. As a result of this error, Martel was required to perform extra work not contemplated under the contract. The District Court awarded Martel damages for the actual construction costs for the extra work performed and damages for "moratory interest" or the interest paid on funds borrowed to finance the extra work. The Supreme Court reversed the portion of the ruling allowing recovery of "moratory interest", holding that the state is not liable for prejudgment or postjudgment interest unless the interest is part of actual damages resulting from the state's breach of contract. Martel Constr., Inc. v. St., 249 M 507, 817 P2d 677, 48 St. Rep. 812 (1991).

Waiver of State Immunity — Applies Only to Express Contracts: Although this section appears to provide a specific waiver of the state's immunity as to all contract actions, express or implied, the section is ambiguous when read and construed in conjunction with other provisions in part 4, specifically 18-1-401 that expressly grants District Courts jurisdiction over only express contract actions. Legislative history demonstrates that the Legislature intended to waive only the state's immunity as to express contracts. This section does not subject the state to liability on implied contracts. Peretti v. St., 238 M 239, 777 P2d 329, 46 St. Rep. 1235 (1989).

Findings of Court in Error — No Waiver of Indemnity Reimbursement From State: Appellant contracted with the state to build a segment of highway. Respondent subcontracted with appellant to do certain concrete work on bridges. The state designed cuts through a mountainous area that were too steep and had to be redone for stability. This delayed the project and the availability of concrete, increasing costs of construction. Appellant entered a supplemental

agreement with the state that purported to waive claims for extra costs. The Supreme Court reversed the lower court finding that this provision precluded appellant from indemnity reimbursement from the state for extra money paid to respondent because of the delay. Under the waiver provision, the contractor could still claim expenses from conditions not within the knowledge of the parties at execution of the agreement. Unavailability of concrete because of delay was such a condition. The court noted that the judgment against the state was subject to 18-1-404. E.F. Matelich Constr. Co. v. Goodfellow Bros., Inc., 217 M 29, 702 P2d 967, 42 St. Rep. 1004 (1985).

Constitutionality of Limitation of Interest: In an action in which the plaintiff was awarded damages for the unilateral and unlawful termination of a lease of certain communications equipment by the state, the trial court did not err in holding the limitation of interest on judgments in contract actions constitutional. The transcripts of the Constitutional Convention debates show that the purpose of the delegates in adopting Art. II, sec. 18, was to limit nonimmunity to torts committed by the state. Leaseamerica Corp. of Wis. v. St., 191 M 462, 625 P2d 68, 38 St. Rep. 398 (1981).

Contractual Liability for Attorney Fees — Fees Not "Costs" Absent Bad Faith: Where the State executed a 6-year lease of certain communications equipment with the plaintiff in a lease providing that the State would pay the lessor for "legal expenses" incurred as a result of any default by the State and unilaterally terminated the lease 3 years later, the trial court did not err in holding the State liable for attorney fees under the indemnity provisions in the lease. A reading of the applicable statutes indicates that liability for attorney fees can arise from contract but cannot be awarded as "costs" absent bad faith on the State's part. Leaseamerica Corp. of Wis. v. St., 191 M 462, 625 P2d 68, 38 St. Rep. 398 (1981).

Exclusive Jurisdiction in District Court: Appellees were students enrolled in a 2-year aviation technology program at the Missoula Technical Center, a vocational-technical center (now College of Technology, University of Montana-Missoula) operated by the state. Because of budget cutbacks, the program was terminated after the first year. The students sued for damages in federal District Court, alleging that the termination of the program violated their rights of equal protection and due process. The District Court held the state had contracted with the students to provide 2 years of instruction and that termination constituted a breach of that contract. The court then ruled that the breach violated the students' due process rights. The U.S. Court of Appeals reversed, saying that the 11th amendment to the United States Constitution explicitly withholds from the U.S. courts jurisdiction over suits brought against a state by citizens of another state or another country. Also, the 11th amendment has always been interpreted to provide that an unconsenting state is immune from suits brought in federal courts by her own citizens, unless the state waives such immunity. Article 2, sec. 18, Mont. Const., waives state immunity from suit. The U.S. Court of Appeals held that in order to waive immunity from suit in federal courts, Art. II, sec. 18, Mont. Const., would expressly have to extend to federal suits, which it does not. The District Court had concluded that alternate jurisdiction could lie under 18-1-404, but that provision holding the state liable on contracts grants Montana state District Courts exclusive jurisdiction over such contract disputes. St. v. Peretti, 661 F2d 756 (9th Cir. 1981).

No Sovereign Immunity in Contract Actions: An action arising out of a contract is an action for injury to property; therefore the state, counties, towns, and all other local governmental entities have no sovereign immunity in contract actions. Peretti v. St. Bd. of Education, 464 F. Supp. 784 (D.C. Mont. 1979).

Contract Action Against State: In a contract action against the state, the same rules of construction apply as in contract actions between private parties. Sornsin Constr. Co. v. St., 180 M 248, 590 P2d 125 (1978).

Failure of Corporation to Possess Articles of Incorporation: The failure of a corporation to possess articles of incorporation until 21 days after the execution of the contract with the state does not constitute an illegal purpose which would void the agreement from its inception. On the contrary, this defect rendered the contract voidable at the state's option. Mont. Ass'n of Underwriters v. Dept. of Administration, 172 M 211, 563 P2d 577 (1977).

Law Review Articles

Recovering Attorney Fees Under Montana Statutory Law, Williams, 46 Mont. L. Rev. 119 (1985).

Contract Damages in Montana Part II: Reliance and Restitution, Burnham, 45 Mont. L. Rev. 1 (1984).

Contract Damages in Montana Part I: Expectancy Damages, Burnham, 44 Mont. L. Rev. 1 (1983).

Risk Allocation for Third-Party Toxic Tort Liability at Government-Owned, Contractor-Operated Facilities (GOCOs), Tolah, 32 Pub. Cont. L.J. 101 (2002).

Collateral References

Modern status of rules regarding tort liability of building or construction contractor for injury or damage to third person occurring after completion and acceptance of work; "completed and accepted" rule. 74 ALR 5th 523.

The government-contractor defense to state products-liability claims. 53 ALR 5th 535.

Garnishment of funds payable under building and construction contract. 16 ALR 5th 548.

Equipment leasing expense as element of construction contractor's damages. 52 ALR 4th 712.

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. 40 ALR 4th 998.

Liquidated damages: contractual provision for per diem payments for delay in performance as one for liquidated damages or penalty. 12 ALR 4th 891.

18-1-413. Litigation — compromise.

Compiler's Comments

1999 Amendment: Chapter 451 in first sentence after "litigation" inserted "under this part", in second sentence after "any suit" substituted "under this part" for "thereon", and inserted third sentence applying the provisions of 2-4-603(1) to an arbitration, compromise, or settlement; and made minor changes in style. Amendment effective April 22, 1999.

Applicability: Section 5, Ch. 451, L. 1999, provided: "[This act] applies to any arbitration, compromise, or settlement of actions entered into on or after [the effective date of this act]." Effective April 22, 1999.

18-1-414. Judgments — payment.

Case Notes

Sole Means to Collect Judgment — Regular Sessions: This section provides the sole means of collecting a judgment against the state in a contractual dispute. The section speaks to appropriations at regular sessions of the Legislature. First Nat'l Bank v. Sourdough Land & Cattle Co., 171 M 390, 558 P2d 654 (1976).

CHAPTER 2
CONSTRUCTION CONTRACTS

Chapter Compiler's Comments

Exemption of Certain Projects — Conditions — Termination: Section 4, Ch. 303, L. 1999, provided: "(1) If the nondenominational chapel project at Montana tech of the university of Montana is authorized in House Bill No. 5, then the design of this project is not subject to the requirements of 18-2-112 or Title 18, chapter 8, part 2.

(2) (a) It is the intent of the legislature, with regard to the classroom-laboratory building authorized in section 4, Chapter 469, Laws of 1997, that the department of administration contract as provided in this subsection (2). The department shall contract for combinations of services, materials, and labor related to innovative building technologies, not otherwise expressly allowed under Title 18, if the innovative technologies:

(i) have the potential to produce energy or operational savings for the state over the life cycle of the building;

(ii) demonstrate the use of recycled material; or

(iii) demonstrate the use of indigenous material for which a new local, regional, or national market may be developed.

(b) The conditions in subsection (2)(a) must specifically apply to individual building systems or components and not to the general contract for construction or for any project service, including design. The terms, guaranties, and conditions related to the innovations must be negotiated by the department in the best interests of the state and must provide that there is no express or implied commitment of state appropriations for construction, operations, or maintenance." Section 6, Ch. 303, L. 1999, provided that sec. 4, Ch. 303, L. 1999, terminates June 30, 2003.

Authorizing Inmate Labor for Construction of Prison Projects — 1989 Capital Projects Bill: Section 22, House Bill No. 777, L. 1989, provided: "For the purposes of constructing a 96-man housing unit authorized in [section 6]; the ranch housing units and the irrigation system at

Montana state prison authorized in [section 7]; and the inspection, study, and renovation of dams at Montana state prison authorized in [section 10(2)]; the department of institutions [now department of corrections] may use inmate labor to construct the projects and is exempt, for the purposes of completing these projects, from the provisions of 53-1-301(1)(g). The department of administration may exempt these projects from any provisions of Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements." House Bill No. 777 was successfully challenged in the First Judicial District Court in Cause No. ADV-89-914. The District Court held that the title of the bill did not contain any reference to the substantive change the bill created in state law requirements for competitive bidding and that such a substantive change did not belong in an appropriation bill. A special session of the Legislature was called on May 21, 1990, and House Bill No. 1 was passed allowing for the use of convict labor and exempting the project from competitive bidding requirements.

Chapter Case Notes

Architect Liable for Inadequate Specifications: There was sufficient evidence presented to the District Court to support its findings that the architect's water system specifications for a new school building were inadequate. A contractor is not responsible for errors or defects in the plans and is not liable, absent negligence on his part, when the owner's plans and specifications prove defective. Ace Plumbing & Heating, Inc. v. School District, 204 M 81, 662 P2d 1327, 40 St. Rep. 678 (1983).

Effect of Unanticipated Condition on Contractor's Obligation: Even though a contract incorporates by reference federal, state, or local laws, a contractor is not required to alter construction plans to comply with health standards when the condition to be alleviated is abnormal, unanticipated, or substantially different from those in the contract plans and drawings. Ace Plumbing & Heating, Inc. v. School District, 204 M 81, 662 P2d 1327, 40 St. Rep. 678 (1983).

Contract Made Without License: The District Court erred in concluding that the contract entered into between the parties was illegal and therefore void. Appellant admits that it did not have a public contractor's license as required by statute when it accepted the bid proposal. It admits that it may have violated the law and may be assessed a misdemeanor fine. Nowhere in the statutes is it declared that a contract made without a license is unenforceable or void. Taurman v. Cascade, 192 M 529, 629 P2d 226, 38 St. Rep. 906 (1981).

Chapter Law Review Articles

Differing Site Conditions: Evaluating the Material Difference, McClure, 15 Pub. Cont. L.J. 138 (1984).

Construction Management and Design-Build: An Owner's Experience in the Public Sector, Dibner, 46 Law & Contemp. Probs. 137 (1983).

Unusually Severe Weather in Government Construction Contracting, Howell, 23 A.F. L. Rev. 156 (1982).

Differing Site Conditions: Contractor's Reliance on Government Test Boring Information, Stubbs, 23 A.F. L. Rev. 147 (1982).

The Right of a Government Construction Contractor to Suspend Operations or Abandon Performance, Rephan, 29 Fed. B. News & J. 121 (1982).

Part 1
General Provisions

Part Case Notes

Implied Warranty — Plans and Specifications: A contractor can rely on plans and specifications and need not verify them. The owner warrants and is responsible for the accuracy of the descriptions in the plans and specifications of the contract. The contract impliedly warrants that the plans are suitable and accurate. The implied warranty is as much a part of the contract as the express terms and is subject to the statute of limitations pertaining to the contract. Lutey Constr. v. St., 257 M 387, 851 P2d 1037, 50 St. Rep. 321 (1993).

18-2-101. Definitions of building, costs, and construction.

Compiler's Comments

2005 Amendment: Chapter 374 in definition of costs deleted reference to 17-5-401; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

1999 Amendment: Chapter 470 in introductory clause inserted reference to 18-2-123. Amendment effective October 1, 1999.

Applicability: Section 12, Ch. 470, L. 1999, provided: "[This act] applies to contracts agreed to on or after July 1, 1999."

1997 Amendment: Chapter 392 in (2)(b), after "part of", inserted "an environmental remediation or abandoned mine land reclamation project" and at end inserted "unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed"; and made minor changes in style. Amendment effective April 28, 1997.

1995 Amendment: Chapter 241 in definition of building inserted (c) excluding leased buildings; and made minor changes in style.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1985 Amendments: Chapter 7 inserted (1)(d) referring to buildings constructed with federal or private moneys; and made minor changes in phraseology.

Chapter 372 inserted (4) defining costs.

1983 Amendment: In (3) after "alteration" inserted "repair, maintenance" twice, and after "remodeling", deleted "but does not include the repair or maintenance of an existing building".

1981 Amendment: In (3) substituted definition of construction for "construction includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration".

Attorney General's Opinions

Daly Mansion Restoration Subject to Public Construction Contracts: The Daly Mansion is a "building" within the definition in this section, and work on the mansion constitutes "construction" under the statute. Therefore, restoration and repair of the state-owned Daly Mansion are subject to 18-2-102 and 18-2-103 regarding public construction contracts. 42 A.G. Op. 66 (1988).

18-2-102. Authority to construct buildings.

Compiler's Comments

1997 Amendment: Chapter 249 in (1), in two places, substituted "$150,000" for "$50,000". Amendment effective July 1, 1997.

1995 Amendment: Chapter 241 in (1) inserted second sentence concerning legislative approval of repair and maintenance costs.

1993 Amendment: Chapter 518 in two places in (1) increased "$25,000" to "$50,000"; in (2)(a), after "building", inserted "and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency"; and made minor changes in style. Amendment effective April 24, 1993.

1985 Amendment: Inserted (2)(d) allowing Department of Military Affairs to authorize construction of certain buildings.

Case Notes

Consent by Appropriation — Effect of Statute Allowing Committee Decision on Location of Legislative Chambers: The directive in 5-17-102 (renumbered 2-17-805) to the Capitol Building and Planning Committee (abolished in 1993) to decide the location of legislative chambers belies the contention that the Legislature consented under this section to relocation of the Senate chambers when the Legislature passed an appropriation for a capitol renovation project. Goodover v. Dept. of Administration, 201 M 92, 651 P2d 1005, 39 St. Rep. 1975 (1982).

Consent to Remodeling: This section's provision for legislative consent to "construction" of a building requires legislative consent to a remodeling project that will cost in excess of $25,000 (see 1993 and 1997 amendments), and the consent may take the form of an appropriation of money or a joint resolution. Goodover v. Dept. of Administration, 201 M 92, 651 P2d 1005, 39 St. Rep. 1975 (1982).

Attorney General's Opinions

Daly Mansion Restoration Subject to Public Construction Contracts: The Daly Mansion is a "building" within the definition in 18-2-101, and work on the mansion constitutes "construction" under the statute. Therefore, restoration and repair of the state-owned Daly Mansion are subject to 18-2-103 and this section regarding public construction contracts. 42 A.G. Op. 66 (1988).

Collateral References

73A C.J.S. Public Contracts §3.

18-2-103. Supervision of construction of buildings.

Compiler's Comments

2005 Amendment: Chapter 574 in (1)(c) inserted exception clause. Amendment effective October 1, 2005.

1999 Amendment: Chapter 303 near end of (4) substituted "registered" for "licensed"; and made minor changes in style. Amendment effective April 14, 1999.

1997 Amendment: Chapter 249 in (1) substituted "$150,000" for "$50,000"; in (4), in two places, substituted "$75,000" for "$25,000" and substituted "$25,000" for "$5,000"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 518 in (1) increased "$25,000" to "$50,000"; deleted former last sentence in (1)(c) that read: "However, any contract award that is protested or any contract that is awarded to a bidder other than the lowest bidder is subject to approval by the board of examiners"; in (1)(d), after "orders", deleted "up to $25,000. Any change order over $25,000 must be with the consent of the board of examiners. The department may refer change orders under $25,000 that affect the project scope or other unusual change orders to the board of examiners for consideration. The board of examiners shall act within 14 working days after processing completion by the department"; in (2) deleted second sentence that read: "However, any powers and duties subject to the approval of the board of examiners may not be delegated"; deleted former (3) that read: "For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required"; in (6) substituted "subsections (1) through (3)" for "subsections (1) through (4)"; and made minor changes in style. Amendment effective April 24, 1993.

1989 Amendment: In (1)(d) increased change order amount from $5,000 to $25,000, provided that change orders over $25,000 must be with the consent of the Board of Examiners, and inserted second sentence that read: "The department may refer change orders under $25,000 that affect the project scope or other unusual change orders to the board of examiners for consideration"; and made minor change in phraseology. Amendment effective March 28, 1989.

1985 Amendments: Chapter 7 inserted (8) authorizing Department of Military Affairs to act as contracting agency.

Chapter 137 in (1)(a) substituted present language referring to plans, specifications, and cost estimates for "review and approve all plans and working drawings prepared by architects"; and in (1)(e) before "plans and specifications", substituted "accepted" for "approved".

Chapter 466 in (1)(d) substituted present language referring to change orders for "review and, with the consent of the board of examiners, approve all change orders".

Chapter 467 in (1)(c), at beginning deleted "under the supervision and with the approval of the board of examiners" and inserted last sentence requiring approval of Board of Examiners in certain cases.

Chapter 648 inserted (2) authorizing Department to delegate certain powers and duties; deleted former (4) that read: "The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more than $5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana"; in (5) at end of first sentence substituted "costs are $25,000 or less" for "costs are less than $5,000" and inserted second sentence requiring informal bids on certain smaller projects; and in (7) substituted "subsections (1) through (4)" for "subsections (1) through (3)".

1983 Amendments: Chapter 281, at end of (6), substituted "regulation account in the state special revenue fund" for "revolving account in the revolving fund".

Chapter 491 inserted (2) exempting repair and maintenance projects from approval by Board of Examiners; and in (4), after "alteration" inserted "repair, maintenance,".

Case Notes

Lowest Bidder Working Beyond Contract Time — Other Bidder Without Standing to Protest: Appellant bid $440 more than lowest bidder and protested the bid award because the recipient of contract had not completed another public contract on which he was working beyond contract completion time. The District Court dismissed the action for lack of standing. The Supreme Court affirmed since a contract does not exist prior to the acceptance of bid by an agency, depriving appellant of standing under contract theory. The bidding statutes were not enacted for the benefit of competing bidders, but for the public. The court noted that appellant failed to claim standing as a taxpayer and did not seek judicial review under the Montana Administrative

Procedure Act. Baker v. St., 218 M 235, 707 P2d 20, 42 St. Rep. 1546 (1985), distinguished in ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Mandamus Against Those Determining Qualifications of Public Contract Bidders: The Department of Administration and Board of Examiners, in determining whether bidders for the construction of a public building are qualified and will perform the contract in conformity with the specifications and terms of the solicitation for bids, as required by 18-2-103, are acting in a discretionary manner, and mandamus may not be used to control their discretion. Martel Constr., Inc. v. Bd. of Examiners, 205 M 332, 668 P2d 222, 40 St. Rep. 1340 (1983).

Meeting of Minds — Oral Acknowledgment of Part of Written Contract Bid Specifications: The State's solicitation for bids for construction of building provided that the bid acknowledge receipt of any addenda. The State accepted the bid of a contractor that did not make the acknowledgment in its bid. The evidence that the State phoned the contractor regarding two addenda and contractor stated it knew of them and had begun preparation for fulfilling them was adequate to show that contractor had actual knowledge of the addenda and showed there was a meeting of the minds as to their existence and the requirements for fulfillment of their terms. Martel Constr., Inc. v. Bd. of Examiners, 205 M 332, 668 P2d 222, 40 St. Rep. 1340 (1983).

Public Contract Bid — Submission Binds Bidder: State's solicitation for bids provided that all written addenda would become part of the contract documents, that all bidders would be bound by the addenda, whether or not they were received by the bidder, and that the owner reserved the right to reject all bids and waive any informality or irregularity in any bid. One bid did not acknowledge receipt of certain addenda, though the bidder stated during a phone conversation with the State that he knew of the addenda. The solicitation provisions bound the bidder to full performance of the contract documents, including all addenda, whether received or not, and in submitting its bid the bidder bound itself to the full performance of the contract documents, including the addenda. Martel Constr., Inc. v. Bd. of Examiners, 205 M 332, 668 P2d 222, 40 St. Rep. 1340 (1983).

Waiver of Irregularities in Bids — Materiality of Irregularity: The State has the right to waive immaterial irregularities in bids for public contracts. Deviations in bids not going to the substance of the bid and irregularities not giving one bidder a substantial advantage over other bidders are types of irregularities that can be waived by the State in awarding contracts. The irregularity was immaterial where lowest bidder failed to acknowledge receipt of addenda put out by the State, though the bidder was required to make such acknowledgment. The bidder stated in a phone conversation with the State that it knew of the addenda, that the addenda required work costing about $55,280, and that the spread between that bidder and the next lowest bidder was $174,000. The defect would have been material and could not have been waived if the bid spread had been less than $55,280. Martel Constr., Inc. v. Bd. of Examiners, 205 M 332, 668 P2d 222, 40 St. Rep. 1340 (1983).

Attorney General's Opinions

Daly Mansion Restoration Subject to Public Construction Contracts: The Daly Mansion is a "building" within the definition in 18-2-101, and work on the mansion constitutes "construction" under the statute. Therefore, restoration and repair of the state-owned Daly Mansion are subject to 18-2-102 and this section regarding public construction contracts. 42 A.G. Op. 66 (1988).

Law Review Articles

Equitable Jurisdiction Over Government Contract Claims Brought Before the Contract Is Awarded, Golodner, 56 U. Colo. L. Rev. 655 (1985).

Awarding Public Works Contracts: Granting Preference to Resident Bidders: Galesburg Construction Co. v. Board of Trustees, 641 P2d 745 (Wyo.), Metzke, 18 Land & Water L. Rev. 393 (1983).

Collateral References

73A C.J.S. Public Contracts §§16, 17.

Mistake: right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee. 2 ALR 4th 991.

18-2-105. General powers and duties of department of administration.

Compiler's Comments

1997 Amendment: Chapter 249 in (8) deleted fourth sentence that read: "Any contract award resulting from negotiation is subject to the approval of the board of examiners." Amendment effective July 1, 1997.

1993 Amendment: Chapter 518 inserted (3) authorizing Department to transfer funds and authority to agencies and accept funds and authority from agencies; and made minor changes in style. Amendment effective April 24, 1993.

1985 Amendment: Inserted (7) authorizing negotiation of deductive changes.

Attorney General's Opinions

Buildings — Lease Purchase: The Department of Administration may not dispose of any interest in state lands without the approval of the state Board of Land Commissioners. 35 A.G. Op. 41 (1973).

Collateral References

73A C.J.S. Public Contracts §§26, 27.

18-2-106. Pecuniary interest prohibited.

Compiler's Comments

1999 Amendment: Chapter 303 at beginning of (1) substituted "The director of administration and the state architect may not" for "Neither the director of administration nor any employee of the department of administration shall"; inserted (2) concerning employees directly responsible for construction procurement; and made minor changes in style. Amendment effective April 14, 1999.

Collateral References

73A C.J.S. Public Contracts §4.

64 Am. Jur. 2d Public Works and Contracts §25.

Furnishing public official with meals, lodging, or travel, or receipt of such benefits, as bribery. 67 ALR 3d 1231.

18-2-107. Deposit of capitol building grant revenue.

Compiler's Comments

2003 Amendment: Chapter 355 in (1) inserted reference to 77-2-362; and made minor changes in style. Amendment effective April 17, 2003.

Severability: Section 20, Ch. 355, L. 2003, was a severability clause.

1999 Amendment: Chapter 122 in (1) near end inserted reference to 77-1-108. Amendment effective July 1, 1999.

Repeal of Termination Date: Section 3, Ch. 157, L. 1995, repealed sec. 12, Ch. 533, L. 1993, that terminated this section. Repealer effective June 30, 1995.

1993 Amendment: Chapter 533 in (1), at end, inserted "after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

1983 Amendment: In (1), substituted "a capital projects fund" for "the federal and private revenue fund".

18-2-108. Compliance with state laws and regulations.

Compiler's Comments

Section Not Codified: Section 82-1918(2), R.C.M. 1947, was not codified in the MCA, as it was redundant with 18-2-108. This subsection has not been repealed and is still valid law. Reference may be made to sec. 8, Ch. 66, L. 1923, as amended by sec. 1, Ch. 496, L. 1973.

Attorney General's Opinions

Buildings — Lease Purchase: The Department of Administration may not dispose of any interest in state lands without the approval of the state Board of Land Commissioners. 35 A.G. Op. 41 (1973).

18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited.

Compiler's Comments

1995 Amendment: Chapter 470 in (2) increased value of projects that Department may prepare working drawings for from $25,000 to $75,000; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 518 in (1)(b) substituted "18-2-105(7)" for "18-2-105(6)"; and made minor changes in style. Amendment effective April 24, 1993.

1983 Amendment: In (2), inserted "with the exception of repair or maintenance projects".

Collateral References
64 Am. Jur. 2d Public Works and Contracts §§49, 50.

18-2-112. Appointment of architects and consulting engineers.

Compiler's Comments
1993 Amendments: Chapter 22 in (1), at beginning, inserted exception clause; inserted (2) requiring the Department of Administration to appoint the honors college program building architect nominated by the University of Montana (now University of Montana-Missoula); and made minor changes in style. Amendment effective February 8, 1993, and terminates July 1, 1995.

Chapter 518 deleted former second sentence that read: "Such appointment shall be subject to the approval of the state board of examiners"; and made minor changes in style. Amendment effective April 24, 1993.

1983 Amendment: Inserted last sentence exempting repair and maintenance projects from appointment of architect or consulting engineer.

Case Notes
Constitutionality: Section 78-403, R.C.M. 1947 (now repealed), making an appropriation for the employment of an architect to plan office building at the State Capitol, did not violate either Art. XII, sec. 12, or Art. XIII, sec. 2, 1889 Mont. Const. (similar to Art. VIII, sec. 8, 1972 Mont. Const.) Graham v. Bd. of Examiners, 116 M 584, 155 P2d 956 (1945).

Collateral References
64 Am. Jur. 2d Public Works and Contracts §39.

18-2-113. Architects on public buildings to be certified.

Collateral References
Licenses *key* 24.
53 C.J.S. Licenses §64.

18-2-114. Seal and signature of architect on plans.

Collateral References
Architect's liability for personal injury or death from improper plans or design. 59 ALR 2d 1081.

Responsibility of one acting as architect for defects or insufficiency of work attributable to plans. 25 ALR 2d 1085.

18-2-122. Plans to bear seal.

Compiler's Comments
1989 Amendment: Near end inserted "professional" before "land surveyor"; and made minor change in style.

Attorney General's Opinions
Public Buildings — Does Not Apply to Commercial Establishments: "Public" in this section refers only to the buildings of the state and its political subdivisions. Therefore, plans and specifications for construction of privately owned buildings need not bear seals of specified professional persons. 36 A.G. Op. 52 (1976).

18-2-123. Payment of contractors and subcontractors.

Compiler's Comments
Effective Date: This section is effective October 1, 1999.

Applicability: Section 12, Ch. 470, L. 1999, provided: "[This act] applies to contracts agreed to on or after July 1, 1999."

Part 2
Performance, Labor, and Materials Bonds

Part Case Notes
Federal Court Actions: Title 18, ch. 2, part 2, governs the court remedies in favor of suppliers and materialmen suing for and making recovery upon surety bonds furnished and supplied by general contractors engaged in public works. Those sections are the state law to be applied in federal court. U.S. v. Reliance Ins. Co. of Philadelphia, 227 F. Supp. 939 (D.C. Mont. 1964).

Part Collateral References
64 Am. Jur. 2d Public Works and Contracts §94.

18-2-201. Security requirements.

Compiler's Comments

2005 Amendment: Chapter 186 in (2)(b) after "bank draft" inserted "or irrevocable letter of credit"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 203 in (1)(a) near end substituted "surety company, licensed in this state" for "licensed surety company"; inserted (1)(b) restricting requiring bond from particular company or producer; in (3) at beginning deleted "Notwithstanding the provisions of subsection (1)", near middle inserted "subject to the provisions of subsection (1)(b)", and at end substituted "governmental entity" for "governmental body"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendments — Composite Section: Chapter 112 at end of (4) increased project waiver amount from $25,000 to $50,000. Amendment effective October 1, 1999.

Chapter 303 deleted former (2) that read: "(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, with the county clerk of either county, except in cases of cities and towns, in which case the bond must be filed with the city or town clerk"; and made minor changes in style. Amendment effective April 14, 1999.

1997 Amendment: Chapter 249 in (5), at end, substituted "$25,000" for "$5,000". Amendment effective July 1, 1997.

1995 Amendment: Chapter 130 in (3)(b) inserted "certificate of deposit, money market certificate"; in (3)(b)(i) substituted current language relating to federally or state-chartered bank or savings and loan association for "banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana"; inserted (3)(b)(ii) relating to credit union; deleted (3)(c) that read: "(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana"; and made minor changes in style. Amendment effective March 13, 1995.

1993 Amendment: Chapter 236 in (1), near beginning, extended reference to subsection (6); at beginning of (5) inserted exception clause; inserted (6) allowing waiver of certain statutory requirements for school district projects costing less than $7,500; and made minor changes in style. Amendment effective March 31, 1993.

1987 Amendments: Chapter 250 in (1), near beginning in exception clause, inserted "and (5)"; and inserted (5) authorizing contracting agency to waive bonding requirements for projects costing less than $5,000.

Chapter 370 near beginning of (1) changed "18-1-219" to "85-1-219"; and in (3), after "agency", inserted "of".

1985 Amendments — Composite Section: Chapter 147 in (1) at beginning inserted exception clause referring to subsection (4), and near end of lead-in to (a), (b), and (c), after "sufficient bond", deleted "with two or more sureties acceptable to the governmental body letting the contract, or"; and inserted (4) authorizing local government bodies to accept bonds with two or more sureties.

Chapter 498 in (1) at beginning, inserted exception clause referring to 85-1-219.

In (1) the Code Commissioner inserted "of this section" after "subsection (4)" for clarity in distinguishing the exceptions.

1981 Amendment: In (1) near the end of the lead-in to (a), (b), and (c), inserted "acceptable to the governmental body letting the contract" after "sureties" and inserted "licensed" before "surety company"; added (3) authorizing substitutes for performance, labor, and materials bonds; and made minor changes in punctuation.

Case Notes

Material Supplier Held to Be Subcontractor: Under a contract that defined "work" as including construction labor and all materials and equipment incorporated into the construction project, a firm which merely served as a conduit for materials used by a general contractor was held to be a subcontractor, and a supplier of that firm was held entitled to pursue action on the general contractor's bond. Robintech, Inc. v. White & McNeil Excavating, Inc., 218 M 404, 709 P2d 631, 42 St. Rep. 1690 (1985).

Action Against City: A materialman, the supplier of a contractor who had a public works contract with city, could not hold the city liable for materials and supplies not paid for by contractor but used in performance of contract. C. E. Mitchell & Sons v. Davis, 162 M 221, 511 P2d 316 (1973).

Estoppel of Surety: This section did not prevent a surety on a bond given hereunder from becoming liable by estoppel to a third party who, in reliance on the surety's representations that he would be protected by the bond, paid off unpaid checks of the contractor and advanced money to the contractor for future payments, all in the nature of claims covered by the bond. Bower v. Tebbs, 132 M 146, 314 P2d 731 (1957).

Action on Contract — Change of Venue: An action brought by a merchant against a state highway contractor and his bondsman to recover for supplies furnished the former's subcontractor was held to be one upon a contract between the contractor and the state for the benefit of third persons and to be triable in the county in which the person entitled to payment resided or had his place of business. H. Earl Clack Co. v. Staunton, 100 M 26, 44 P2d 1069 (1935).

Law Review Articles

Recovery of Damages for Delay Against Sureties on Public Works Bonds, Balkin, 20 F. 640 (1985).

The Bankruptcy of Public Works Contractors—What Recourse for Laborers, Subcontractors, and Materialmen?, Keyes, 21 Idaho L. Rev. 561 (1985).

Collateral References

Counties *key* 123; Municipal Corporations *key* 356; States *key* 101.

20 C.J.S. Counties §160; 64 C.J.S. Municipal Corporations §§1055 through 1064; 73A C.J.S. Public Contracts §§42 through 52; 81A C.J.S. States §§185 through 193.

Garnishment of funds payable under building and construction contract. 16 ALR 5th 548.

What constitutes "public work" within statute relating to contractor's bond. 48 ALR 4th 1170.

Contractual provision for per diem payments for delay in performance as one for liquidated damages or penalty. 12 ALR 4th 891.

Liability of builder or subcontractor for insufficiency of building resulting from latent defects in materials used. 61 ALR 3d 792.

Relative rights, as between surety on public work contractor's bond and unpaid laborers or materialmen, in percentage retained by obligee. 61 ALR 2d 899.

Right of person furnishing material or labor to maintain action on contractor's bond. 118 ALR 56; 77 ALR 21.

18-2-202. Failure to require security — waiver.

Compiler's Comments

1995 Amendment: Chapter 130 near middle, after "fails to take", substituted "the security required or authorized by 18-2-201" for "such bond, cash, checks, drafts, money orders, or certificates of deposit as herein required"; and made minor changes in style. Amendment effective March 13, 1995.

1987 Amendment: Near middle, after "municipal corporation", substituted "waives or fails" for "shall fail".

1981 Amendment: Inserted ", cash, checks, drafts, money orders, or certificates of deposit" after "such bond" in the middle of the section.

Collateral References

Municipal Corporations *key* 345; States *key* 101.

64 C.J.S. Municipal Corporations §1056; 81A C.J.S. States §§185 through 193.

18-2-203. Amount and terms of security.

Compiler's Comments

1995 Amendment: Chapter 130 at beginning substituted "security" for "bond" and near middle, after "fix and determine the", substituted "amount of the security and the name of the secured party" for "amount of such bond and to whom such bond shall run"; and made minor changes in style. Amendment effective March 13, 1995.

Collateral References

States *key* 101, 108 ½, 109.

73A C.J.S. Public Contracts §§44, 45; 81A C.J.S. States §§185 through 193.

18-2-204. Right of action on security — notice.

Compiler's Comments

1995 Amendment: Chapter 130 in (1), in first sentence, substituted "security" for "bond" and after "furnished in the" deleted "prosecution of such", in second sentence substituted "right of action on the security" for "right of action on such bond for any sum whatever", and in model notice substituted "security" for "bond", after "name of the principal and" substituted "name of

the person providing the security" for "surety or sureties upon such bond", and at end substituted "the security" for "said bond"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Action Against City: A materialman, the supplier of a contractor who had a public works contract with city, could not hold the city liable for materials and supplies not paid for by contractor but used in performance of contract. C. E. Mitchell & Sons v. Davis, 162 M 221, 511 P2d 316 (1973).

"Acceptance" — By Whom: The word "acceptance" in this section as used in connection with a state highway contract contemplates a final, complete, and unconditional acceptance. There can be no such acceptance while there is still a dispute as to the amount owing on the contract. It means acceptance by an officer or body, not an engineer. Kirkpatrick v. Douglas, 104 M 212, 65 P2d 1169 (1937).

Collateral References

States *key* 101, 108 ½, 109.

73A C.J.S. Public Contracts §§53 through 62; 81A C.J.S. States §§185 through 193.

Relative rights, as between surety on public work contractor's bond and unpaid laborers or materialmen, in percentage retained by obligee. 61 ALR 2d 899.

18-2-205. Effect of dealing with subcontractor.

Compiler's Comments

1995 Amendment: Chapter 130 substituted "the security" for "such bond"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Action Against City: A materialman, the supplier of a contractor who had a public works contract with city, could not hold the city liable for materials and supplies not paid for by contractor but used in performance of contract. C. E. Mitchell & Sons v. Davis, 162 M 221, 511 P2d 316 (1973).

Federal Court Actions: Title 18, ch. 2, part 2, governs the court remedies in favor of suppliers and materialmen suing for and making recovery upon surety bonds furnished and supplied by general contractors engaged in public works. Those sections are the state law to be applied in federal court. U.S. v. Reliance Ins. Co. of Philadelphia, 227 F. Supp. 939 (D.C. Mont. 1964).

Provender, Materials, or Supplies: Equipment rental comes within the phrase "provender, materials, or supplies" as used in a bond pursuant to this section. Bower v. Tebbs, 132 M 146, 314 P2d 731 (1957).

Action on Contract — Change of Venue: An action brought by a merchant against a state highway contractor and his bondsman to recover for supplies furnished the former's subcontractor was held to be one upon a contract between the contractor and the state for the benefit of third persons and to be triable in the county in which the person entitled to payment resided or had his place of business. H. Earl Clack Co. v. Staunton, 100 M 26, 44 P2d 1069 (1935).

Collateral References

Counties *key* 123; Municipal Corporations *key* 356; States *key* 101.

20 C.J.S. Counties §160; 64 C.J.S. Municipal Corporations §§1055 through 1064; 73A C.J.S. Public Contracts §§31 through 35, 50, 51; 81A C.J.S. States §§185 through 193.

64 Am. Jur. 2d Public Works and Contracts §§97 through 99.

Liability of subcontractor upon bond or other agreement indemnifying general contractor against liability for damage to person or property. 68 ALR 3d 7.

Relative rights, as between surety on public work contractor's bond and unpaid laborers or materialmen, in percentage retained by obligee. 61 ALR 2d 899.

Right of person furnishing material or labor to maintain action on contractor's bond. 118 ALR 56; 77 ALR 21.

18-2-206. Notice to contractor concerning subcontractor.

Compiler's Comments

1995 Amendment: Chapter 130 throughout section substituted references to security for references to bond; and made minor changes in style. Amendment effective March 13, 1995.

1987 Amendment: In (1), after "first delivery", deleted "of such provender, material, supplies, or provisions" and after "such work" substituted "give a notice of a right of action on the bond" for "deliver or send by certified mail to the contractor a notice in writing stating in substance and effect that"; deleted former (1)(a) and (1)(b) stating content of notice and that bond would be held;

inserted (2) detailing notice delivery and content requirements; inserted (3) making prescribed notice exclusive; and made minor changes in phraseology.

Case Notes

Material Supplier Held to Be Subcontractor: Under a contract that defined "work" as including construction labor and all materials and equipment incorporated into the construction project, a firm which merely served as a conduit for materials used by a general contractor was held to be a subcontractor, and a supplier of that firm was held entitled to pursue action on the general contractor's bond. Robintech, Inc. v. White & McNeil Excavating, Inc., 218 M 404, 709 P2d 631, 42 St. Rep. 1690 (1985).

Time for Raising Lack of Notice as Defense: In an action by a materialman against a general contractor for material supplied to the subcontractor, the general contractor could not raise the affirmative defense that statutory notice was not given for the first time upon submitting proposed findings of fact and conclusions of law. The materialman alleged that he had complied with all conditions precedent to bringing the suit. The general contractor entered a general denial, and a general denial did not put notice in issue. Treasure St. Indus., Inc. v. Leigland, 151 M 288, 443 P2d 22 (1968).

Waiver of Notice: A materialman brought an action against the general contractor for materials supplied to subcontractor. The general contractor waived the right to notice from materialman where he knew from beginning that the materialman was supplying masonry materials to the subcontractor for the job and consented thereto. Treasure St. Indus., Inc. v. Leigland, 151 M 288, 443 P2d 22 (1968), followed in Robintech, Inc. v. White & McNeil Excavating, Inc., 218 M 404, 709 P2d 631, 42 St. Rep. 1690 (1985).

Defense Not Available to Contractor: Plaintiff brought an action against a highway contractor and his surety to recover for supplies furnished to drivers of trucks of a subcontractor who had not received pay therefor. The defense that the subcontractor deducted the amount owing from the wages of the drivers and that he was the agent of the plaintiff in collecting for the supplies did not alter the liability of the contractor and his surety under their contracts. H. Earl Clack Co. v. Staunton, 105 M 375, 72 P2d 1022 (1937).

Subcontractor Agent of Contractor: This section making the giving of notice a condition precedent to the right to proceed to suit does not deprive one of right to maintain an action instituted on the theory that the subcontractor was the agent of the contractor, without having first given notice. The contractor and his surety were liable for the indebtedness incurred to materialman who furnished supplies to subcontractor as the relationship of principal and agent was established by contracts. H. Earl Clack Co. v. Staunton, 105 M 375, 72 P2d 1022 (1937).

Collateral References

Counties *key* 123; Municipal Corporations *key* 347(1); States *key* 101.

20 C.J.S. Counties §160; 73A C.J.S. Public Contracts §31.

64 Am. Jur. 2d Public Works and Contracts §§97 through 99.

18-2-207. Costs — attorney fees.

Compiler's Comments

1995 Amendment: Chapter 130 near beginning substituted "the surety, payor, or other person liable on the security" for "such surety or sureties" and near end substituted "notice required in 18-2-206" for "notice hereinbefore mentioned"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Attorney Fees: Under this section the prevailing plaintiff is entitled to recover as compensation for attorneys such sum as the court shall adjudge reasonable for the institution and prosecution of proceedings against surety. U.S. v. Reliance Ins. Co. of Philadelphia, 227 F. Supp. 939 (D.C. Mont. 1964).

Collateral References

73A C.J.S. Public Contracts §61.

Amount of compensation of attorney for services as to public contract, in absence of contract or statute fixing amount. 56 ALR 2d 195.

18-2-208. Exceptions.

Compiler's Comments

1995 Amendment: Chapter 130 in (2), after "obligations in", substituted "the security that is considered necessary" for "such bond as may be deemed necessary" and after "contract" deleted "secured thereby"; in (3) substituted "The notice required by 18-2-204 to be given within 90 days

after completion" for "Nothing herein referred to with reference to the giving of such notice within 90 days from and after completion"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Supplier of Subcontractor Not Prohibited From Pursuing Claim Against General Contractor's Bond: Luciano supplied pipe supplies to Petroleum Pipe and Supply Company, a subcontractor for Northwest Pipe and Casing Company. Northwest advanced money to Petroleum, and Luciano supplied pipe to Petroleum in advance of payment for the pipe. Petroleum subsequently went bankrupt, and Luciano made a claim against Northwest's bond for the amount owed by Petroleum for advanced supplies. Northwest argued that the language of the statute prohibited a claim by Luciano. The Supreme Court stated that the statute had to be strictly construed in order to ensure that those persons who should be protected by a contractor's bond were in fact protected. The Supreme Court held that Northwest had only loaned money to Petroleum and that although Petroleum would not have been able to sue on the bond, no money had been lent to Luciano and he was entitled to seek recovery from the general contractor's bond for supplies advanced to Petroleum. Luciano v. NW. Pipe & Casing Co., 264 M 148, 870 P2d 99, 51 St. Rep. 196 (1994).

Collateral References

Counties *key* 123; Municipal Corporations *key* 346; States *key* 101.

20 C.J.S. Counties §160; 64 C.J.S. Municipal Corporations §§1055 through 1064; 81A C.J.S. States §§185 through 193.

Authority of state, municipality, or other governmental entity to accept late bids for public works contracts. 49 ALR 5th 747.

Relative rights, as between surety on public work contractor's bond and unpaid laborers or materialmen, in percentage retained by obligee. 61 ALR 2d 899.

Right of person furnishing material or labor to maintain action on contractor's bond. 118 ALR 56; 77 ALR 21.

Part 3
Contract Requirements and Restrictions

Part Law Review Articles

"Best Value" Procurement for Cities and Counties, Nelson, 65 Tex. B. J. 36 (2002).

Part Collateral References

Effect of stipulation, in public building or construction contract, that alteration or extras must be ordered in writing. 1 ALR 3d 1273.

18-2-301. Bids required — advertising.

Compiler's Comments

1997 Amendments: Chapter 57 inserted (5) providing that state laws governing advertising and competitive bidding do not apply when the Department of Fish, Wildlife, and Parks is preserving or restoring historic buildings it owns in Bannack if certain conditions are met. Amendment effective July 1, 1997.

Chapter 249 in (1), near middle after "amount involved is", substituted "$75,000" for "$25,000". Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 at end of (4) substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 518 in (1), near beginning after "unlawful for", deleted "the board of examiners or"; in (3), after "If", substituted "responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state" for "no bid for such work is accepted, the work may not be done or accomplished. The work may be readvertised from time to time until awarded to a qualified competitive bidder"; and made minor changes in style. Amendment effective April 24, 1993.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Case Notes

Scope of Section: This statute deals with the procedure to be followed when and if a contract is to be awarded. It does not set forth the instances when a contract must be let or prohibit state

officers and employees from performing work on state buildings. Nat'l Elec. Contractors Ass'n v. Bd. of Education, 137 M 382, 352 P2d 258 (1960).

Supplies: Fire insurance on state buildings is not included within the term "supplies" under sections 82-1127 and 82-1128, R.C.M. 1947 (now repealed), for the furnishing of which the Board of Examiners (see 1993 amendment) must call for bids under proper advertisements. Miller Ins. Agency v. Porter, 93 M 567, 20 P2d 643 (1933), distinguished in Wheeler v. Mitchell, 110 M 385, 101 P2d 1071 (1940).

Authority of Board of Examiners: When the Board of Examiners (see 1993 amendment) had exercised the powers conferred upon it by the 1889 Montana Constitution and legislative enactments of the state, its functions were ended. Porter v. Hartley, 67 M 244, 216 P 344 (1923); State ex rel. Schneider v. Cunningham, 39 M 165, 101 P 962 (1909).

Awarding the Contract: The law imposes upon the Board of Examiners (see 1993 amendment) the duty to award the contract to the lowest responsible bidder, unless the bids be rejected. Whenever, after compliance with the statutory prerequisites essential to the valid acceptance of a bid, it has regularly awarded the contract, there spring into existence vested rights which the Board cannot destroy or impair. It cannot insert into the formal written contract any condition not consonant with the contract already made by virtue of the acceptance of the bid. In the absence of fraud, accident, and mistake, or other legal reason sufficient to render the acceptance void or voidable, the contract resulting therefrom cannot (unless by mutual consent) be changed or annulled, nor may its obligation be impaired, by any act of the Board. State ex rel. Robert Mitchell Furniture Co. v. Toole, 26 M 22, 66 P 496 (1901).

Constitutionality: The provisions of section 82-1128, R.C.M. 1947 (now repealed), requiring all contracts to be advertised, were not repugnant to Art. V, sec. 30, 1889 Mont. Const. State ex rel. Robert Mitchell Furniture Co. v. Toole, 26 M 22, 66 P 496 (1901).

Municipal Contracts: Where advertising for bids is a statutory requirement, neither the municipality nor its agents can make a contract binding upon it without compliance with the formalities so prescribed. State ex rel. Robert Mitchell Furniture Co. v. Toole, 26 M 22, 66 P 496 (1901).

Rescission of Contract: The board had regularly accepted a bid for supplies. Its action in subsequently attempting to rescind the contract because the bidder was shown to be a corporation employing nonunion workmen and hostile to labor organizations was void. State ex rel. Robert Mitchell Furniture Co. v. Toole, 26 M 22, 66 P 496 (1901).

Supplies: An advertisement for proposals for the furnishing of supplies was not made in compliance with section 82-1128, R.C.M. 1947 (now repealed), but was made only in a newspaper which had the contract for public printing. The contention that the publication was lawful because the advertisement was public printing was without merit. State ex rel. Robert Mitchell Furniture Co. v. Toole, 26 M 22, 66 P 496 (1901).

Approval of Contracts:

Under section 82-1141, R.C.M. 1947 (now repealed), the duty of the Governor and State Treasurer to approve a contract for state printing was not ministerial but involved judicial discretion and could not be controlled by mandamus. State ex rel. St. Publishing Co. v. Smith, 23 M 44, 57 P 449 (1899).

A compliance with section 82-1141, R.C.M. 1947 (now repealed), requiring approval of contracts by Governor and State Treasurer, was indispensable to the validity of a contract for public printing. A contract entered into by a party with the Board of Examiners without the approval of the Governor and State Treasurer was void. State ex rel. St. Publishing Co. v. Hogan, 22 M 384, 56 P 818 (1899).

Collateral References

States *key* 98.

73A C.J.S. Public Contracts §§5, 6, 14 through 20; 81A C.J.S. States §§160 through 167.

64 Am. Jur. 2d Public Works and Contracts §§29, 33, 52 through 58, 62 through 64.

Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid. 89 ALR 4th 587.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract. 65 ALR 4th 93.

Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision. 56 ALR 4th 1042.

Duty of public authority to disclose to contractor information, allegedly in its possession, affecting cost or feasibility of project. 86 ALR 3d 182.

Liability of municipality or other governmental body on implied or quasi contract for value of property or work. 33 ALR 3d 1164.

Rights and remedies of bidder for public contract who has not entered into a contract, where bid was based on his own mistake of fact or that of his employees. 52 ALR 2d 792, superseded by 2 ALR 4th 991.

Right to award public contract to one other than lowest financial bidder as affected by fact that bidder furnishes bond. 86 ALR 131.

Mandamus to compel consideration, acceptance, or rejection of bids for public contract. 80 ALR 1382.

Right in submitting proposal for bids on public works to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work. 79 ALR 225.

What is an "emergency" within statutory provision excepting emergency contract or work for requirement of bidding on public contracts. 71 ALR 173.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law. 69 ALR 697.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

18-2-302. Bid security — waiver — authority to submit.

Compiler's Comments

2003 Amendment: Chapter 203 inserted (1)(b) restricting requiring bond from particular company or producer; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 282 inserted (3) requiring bid security to be submitted by individual authorized to submit it and requiring form and content of security to comply with specifications. Amendment effective October 1, 1999.

Applicability: Section 5, Ch. 282, L. 1999, provided: "[This act] applies to bids made in response to requests for bids made after October 1, 1999."

1997 Amendment: Chapter 249 in (2), at end, substituted "$25,000" for "$5,000". Amendment effective July 1, 1997.

1995 Amendment: Chapter 130 in (1), near end of second sentence, inserted "a certificate of deposit, a money market certificate"; in (1)(a), after "drawn and issued by a", substituted current language relating to federally chartered or state-chartered bank or savings and loan association for "national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana"; inserted (1)(b) relating to credit union; in (1)(c) substituted "surety company" for "surety corporation"; and made minor changes in style. Amendment effective March 13, 1995.

1987 Amendment: In (1), at beginning, inserted exception clause; and inserted (2) authorizing contracting agency to waive bid security requirements for projects costing less than $5,000.

Collateral References

73A C.J.S. Public Contracts §§15, 18.

64 Am. Jur. 2d Public Works and Contracts §§59, 60.

Liability of surety on bid bond for public work. 70 ALR 2d 1370.

18-2-303. Construction bids — minimum requirements — effect of failure to comply.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Applicability: Section 5, Ch. 282, L. 1999, provided: "[This act] applies to bids made in response to requests for bids made after October 1, 1999."

18-2-306. Time of final acceptance and final payment on construction contracts — interest.

Compiler's Comments

2001 Amendment: Chapter 181 in (2) near end of first sentence before "18-1-104" inserted "17-8-242 or" and at end inserted "as applicable"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Effective Date: This section is effective October 1, 1999.

Applicability: Section 3, Ch. 439, L. 1999, provided: "[This act] applies to contracts entered into after October 1, 1999."

18-2-312. Excusable delays.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §109.

Construction contract provision excusing delay caused by "severe weather". 85 ALR 3d 1085.

Validity and construction of "no damage" clause with respect to delay in building or construction contract. 74 ALR 3d 187.

18-2-313. Contract provisions necessary for federal funds.

Collateral References

States *key* 97.

81A C.J.S. States §§158, 159.

64 Am. Jur. 2d Public Works and Contracts §§3, 4.

18-2-314. Cost-plus system invalid.

Collateral References

States *key* 100.

81A C.J.S. States §§158, 159.

18-2-315. State purchasing not affected.

Collateral References

States *key* 93.

81A C.J.S. States §155.

18-2-316. Limit on retainage for public contracts.

Compiler's Comments

Effective Date: Section 4, Ch. 222, L. 1999, provided that this section is effective July 1, 1999.

Applicability: Section 5, Ch. 222, L. 1999, provided: "[This act] applies to contracts entered into after July 1, 1999."

Part 4
Special Conditions — Labor

Part Compiler's Comments

Statement of Intent: The statement of intent attached to HB 79 (Ch. 139, L. 1981) provided: "A statement of intent is required for this bill because it grants the Commissioner of Labor and Industry rulemaking authority regarding the preference for Montana labor in public works contracts. This bill intends that the commissioner adopt rules concerning areas such as the use of apprentices, methods of computing standard prevailing wage rates, and geographical areas subject to the rates. The commissioner shall also have the authority to adopt rules as may be needed to ensure that reporting and enforcement measures are complied with."

Part Case Notes

Failure to Pay Wage Rates Prescribed in Contract — Employer Liable for Penalties: Contractors appealed from a District Court order, arguing that because wage rates were not adopted in compliance with administrative procedures, inclusion constituted an illegal provision in the contract with which contractors were not required to comply. The Supreme Court held that contractors were legally bound to pay the wage rates agreed to by all parties and contained in a voluntarily executed contract. Lix v. Kenney, 246 M 426, 804 P2d 391, 48 St. Rep. 23 (1991).

Primary Contractor Liable When Subcontractor Defaults: Subcontractor clauses that speak of a continuing obligation to see that the subcontractor abides by the terms and conditions of a collective bargaining agreement established between a primary contractor and union employees, including fringe benefits, if breached by the subcontractor become a legal and enforceable promise to pay on the part of the primary contractor. Sletten Constr. Co. v. Audit Services, Inc., 190 M 123, 619 P2d 177, 37 St. Rep. 1777 (1980).

Part Attorney General's Opinions

Application of Wage Rate to Service Contracts: The provisions of the prevailing wage rate law apply to service contracts entered into by the state, counties, municipalities, or school districts. The term "public works contracts" in 18-2-403(2) includes all contracts subject to the requirements of 18-2-403(1). 42 A.G. Op. 60 (1988).

Workfare — Prevailing Wage for Similar Work: Section 53-3-304 (now repealed) requires that all participants in the "workfare" program receive benefits equal to wages paid at the prevailing rate for similar county work. The prevailing wage as determined under the "Little Davis-Bacon

Act" is the most frequent or commonly used rate of pay. The prevailing wage is not necessarily the minimum wage. The county may pay the minimum wage only if similar work, as that done under workfare, has generally been performed for the minimum wage or if the county has never had similar work performed. To determine what is similar work, the county should classify work to be performed under the workfare program with other work closely resembling the type currently being done for the county. 40 A.G. Op. 3 (1983).

Part Collateral References

64 Am. Jur. 2d Public Works and Contracts §§72, 226.

18-2-401. Definitions.

Compiler's Comments

2003 Amendment: Chapter 293 in definition of standard prevailing rate of wages in (a)(ii) in second sentence near middle after "performed by" inserted "electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and". Amendment effective April 11, 2003.

2001 Amendment: Chapter 517 in definition of bona fide resident of Montana at beginning of second sentence deleted "Sojourners or"; inserted definitions of contractor and employer; in definition of standard prevailing rate of wages in (a)(ii) at end of first complete sentence after "computed" substituted "by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes" for "from a weighted average wage rate based on all of the hours worked on work", inserted second through fourth full sentences regarding survey information and setting prevailing wages for each craft, and near middle of fifth full sentence after "unless the" substituted "annual survey of construction contractors and the biennial survey of nonconstruction service employers" for "survey of employers"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

1999 Amendments — Composite Section: Chapter 30 in definition of public works contract inserted (b) excluding certain contracts entered into by the department of public health and human services; and made minor changes in style. Amendment effective February 18, 1999.

Chapter 289 in definition of heavy and highway construction wage rates after "department of labor" inserted "and zone pay" and at end inserted reference to staging yards and new or reopened pits; inserted definition of project location; inserted definition of special circumstances; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 496 in definition of public works contract in first sentence after "means a contract for construction services" deleted "or nonconstruction services" and after first "political subdivision" inserted "or for nonconstruction services let by the state, county, municipality, or political subdivision" and inserted second sentence exempting certain schools districts from nonconstruction services job classifications. Amendment effective April 27, 1999.

Effective Date — Applicability: Section 2, Ch. 30, L. 1999, provided: "[This act] is effective on passage and approval [approved February 18, 1999] and applies to contracts entered into on or after [the effective date of this act]."

Section 3, Ch. 289, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act]." Effective July 1, 1999.

Section 2, Ch. 496, L. 1999, provided: "[This act] is effective on passage and approval [approved April 27, 1999] and applies to school district contracts entered into on or after [the effective date of this act]."

1997 Amendment: Chapter 522 inserted definitions of construction services, nonconstruction services, and public works contract; deleted definition of labor that read: ""Labor" means all services in excess of $25,000 performed in construction, maintenance, or remodeling work in a state, county, municipal, school district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work"; in definition of standard prevailing rate of wages, in (a)(ii) near beginning of second sentence after "wages", substituted "must be computed from" for "is" and at end inserted "unless the survey of employers in the district does not generate sufficient data" and inserted third through seventh sentences regarding use of alternative methods of wage rate determination; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to

adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

1993 Amendment: Chapter 609 in (5), (7)(a)(ii), and (7)(b), after "contributions", inserted "that meet(s) the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor"; in two places in (5), in two places in (7)(a)(i), and in (7)(a)(ii), after "heavy", inserted "and"; in (6), after "remodeling", inserted "work" and after "school" substituted "district, or political subdivision project" for "work"; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

1987 Amendment: In (1) inserted "in excess of $25,000", after "construction" deleted "repair, or", and after "maintenance" inserted "or remodeling"; inserted definitions of district, heavy highway construction wage rates, and work of a similar character; in (7)(a) substituted "or "standard prevailing wage"" for "including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the county or locality in which the work is being performed"; inserted (7)(a)(i) referring to heavy highway construction wage rates; in (7)(a)(ii) inserted "other than heavy highway construction wages", in two places substituted "district" for "county or locality", and inserted last sentence concerning weighted average; in (7)(b), in two places, substituted "district" for "county or locality"; and made minor changes in phraseology.

1981 Amendment: Added opening phrase of section providing that definitions apply to part 4; inserted (2) defining Commissioner; and inserted (3) defining Department.

Case Notes

"Heavy or Highway" Construction Construed — "Utility Rights-of-Way" Construed: After receiving complaints about the wages being paid to workers constructing tunnels for heating and electric utilities on the Montana State University-Bozeman campus, the Montana Department of Labor and Industry (DLI) held that the construction projects were "heavy" construction within the meaning of subsection (5) and (7) of this section and that a higher wage should be paid. The DLI also held that the contracting state agency, the Department of Administration (DA), was liable for back wages. The DA appealed the DLI decision to the District Court, which held that the project was not "heavy" construction because it was not a utility "right-of-way". The Supreme Court held that the District Court erred in applying the definition of "right-of-way" found in 60-1-103 and in holding that a "right-of-way" is only an interest in land. The Supreme Court pointed out that this section sets out a listing of projects that are to be built or constructed. The Supreme Court noted that not only could an interest in land not be "constructed" but that the inclusion of "rights-of-way" in the list of types of projects listed in subsection (5) of this section was not intended by the Legislature, because of the use of the phrase "such as", to be an exclusive list of projects. The Supreme Court therefore held that the tunnels were "utility rights-of-way", that they qualified as "heavy construction" within the meaning of subsection (5) of this section, and that a higher wage should have been paid by the DA. Dept. of Administration v. Ekanger, 284 M 151, 943 P2d 994, 54 St. Rep. 821 (1997).

Little Davis-Bacon Act — No Unconstitutional Delegation by Legislature: Appellant contended that 18-2-401(7)(b) is an unconstitutional delegation of authority from the Legislature to private parties for determination of the prevailing wage rate. The court held that

such provision was not applicable to the facts of the case. The case is governed by 18-2-401(7)(a). Montana's Little Davis-Bacon Act authorizes the Commissioner of Labor to establish standard prevailing rates using union contracts and "other information" as guidelines. Therefore, collective bargaining agreements are advisory, but not compulsory, where there is other evidence of prevailing wage rates in the community as there was in the Bozeman area. No unconstitutional delegation of authority has occurred in 18-2-401(7)(a). Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985).

Commissioner to Determine Standard Prevailing Rate of Wages: Plaintiff was awarded the mechanical subcontract on a research laboratory being constructed by the State. The State received a complaint that plaintiff was not paying the "standard prevailing rate" (SPR) of wages. The State investigated and concluded that the complaint was legitimate. Plaintiff commenced a declaratory judgment action, and judgment was entered in his favor. On appeal, the Supreme Court held that the authority to determine the SPR rests exclusively with the Commissioner of Labor and Industry. The District Court was incorrect in allowing the contractor to determine the SPR. The court also held that this was not reversible error since the SPR existed only somewhere in the bureaucracy and plaintiff was unaware of it. Because of this, there was no mutual assent under the contract. Thompkins v. Fuller, 205 M 168, 667 P2d 944, 40 St. Rep. 1192 (1983).

"Work of a Similar Character" Construed: In interpreting the meaning of the "standard prevailing rate" of wages paid by other contractors for "work of a similar character", the Supreme Court held that "work of a similar character" refers to projects as a whole and not to individual labor. Thompkins v. Fuller, 205 M 168, 667 P2d 944, 40 St. Rep. 1192 (1983).

18-2-402. Standard prevailing rate of wages.

Compiler's Comments

1987 Amendment: At end of first sentence of (1) substituted "applicable to public works contracts under this part" for "in the county or locality in which the contract is to be performed" and at end of second sentence substituted "on which the rates are based" for "from which rates and jurisdictional areas applicable to public works contracts under this part may be ascertained".

Administrative Rules

ARM 24.17.101 Purpose and scope.
ARM 24.17.103 Definitions.
ARM 24.17.121 Establishing standard prevailing rate of wages and fringe benefits.
ARM 24.17.124 Department assistance and new job classification rates.
ARM 24.17.127 Adoption of standard prevailing rate of wages.
Title 24, chapter 17, part 5, ARM Regulation of construction contracts.
Title 24, chapter 17, part 6, ARM Nonconstruction services.

Case Notes

Lease Between City and Finance Company — Public Works Contract: Pollard Finance, Inc., arranged to have a building built on land owned by the city of Bozeman and leased the building to the city. In an action by the Commissioner of Labor for unpaid wages mandated by 18-2-401, et seq., the court held that the lease agreement constituted a public works contract subject to those provisions. There was substantial credible evidence to support the finding by the trial court that the lease was in fact a sale of the building to the city and that this was in effect a public works project. Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985).

Little Davis-Bacon Act — No Unconstitutional Delegation by Legislature: Appellant contended that 18-2-401(7)(b) is an unconstitutional delegation of authority from the Legislature to private parties for determination of the prevailing wage rate. The court held that such provision was not applicable to the facts of the case. The case is governed by 18-2-401(7)(a). Montana's Little Davis-Bacon Act authorizes the Commissioner of Labor to establish standard prevailing rates using union contracts and "other information" as guidelines. Therefore, collective bargaining agreements are advisory, but not compulsory, where there is other evidence of prevailing wage rates in the community as there was in the Bozeman area. No unconstitutional delegation of authority has occurred in 18-2-401(7)(a). Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985).

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Law Review Articles

Prevailing Wages: Costly to State and Local Taxpayers, Gamrat, 20 Gov't Union Rev. 1 (2002).

Construction Covered by the Prevailing Wage Act, Miller, 31 Urb. Law. 97 (1999).

"Privatization" and Labor Relations: Some Welcome Guidance From the NLRB, Locke, 38 Lab. L.J. 166 (1987).

The New Prevailing Wage Law: Problems for Public Contractors Prevail, Taldone, 57 N.Y. St. B.J. 39 (July 1985).

An Analysis of the Litigation Regarding the Regulations Implementing the Davis-Bacon Act, Caruso, 31 Fed. B. News & J. 117 (1984).

The Case Against the Davis-Bacon Act, Schulman, 4 Gov't Union Rev. 23 (1983).

Much Ado About Davis-Bacon: A Critical Review and New Evidence, Allen, 26 J.L. & Econ. 707 (1983).

Prevailing Wage Laws of the States, Thieblot, 4 Gov't Union Rev. 3 (1983).

Employee Rights: Enforcement of the Public Works Prevailing Wage Obligation, 14 Loy. L.A.L. Rev. 311 (1981).

Collateral References

Counties *key* 122, et seq.; Municipal Corporations *key* 339, et seq.; Schools and School Districts *key* 80, et seq.; States *key* 100, et seq.

20 C.J.S. Counties §152; 64 C.J.S. Municipal Corporations §§1047, 1048; 81A C.J.S. States §§158, 159.

64 Am. Jur. 2d Public Works and Contracts §§216, 227, 228.

What projects involve work subject to state statutes requiring payment of prevailing wages on public works projects. 10 ALR 5th 337.

Who is "employee," "workman," or the like, of contractor subject to state statute requiring payment of prevailing wages on public works projects. 5 ALR 5th 513.

Validity of statute, ordinance, or charter provision requiring that workmen on public works be paid the prevailing or current rate of wages. 18 ALR 3d 944.

18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception.

Compiler's Comments

2003 Amendment: Chapter 467 at beginning of (4) inserted exception clause; inserted (5) allowing employer who performs public works contract for nonconstruction services to pay disabled employees less than standard prevailing wages if employer conforms with federal Fair Labor Standards Act and pays wages equal to or above state's minimum wage; and made minor changes in style. Amendment effective April 23, 2003.

Effective Date — Applicability: Section 3, Ch. 467, L. 2003, provided: "[This act] is effective on passage and approval [approved April 23, 2003] and applies to contracts entered into on or after [the effective date of this act]."

1999 Amendment: Chapter 289 in (2) after "contracts" inserted "for construction services" and after "highway construction" inserted "that are conducted at the project location or under special circumstances"; at end of (3) substituted "for heavy and highway construction services conducted at the project location or under special circumstances" for "for the project"; inserted (4) requiring certain pay provisions in public works contracts for nonconstruction services; inserted (5) exempting transportation of certain items to or from project location from standard prevailing wages requirement; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 3, Ch. 289, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act]." Effective July 1, 1999.

1997 Amendment: Chapter 522 in (1), at beginning after "In", substituted "every public works contract" for "any contract let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under any law of this state" and near middle, before "contract", inserted "public works"; in (3), at beginning after "every", inserted "public works"; in (4), at beginning after "contract", inserted "other than a public works contract"; in (5), at beginning before "contract" and near middle before "contracts", inserted "public works"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

1993 Amendments — Composite Section: Chapter 464 inserted (2)(a) requiring payment of travel allowance; at end of (2)(b) deleted "and travel allowance provisions"; inserted (2)(b)(i) requiring that the standard prevailing wage rate meet federal program criteria; in (4), near beginning after "financed", substituted "from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993" for "in whole or in part by tax-exempt industrial revenue bonds" and at end, after "being performed", inserted "unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 609 in (1), (2), and in two places in (3), after "heavy", inserted "and"; inserted (2)(a) requiring payment of travel allowance; at end of (2)(b) deleted "and travel allowance provisions"; inserted (2)(b)(i) requiring that the standard prevailing wage rate meet federal program criteria; and made minor changes in style. Amendment effective May 3, 1993.

A style change in (5) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Effective Date: Section 3, Ch. 420, L. 1991, provided: "[This act] [18-2-403(4)] is effective July 1, 1991."

1987 Amendment: At beginning of (2) inserted "All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor"; near end of (2) substituted "district" for "county or locality"; inserted (3) requiring payment of heavy highway construction wage rates; and made minor changes in phraseology.

1981 Amendment: Inserted "bid specification and the" between "inserted in the" and "contract" in (1); added (3) shifting obligation to pay standard prevailing wage rate from contractor to public contracting agency in certain situations.

Administrative Rules

ARM 24.17.101 Purpose and scope.

ARM 24.17.144 Obligations of public contracting agencies.

ARM 24.17.147 Obligations of employers, contractors, and subcontractors.

Case Notes

Public Works Project — No Prevailing Wage Provision — Penalties Upheld: The trial court, having found a new building lease to be a sales contract, and thus a public works contract,

properly imposed penalties for the city's failure to include a prevailing wage rate provision in the public works contract. Section 39-3-206 provides that if an employer on a public works project is delinquent, his obligation to pay prevailing wages includes a civil penalty. Section 18-2-403 provides that if a provision for the payment of the prevailing wage rate is not included by the public contracting body in the contract with the contractor, then the obligation to pay the prevailing wage is on the public contracting agency. While this section is silent as to shifting penalties, the Supreme Court found that an interpretation of the statute allowing civil penalties against the contracting agency accords with the underlying purpose of the statute to serve as a deterrent. Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985).

Attorney General's Opinions

Prevailing Wage Requirements Applicable to Offsite Construction Work — Project Location Indicative of Appropriate Rate: The 1997 amendments to the prevailing wage requirements in this section extend to any public works contract, without a work situs limitation. A contractor's offsite fabrication of items for onsite installation constitutes construction within the scope of the term "construction services". Therefore, the prevailing wage requirements in subsection (2)(b) of this section apply to fabrication of materials performed offsite by a contractor for installation or use at the site of construction under a public works contract. With respect to offsite services, the prevailing wage district is the district where the onsite construction occurs. 47 A.G. Op. 12 (1998).

Application of Wage Rate to Service Contracts: The provisions of the prevailing wage rate law apply to service contracts entered into by the state, counties, municipalities, or school districts. The term "public works contracts" in subsection (2) of this section includes all contracts subject to the requirements of 18-2-403(1). 42 A.G. Op. 60 (1988).

Law Review Articles

Construction Worker Residency Requirements: A Constitutional Response, 17 New England L. Rev. 461 (1981, 1982).

Collateral References

Counties *key* 122, et seq.; Municipal Corporations *key* 339, et seq.; Schools and School Districts *key* 80, et seq.; States *key* 100, et seq.

20 C.J.S. Counties §152; 64 C.J.S. Municipal Corporations §§1047, 1048; 81A C.J.S. States §§158, 159.

64 Am. Jur. 2d Public Works and Contracts §§220 through 225, 231, 235 through 237.

Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid. 89 ALR 4th 587.

Validity of state statute or local ordinance requiring, or giving preference to, the employment of residents by contractors or subcontractors engaged in, or awarded contracts for, the construction of public works or improvements. 36 ALR 4th 941.

Construction and operation of "equal opportunities clause" requiring pledge against racial discrimination in hiring under construction contract. 44 ALR 3d 1283.

18-2-404. Approval of public works contract — bond.

Compiler's Comments

1997 Amendment: Chapter 522 in (1), near middle after "contracting", deleted "state"; in (2), at beginning after "In all", inserted "public works" and at end, before "contract", inserted "public works"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard

prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

Collateral References

73A C.J.S. Public Contracts §§6, 25, 48 through 52.

18-2-406. Posting wage scale and fringe benefits.

Compiler's Comments

2001 Amendment: Chapter 517 at beginning substituted "The contractor performing" for "Contractors, subcontractors, and employers who are performing", after "providing" inserted "construction", near middle after "project or" substituted "staging area" for "work area", after "first day of work" inserted "and continuing for the entire duration of the project", after "all wages" inserted "and fringe benefits", and at end after "employees" deleted "employed on such site or work area"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

18-2-407. Forfeiture for failure to pay standard prevailing wage.

Compiler's Comments

2003 Amendment: Chapter 467 in (1) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective April 23, 2003.

Effective Date — Applicability: Section 3, Ch. 467, L. 2003, provided: "[This act] is effective on passage and approval [approved April 23, 2003] and applies to contracts entered into on or after [the effective date of this act]."

1999 Amendment: Chapter 389 in (1) at end of second sentence substituted "general fund" for "employment security account, as provided in 39-51-409, and must be used for enforcement"; and made minor changes in style. Amendment effective July 1, 1999.

1995 Amendment: Chapter 90 in second sentence of (1) substituted "employment security account, as provided in 39-51-409" for "unemployment insurance administration account, as provided in 39-51-406"; and in three places in (2), after "commissioner of labor", inserted "and industry". Amendment effective March 9, 1995.

1993 Amendment: Chapter 609 in (1), in first sentence after "forfeit to the", substituted remainder of sentence relating to 20% penalty rate, second sentence relating to deposition of money in unemployment insurance administration account, and third sentence requiring forfeiture of wages owed plus $25 a day for underpaying employee for "contracting agency the sum of $25 a day for each worker underpaid"; at end of (2), after "part 2", inserted exception clause; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

1989 Amendment: In middle of last sentence inserted "or the commissioner of labor on behalf of all the underpaid workers"; and made minor change in phraseology. Amendment effective July 1, 1989.

Applicability: Section 9, Ch. 554, L. 1989, provided: "[This act] applies to all wage claims filed with the department after July 1, 1989."

Collateral References

73A C.J.S. Public Contracts §48.

18-2-409. Montana residents to be employed on state construction contracts.

Compiler's Comments

2003 Amendment: Chapter 564 in (1) near end after "contract" inserted "each contractor shall ensure that" and after "50%" substituted "of the contractor's workers performing labor on the project are bona fide Montana residents" for "of the work must be performed by bona fide Montana residents"; in (2) in third sentence at beginning after "If" deleted "there are two or more contracts and", after "personnel" substituted "each contractor" for "a contractor", after "workers" inserted "on the project", and at end after "residents" deleted "and one or more of the other

contracts must provide for a higher percentage of Montana residents so that 50% of the workers on the project will be Montana residents"; and made minor changes in style. Amendment effective May 5, 2003.

Effective Date — Applicability: Section 2, Ch. 564, L. 2003, provided: "[This act] is effective on passage and approval [approved May 5, 2003] and applies to contracts entered into on or after [the effective date of this act]."

Statement of Intent: The statement of intent attached to Ch. 549, L. 1985, provided: "A statement of intent is required for this bill because section 1 grants rulemaking authority to the commissioner of labor and industry.

The rules should, at a minimum:

(1) provide the most practical method or methods for quantifying the requirement that at least 50% of the workers on a project must be Montana residents so that the quantification method or methods can be applied to contracts and projects to ensure that the requirement is complied with;

(2) include a procedure by which the commissioner will determine whether or not 50% of the workers of a contractor are Montana residents; and

(3) include procedures for investigating complaints and enforcing section 1."

Applicability: Section 4, Ch. 549, L. 1985, provided: "This act applies to state construction contracts for which bids are solicited after the effective date of this act." Effective October 1, 1985.

Administrative Rules

ARM 24.17.101 Purpose and scope.

ARM 24.17.103 Definitions.

ARM 24.17.144 Obligations of public contracting agencies.

ARM 24.17.147 Obligations of employers, contractors, and subcontractors.

Law Review Articles

Residency Requirements for Municipally-Financed Construction Contracts and the Dormant Commerce Power (White v. Massachusetts Council of Construction Employers, Inc., 406 US 20 (1983)), Strauss, 28 Wash. U.J. Urb. & Contemp. L. 429 (1985).

Local Hire and the State-Market-Participant Doctrine: A Trojan Horse for the Commerce Power of Congress, Clarke, 33 Clev. St. L. Rev. 191 (1984-85).

State or Local Governments Acting as Market Participants Are Not Subject to Commerce Clause Restraints (White v. Massachusetts Council of Construction Employers, Inc., 103 S Ct 1042 (1983)), Freeman, 10 J. Contemp. L. 217 Ann. (1984).

Collateral References

Validity of state statute or local ordinance requiring, or giving preference to, the employment of residents by contractors or subcontractors engaged in, or awarded contracts for, the construction of public works or improvements. 36 ALR 4th 941.

18-2-411. Creation of prevailing wage rate districts.

Compiler's Comments

2005 Amendment: Chapter 538 in (5) inserted second sentence requiring that the standard prevailing rate of wages for construction services, as determined by the commissioner, must be used for calculating an apprentice's wage; and made minor changes in style. Amendment effective October 1, 2006.

Preamble: The preamble attached to Ch. 538, L. 2005, provided: "WHEREAS, the Legislature has required the creation of at least 10 prevailing wage rate districts in 18-2-411, and these districts cover the entire state and use an annual survey to establish prevailing wage rates; and

WHEREAS, the Department of Labor and Industry has created a separate biennial survey of journeyman's wages in districts outside of Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties for a building construction occupation and has used this wage rate rather than the standard prevailing wage rate as a base for calculating the wages of apprentices, thus duplicating efforts."

1993 Amendment: Chapter 609 in (1), after "heavy", inserted "and". Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Attorney General's Opinions

Prevailing Wage Requirements Applicable to Offsite Construction Work — Project Location Indicative of Appropriate Rate: The 1997 amendments to the prevailing wage requirements in

18-2-403 extend to any public works contract, without a work situs limitation. A contractor's offsite fabrication of items for onsite installation constitutes construction within the scope of the term "construction services". Therefore, the prevailing wage requirements in 18-2-403(2)(b) apply to fabrication of materials performed offsite by a contractor for installation or use at the site of construction under a public works contract. With respect to offsite services, the prevailing wage district is the district where the onsite construction occurs. 47 A.G. Op. 12 (1998).

18-2-412. Method for payment of standard prevailing wage

Compiler's Comments

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Effective Date: Section 11, Ch. 609, L. 1993, provided that this section is effective on passage and approval. Approved May 3, 1993.

18-2-421. Notice.

Compiler's Comments

1997 Amendment: Chapter 522 near beginning of second sentence, after "case of", substituted "public works contracts" for "projects"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

Administrative Rules

ARM 24.17.144 Obligations of public contracting agencies.

18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and payroll record notification.

Compiler's Comments

2001 Amendment: Chapter 517 in (1) after "contractors and" substituted "employers" for "subcontractors"; inserted (2) requiring that contracts contain a provision requiring each contractor and employer to maintain payroll records; inserted (3) requiring that contracts contain a provision requiring each contractor to post a statement of all wages and fringe benefits; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

1997 Amendment: Chapter 522 at beginning, after "All", substituted "public works contracts and the bid specifications for those contracts" for "bid specifications and contracts for public works projects" and before "prevailing" inserted "standard"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of

wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

Administrative Rules

ARM 24.17.144 Obligations of public contracting agencies.

Attorney General's Opinions

Prevailing Wage Requirements Applicable to Offsite Construction Work — Project Location Indicative of Appropriate Rate: The 1997 amendments to the prevailing wage requirements in 18-2-403 extend to any public works contract, without a work situs limitation. A contractor's offsite fabrication of items for onsite installation constitutes construction within the scope of the term "construction services". Therefore, the prevailing wage requirements in 18-2-403(2)(b) apply to fabrication of materials performed offsite by a contractor for installation or use at the site of construction under a public works contract. With respect to offsite services, the prevailing wage district is the district where the onsite construction occurs. 47 A.G. Op. 12 (1998).

18-2-423. Submission of payroll records.

Compiler's Comments

1993 Amendment: Chapter 609 inserted second sentence requiring employees receiving hourly wage to be paid weekly and third sentence requiring submission of employee payroll records to Department within 5 days of request after complaint filed. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

18-2-425. Prohibition — project labor agreement.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

18-2-431. Rulemaking authority.

Compiler's Comments

Statement of Intent: The statement of intent attached to Ch. 234, L. 1985, provided: "This bill requires a statement of intent because it expressly delegates rulemaking authority to the commissioner of labor and industry.

Title 18, chapter 2, part 4, MCA, the "Little Davis-Bacon Act", requires that a standard prevailing wage be paid for labor on all public works contracts and that Montana labor receive a preference for employment on all public contracts. The commissioner is given the duty to determine the prevailing wage by locality and to otherwise administer part 4. In early 1983 Judge Bennett found in Townsend Electric, Inc. v. Hunter, et al., first judicial district of Montana (no. 47160), that the commissioner's determinations as to prevailing wage did not have the force of law because the legislature had never granted the commissioner express rulemaking authority to implement part 4. This bill is introduced to clarify that the legislature intends, and has so intended since the adoption of the Little Davis-Bacon Act in 1931, that the commissioner of labor and industry set and enforce prevailing wage rates under that act.

The rulemaking authority expressly delegated to the department of labor and industry by this bill authorizes the department to promulgate the prevailing wage rates as "rules" under the Montana Administrative Procedure Act.

The department is authorized to adopt rules each year establishing the various prevailing wage rates and to adopt rules spelling out the procedures and methods used to arrive at those rates. It is the intent of the legislature that in adopting the rules, the commissioner shall consider the following:

(1) collective bargaining agreements;
(2) federal Davis-Bacon Act rates;
(3) federal Service Contract Act rates;
(4) wage information compiled by the department of labor and industry;
(5) wage surveys, as appropriate and as resources permit; and
(6) other pertinent information."

Administrative Rules

Title 24, chapter 17, subchapter 1, ARM Minimum wage rates — procedures — obligations.
Title 24, chapter 17, subchapter 8, ARM Complaint process.
Title 24, chapter 17, subchapter 9, ARM Entities not eligible for public works contracts.

18-2-432. Penalty for violation.

Compiler's Comments

1999 Amendment: Chapter 78 inserted (1)(b) concerning penalty for gross negligence; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 522 in (1), in two places before "contract", inserted "public works"; in (2), near end before "contracts", inserted "public works"; in (3), near middle before "contract", inserted "public works"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

1993 Amendment: Chapter 609 in two places in (1), after "county", changed "municipal" to "municipality", near middle, after "school", substituted "district, or officer of a political subdivision that" for "officers who have", and at end, after "school", substituted "district, or political subdivision" for "districts"; substituted (2) providing maximum ineligibility of 3 years for labor standards violation for former language that read: "Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court"; in (3), after "county", changed "municipal" to "municipality" and after "school" substituted "district, or political subdivision" for "districts"; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Part 5
Alternative Project Delivery Contracts

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

CHAPTER 3
STATE BUILDING LEASES

Part 1
General Provisions

Part Case Notes

No Conflict Between Long-Range Building Statutes and Lease-Option Limitations: The long-range building statutes are not exclusive; therefore, there is no conflict between the long-range building program and the lease-option arrangement for the acquisition of personal property. Cornwall v. St., 231 M 58, 752 P2d 135, 45 St. Rep. 429 (1988).

Specific Authority Overriding Lease-Option Limitations: The specific authority given to the Attorney General in 44-10-202 to choose a site for the Montana Law Enforcement Academy overrides the limitations placed on lease-option contracts by this part. Cornwall v. St., 231 M 58, 752 P2d 135, 45 St. Rep. 429 (1988).

Part Law Review Articles

State and Municipal Lease-Purchase Agreements: A Reassessment, Bisk, 7 Harv. J.L. & Pub. Pol'y 521 (1984).

18-3-101. Authority to lease with option to purchase.

Compiler's Comments

1997 Amendment: Chapter 455 near end substituted "lease contract" for "rental contract"; and made minor changes in style. Amendment effective April 30, 1997.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §44.

18-3-105. Location of building.

Compiler's Comments

1997 Amendment: Chapter 455 in first sentence, at beginning after "building", inserted "authorized pursuant to 18-3-101" and at end substituted "request for proposals" for "call for bids"; in second sentence, after "contract", inserted "entered into pursuant to this chapter"; and made minor changes in style. Amendment effective April 30, 1997.

18-3-110. Requests for proposals.

Compiler's Comments

1999 Amendment: Chapter 51 in (1) at end of second sentence after "through" substituted "(6)" for "(7)". Amendment effective March 15, 1999.

Effective Date: Section 11, Ch. 455, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

18-3-111. Exemption from construction contract requirements.

Compiler's Comments

Effective Date: Section 11, Ch. 455, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

CHAPTER 4
MONTANA PROCUREMENT ACT

Chapter Compiler's Comments

Severability: Section 52, Ch. 519, L. 1983, was a severability section.

Chapter Administrative Rules

Title 2, chapter 5, subchapters 2 through 6, ARM Regulation of procurement activities — procedures.

Chapter Case Notes

Unfair Practices Act Applicable to State: The Unfair Practices Act, Title 30, ch. 14, part 2, which denounces sales made below cost when the purpose is to injure competitors or destroy competition, is applicable to sales made to the state in the absence of an express exception in

favor of those selling to the state. Helena Auto. Dealers Ass'n v. Anderson, 110 M 1, 98 P2d 371 (1940).

Chapter Law Review Articles

Evaluating Bids Against Cost Limitations, Preston, 15 Pub. Cont. L.J. 463 (1985).

Protection of Corporate Secrets in Government Contract Proposals and Bids, Dobkin & Dempsey, 15 Pub. Cont. L.J. 46 (1984).

Competitive Negotiation Under the Virginia Public Procurement Act, Johnston, 9 Va. B.A.J. 19 (1983).

Part 1
General Provisions

Part Case Notes

Right of Plaintiff to Sue for Damages for Negligent or Bad Faith Application of Procurement Act: The District Court dismissed ISC's suit against the Department of Administration for negligent or bad faith application of the Montana Procurement Act on the basis that 18-4-242 was the exclusive remedy for ISC and that the statute did not allow such an action. The Supreme Court held that the general remedies provided a plaintiff suing the state under 18-4-131 (now repealed) were not displaced by 18-4-242 and that therefore ISC was entitled to seek damages for negligent or bad faith application of the Act by the Department. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Limitations on State Contracts Inapplicable to Leases: Where the state executed a 6-year lease of certain communications equipment in 1973 and unilaterally terminated the lease in 1977, the trial court did not err in holding that the lease was not subject to the provisions of section 82-1918, R.C.M. 1947 (18-4-102, MCA, now repealed), limiting the terms of certain contracts to 3 years. In determining the intent of the Legislature, the court may look to the context and plain meaning of the statute, the title of certain codified provisions, and the legislative history of the law. These indicia of legislative intent show that the Legislature did not intend section 82-1918, R.C.M. 1947, to apply to the Attorney General's leasing power under 44-2-302. Leaseamerica Corp. of Wis. v. St., 191 M 462, 625 P2d 68, 38 St. Rep. 398 (1981).

Property Included in Purchasing Power: There are variations in the statutes in the descriptions of the articles to be purchased by the state. The court found that it was the intent of the Legislature, in providing for a State Purchasing Agent (now Department of Administration) and defining his duties, to include in those duties the purchase of supplies, materials, services, equipment, tools, and all physical property of every kind required by all offices, departments, boards, commissions, and institutions of the State of Montana. The State Aeronautics Commission (now Department of Transportation) was therefore not authorized to make purchases through its power to contract. Holtz v. Babcock, 143 M 341, 390 P2d 801 (1963).

18-4-121. Short title.

Law Review Articles

Recent Developments in State and Local Procurement: Implementation of the Model Procurement Code Picks Up Pace, Ethridge, 17 Urb. Law. 977 (1985).

18-4-122. Purpose.

Compiler's Comments

1997 Amendment: Chapter 443 inserted (9) relating to exclusive remedies for unlawful bid solicitations and contract awards; and made minor changes in style. Amendment effective April 30, 1997.

Preamble: The preamble attached to Ch. 443, L. 1997, provided: "WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana Procurement Act makes Montana taxpayers pay twice for the same product; and

WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking the remedy; and

WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the Legislature, and persons acting under any statute are considered to be acting in contemplation of the Legislature's power to repeal the statute; and

WHEREAS, it is the intent of the Legislature by enacting [sections 2, 10, and 23] [18-4-122, 18-4-242, and retroactive applicability section] and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to the availability of the remedy of money damages; and

WHEREAS, it is the intent of the Legislature by enacting [section 23] [retroactive applicability section] to make the reversal of the ISC case apply retroactively, unless a complaint was filed in district court prior to January 1, 1992, as provided in [section 23]."

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Retroactive Applicability: Section 23, Ch. 443, L. 1997, provided: "[Sections 2 and 10] [18-4-122 and 18-4-242] and the repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief other than those authorized by [section 10] [18-4-242], unless a complaint was filed in district court prior to January 1, 1992."

Case Notes

Award of Contract Under Montana Procurement Act — No Preemption of Other Statutory Requirements: The plaintiff was awarded a state contract to haul goods for the school lunch program. The contract was contingent upon the plaintiff's obtaining a Class C certificate from the Public Service Commission by August 1, 1989. The Commission informed the plaintiff that a public hearing had to be held on issuing the certificate and that the earliest the hearing could be held was August 23, 1989. The plaintiff argued that the policy of the Montana Procurement Act to promote competition preempted 69-12-324, which operates to protect the existing carrier. The Supreme Court ruled that more specific statutes regulating carriers govern over the procurement statutes with respect to carriers. State ex rel. Roberts v. Pub. Ser. Comm'n, 242 M 242, 790 P2d 489, 47 St. Rep. 774 (1990).

Collateral References

64 Am. Jur. 2d Public Works and Contracts §8.

18-4-123. Definitions.

Compiler's Comments

2001 Amendment: Chapter 181 in definition of procurement in (a) in first sentence after "means" inserted "acquisition with or without cost" and inserted (b) providing that procurement does not include acquiring supplies or services by gift; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 in definition of services, at end of first sentence after "contractor", deleted "not involving the delivery of a specific end product other than reports which are merely incidental to the required performance" and in second sentence, after "does not include", deleted "consulting services as defined in 18-8-102, those services listed in 18-8-103" and near end substituted "the provision of human services administered by the department of public health and human services" for "the provision by providers of human services regulated by a state agency"; inserted definition of vendor; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Attorney General's Opinions

Health Insurance: Competitive bidding is not required for purchasing health insurance for school district employees. 40 A.G. Op. 37 (1984).

Service Contracts: Contracts for the preparation and service of meals need not be awarded by competitive bidding. (See 1997 amendment.) 29 A.G. Op. 49 (1962).

Collateral References

64 Am. Jur. 2d Public Works and Contracts §1.

18-4-124. Local government adoption of procurement provisions — alternative project delivery contracts.

Compiler's Comments

2005 Amendment: Chapter 574 inserted (2) allowing a governing body to use an alternative project delivery contract; and made minor changes in style. Amendment effective October 1, 2005.

18-4-125. Collection of data concerning public procurement.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §10.

18-4-126. Public access to procurement information — records — retention.

Compiler's Comments

2005 Amendment: Chapter 289 in (1) inserted reference to 18-4-303. Amendment effective July 1, 2005.

1997 Amendment: Chapter 443 at end of (1) inserted reference to 18-4-304.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause.

18-4-132. Application.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 289 inserted (8) concerning nonapplicability to purchase of art. Amendment effective July 1, 2005.

Chapter 449 inserted (9) exempting contracts under Montana Public Defender Act. Amendment effective April 28, 2005.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

2003 Amendment: Chapter 153 inserted (6)(i) providing that Title 18, chapter 4, does not apply to employment of a court reporter appointed as an independent contractor; and made minor changes in style. Amendment effective March 26, 2003.

2001 Amendments — Composite Section: Chapter 7 in (7)(a) substituted "electrical energy" for "electric energy". Amendment effective October 1, 2001.

Chapter 181 in (1) in first sentence near middle after "body" deleted "as defined in 18-4-123" and at end inserted "except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract" and inserted second sentence referring to the procurement of certain supplies or services at no cost to the state or that are income-producing or advantageous for the state; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1999 Amendments — Composite Section: Chapter 407 inserted (5) concerning state fund contracts for insurance-related services; and made minor changes in style. Amendment effective April 21, 1999.

Chapter 580 inserted (7) regarding inapplicability of chapter to electric energy purchase contracts by university of Montana or Montana state university and requiring accrued savings to be retained by board of regents for university allocation and expenditure. Amendment effective May 10, 1999.

1997 Amendment: Chapter 443 deleted former (1) that read: "Except as provided in 18-4-313, which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984"; inserted (5) exempting certain employment from application of chapter; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1995 Amendment: Chapter 359 inserted (5) excluding chapter applicability to contracts entered into by the state lottery that have an aggregate value of less than $250,000. Amendment effective April 11, 1995.

1989 Amendment: Inserted (4) exempting from this chapter certain transactions by student associations of the University System.

18-4-133. Purchases exempt from general requirements.

Compiler's Comments

2001 Amendment: Chapter 181 inserted (3) creating procedure for procurement officer when bids are not received from a responsible bidder or offeror or responsive bidder or offeror; inserted (4) requiring the department to adopt rules for direct negotiation by procurement officer with vendor; inserted (5) pertaining to contracts with a landowner for certain remediation, reclamation, or conservation projects; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 deleted former (1) that read: "Fresh fruits and vegetables, other than potatoes, may not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account must be kept of these purchases, and the account must be furnished to the department"; near beginning of (2), after "department", deleted "of administration"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1995 Amendment: Chapter 546 in (3), in two places, substituted "department of corrections" for "department of corrections and human services" and inserted reference to Department of Public Health and Human Services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1983 Amendment: In (3), after "the provisions of" changed "part 2 of this chapter" to "this chapter".

1981 Amendment: Substituted "residents of its institutions and community-based programs" for "residents of juvenile correctional facilities and the Boulder River school and hospital" in (3).

Administrative Rules

ARM 2.5.605 Exigency procurements.

Case Notes

Purchase Without Bidding: A lease agreement for an airplane with an option to purchase, entered into by the State Aeronautics Commission (now Department of Transportation), constituted a "purchase" within the statute requiring bids. Purchase of the airplane without bidding could have been authorized on the basis of public exigency, where the Governor had just lost his life in a plane crash and the purchase was made to safeguard the life of the new Governor. Holtz v. Babcock, 143 M 341, 390 P2d 801 (1963).

Attorney General's Opinions

Public Exigency — Limitations: A "public exigency" is a situation in which an unforeseen happening or event necessitates immediate action to protect the public interest. In time of a public exigency, the state may obtain articles and services without competitive bidding in the same manner as between individuals bargaining in a free, open market for similar articles and services. The public exigency exemption does not abrogate the prohibitions against personal interests in contracts contained in 2-2-201. 34 A.G. Op. 46 (1972).

Collateral References

States *key* 94.

64 Am. Jur. 2d Public Works and Contracts §§37, 38, 72.

What is an "emergency" within statutory provision excepting emergency contract or work from requirement of bidding on public contracts. 71 ALR 173.

18-4-141. Contract transfers and collusion prohibited — violations and penalty.

Compiler's Comments

2001 Amendment: Chapter 181 throughout (2) substituted references to "bidders" for references to "vendors"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 in (1) deleted second sentence that read: "No approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their obligations to the state under the contract or order"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1983 Amendment: In (1), inserted ", assigned, or subcontracted" after "transferred" at the beginning of the first sentence, inserted "without the express written approval of the state" after "given to any other party", substituted "unapproved transfer, assignment, or subcontract" for "such transfer" at the end of first sentence, and inserted last sentence referring to nonrelease of original obligor and his sureties.

Attorney General's Opinions

State Not Prohibited From Expressly Releasing Party or Surety After Transfer, Assignment, or Subcontract: This section prohibits the approval of a transfer or assignment of a contract or the granting of subcontract from acting as an implied release of a party or surety from the party's or surety's obligations. This section does not prohibit the state from expressly releasing a party or surety from the party's or surety's obligations. 45 A.G. Op. 11 (1993).

Collateral References

States *key* 95, 98, 105.

81A C.J.S. States §§156, 160 through 167, 169.

64 Am. Jur. 2d Public Works and Contracts §§30 through 32.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in public contract. 73 ALR 1352.

Part 2
Duties of Department

18-4-221. General procurement authority and duties of department — rules.

Compiler's Comments

Statement of Intent: The statement of intent attached to Ch. 519, L. 1983, provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Department of Administration for the purpose of implementing the procurement procedures established by the bill. The bill is based upon the American Bar Association Model Procurement Code for State and Local Governments. The Model Code was drafted on the concept that it should be a short statute providing the fundamentals of sound procurement that should be implemented by rules consistent with the statutory framework.

It is intended that the Department look to the Recommended Regulations for the Model Procurement Code for State and Local Governments adopted by the American Bar Association for guidance in adopting rules implementing the provisions of this bill."

Administrative Rules

Title 2, chapter 5, subchapters 2 through 6, ARM Regulation of procurement activities — procedures.

ARM 2.5.508 Requests for information.

ARM 2.5.509 Late bids or proposals.

ARM 2.5.606 Procurement of used equipment.

Collateral References

73A C.J.S. Public Contracts §3.

64 Am. Jur. 2d Public Works and Contracts §§8, 10.

18-4-222. Delegation of authority by department.

Administrative Rules

ARM 2.5.202 Department of Administration responsibilities.

ARM 2.5.301 Delegation of purchasing authority.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §10.

18-4-223. State procurement rules — delegation — existing rights.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §13.

18-4-224. Contract clauses — rules.

Compiler's Comments

1997 Amendment: Chapter 443 at beginning of (1) substituted "The department may, in its discretion, permit or require" for "The department may adopt rules permitting or requiring"; in (2)(c) substituted "under clauses established under subsection (1)" for "such clauses"; deleted (2)(e) that read: "(e) in the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under 18-4-225"; at beginning of (3) substituted "The department may, in its discretion, permit or require" for "The department may adopt rules permitting or requiring"; inserted (5) allowing Department to accept lower price or better value; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§109, 110, 164 through 198.

18-4-226. Surplus supply — rules.

Compiler's Comments

1999 Amendment: Chapter 441 in (2) after "bidding" inserted "donation to a school district as provided in 18-6-101"; and made minor changes in style. Amendment effective April 23, 1999.

1991 Amendment: In (1)(a), after "state", inserted "but does not include surplus handguns described in 81-1-105 and 87-1-212".

1991 Statement of Intent: The statement of intent attached to Ch. 234, L. 1991, provided: "A statement of intent is required for this bill because [sections 1 and 4] [87-1-105 and 87-1-212] grant to the department of fish, wildlife, and parks and the department of livestock the authority to adopt rules regarding the disposal of surplus handguns. It is intended that the rules address, at a minimum:

(1) the process for determining what handguns are surplus;

(2) the manner of disposal, whether by destruction, sale, or other appropriate means;

(3) the proper crediting of any proceeds derived from the disposal of surplus handguns; and

(4) a procedure to allow a preference to a warden and to a department of livestock state inspector or detective for the purchase of a handgun previously used by that person, provided that the purchase price is established by bid or equal to the appraised value of the handgun."

Termination Date: Section 6, Ch. 234, L. 1991, provided: "[This act] terminates October 1, 1993."

Administrative Rules

ARM 2.5.701 Authority to dispose of supplies.

ARM 2.5.702 Disposition of surplus supplies.

18-4-231. Definition of specification.

Administrative Rules

ARM 2.5.501 Specifications.

18-4-232. Specifications — rules.

Administrative Rules

ARM 2.5.501 Specifications.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§49, 50.

18-4-233. Using agencies' advice.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§49, 50.

18-4-234. Competition.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§50, 51.

18-4-241. Authority to remove or suspend vendor.

Compiler's Comments

1997 Amendment: Chapter 443 throughout section substituted "vendor" for "person"; in (1), at end of first sentence, inserted "by the state" and deleted second sentence that read: "The

removal may not be for a period of more than 3 years"; in (2), near beginning of first sentence, substituted "may temporarily suspend" for "may suspend" and at beginning of second sentence substituted "If an indictment" for "The suspension may not be for a period exceeding 3 months unless an indictment" and near end, after "remain in effect", inserted "at a minimum"; at end of (3)(b) substituted "or failure to provide the department with a correct address" for "and after adequate written notice to the affected person of the intent to remove or suspend"; at end of (3)(c), after "governmental entity", deleted "for any cause listed in the department's rules"; in (4), in first sentence after "suspend", inserted "a vendor" and at end inserted "for reasons other than those reasons provided in subsection (3)(b)"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1987 Amendment: Inserted (3)(d) referring to violations of Title 39, ch. 51, and Title 39, ch. 71; and made minor change in phraseology.

Administrative Rules

ARM 2.5.402 Suspension or debarment from contract eligibility.

Law Review Articles

Public Contracts: Rejecting the Responsible Bidder, Bergman, 57 N.Y. St. B.J. 22 (1985).

Contractor Debarment and Suspension—A Government Perspective, Kabeiseman, 19 Pub. Cont. Newsletter 3(6) (Spring 1984).

Collateral References

64 Am. Jur. 2d Public Works and Contracts §54.

Validity of state statute prohibiting award of government contract to person or business entity previously convicted of bribery or attempting to bribe state public employee. 7 ALR 4th 1202.

18-4-242. Exclusive remedies for unlawful solicitation or award.

Compiler's Comments

1999 Amendment: Chapter 51 in (7) near middle of fourth sentence after "solicitations" substituted "or" for "of"; and in (9) after "solicitations" substituted "or" for "and". Amendment effective March 15, 1999.

1997 Amendment: Chapter 443 in (1), at beginning, substituted "This section establishes the exclusive remedies for a solicitation" for "If a solicitation" and substituted "contract determined to be in violation" for "contract is in violation"; inserted (2) allowing protest to Department in certain cases and establishing time limit for protest; inserted (3) requiring written protest decision from Department; in (4) substituted "In a protest or contested case proceeding, the department may, in an appropriate case, order a remedy provided" for "the department may apply the remedies provided"; at end of (5) substituted "proposed award may be" for "proposed award must be"; deleted former (4) that read: "(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3)"; inserted (7) relating to petition for judicial review and limiting right to recover for solicitation or award of contract in violation of law; inserted (8) providing state not required to delay procurement process pending protest, contested case proceeding, or judicial review; inserted (9) authorizing department to adopt rules governing protests; adjusted subsection references; and made minor changes in style. Amendment effective April 30, 1997.

Preamble: The preamble attached to Ch. 443, L. 1997, provided: "WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana Procurement Act makes Montana taxpayers pay twice for the same product; and

WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207 P 116 (1922), and General Agriculture Corp. v.

Moore, 166 M 510, 534 P2d 859 (1975), that the Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking the remedy; and

WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the Legislature, and persons acting under any statute are considered to be acting in contemplation of the Legislature's power to repeal the statute; and

WHEREAS, it is the intent of the Legislature by enacting [sections 2, 10, and 23] [18-4-122, 18-4-242, and retroactive applicability section] and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to the availability of the remedy of money damages; and

WHEREAS, it is the intent of the Legislature by enacting [section 23] [retroactive applicability section] to make the reversal of the ISC case apply retroactively, unless a complaint was filed in district court prior to January 1, 1992, as provided in [section 23]."

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Retroactive Applicability: Section 23, Ch. 443, L. 1997, provided: "[Sections 2 and 10] [18-4-122 and 18-4-242] and the repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief other than those authorized by [section 10] [18-4-242], unless a complaint was filed in district court prior to January 1, 1992."

Case Notes

Right of Plaintiff to Sue for Damages for Negligent or Bad Faith Application of Procurement Act: The District Court dismissed ISC's suit against the Department of Administration for negligent or bad faith application of the Montana Procurement Act on the basis that this section was the exclusive remedy for ISC and that the statute did not allow such an action. The Supreme Court held that the general remedies provided a plaintiff suing the state under 18-4-131 (now repealed) were not displaced by this section and that therefore ISC was entitled to seek damages for negligent or bad faith application of the Act by the Department. (See 1997 amendment.) ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Collateral References

73A C.J.S. Public Contracts §§24, 29, 40.

64 Am. Jur. 2d Public Works and Contracts §§12, 13, 15, 74 through 87.

Part 3
Procurement Procedure

Part Case Notes

Misapplication of State Law Not Basis for Claim of Denial of Equal Protection: ISC argued that its allegations that the Department of Administration had applied the Montana Procurement Act in a discriminatory fashion in not awarding ISC a contract supported its claim that it had been denied equal protection. The Supreme Court held that ISC's claim failed because at most, it amounted to an allegation that state law was misapplied in an individual case and did not constitute invidious discrimination in violation of the equal protection clause. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

No Property Right Created When Government's Award of Contract Is Discretionary: ISC argued that the Department of Administration had violated its right to due process when the Department did not award ISC a contract that had been put out for bid. The Supreme Court held that a property right that would support a due process claim is not created when a state agency is not required to award a contract on a sufficiently objective basis. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Part Collateral References

Mistake: right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee. 2 ALR 4th 991.

18-4-301. Definitions.

Compiler's Comments

2005 Amendment: Chapter 289 substituted responsible for responsible bidder or offeror as defined term and after "means" deleted "a person who has"; and substituted responsive for responsive bidder as defined term, after "means" deleted "a person who has submitted a bid that", and at end inserted "or request for proposals". Amendment effective July 1, 2005.

Termination Provision Repealed: Section 9, Ch. 289, L. 2005, repealed sec. 29, Ch. 181, L. 2001, which terminated the 2001 amendments to this section June 30, 2005. Effective July 1, 2005.

2001 Amendment: (Temporary version) Chapter 181 inserted definition of alternative procurement method; and made minor changes in style. Amendment effective October 1, 2001, and terminates June 30, 2005.

(Version effective July 1, 2005) In definition of responsive bidder expanded definition to include "offeror", near middle after "bid" inserted "or proposal", and at end inserted "or request for proposals"; and made minor changes in style.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1991 Amendment: Inserted definition of displacement. Amendment effective May 15, 1991.

Termination Provision Amended: Section 3, Ch. 329, L. 1989, amended sec. 6, Ch. 303, L. 1987, so that this section was not terminated.

1987 Amendment: Inserted definitions of office supply and term contract.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §1.

18-4-302. Methods of source selection — authorization for alternative procurement methods.

Compiler's Comments

Termination Provision Repealed: Section 9, Ch. 289, L. 2005, repealed sec. 29, Ch. 181, L. 2001, which terminated the 2001 amendments to this section June 30, 2005. Effective July 1, 2005.

2001 Amendment: Chapter 181 inserted (4) allowing an agency to request authorization for an alternative procurement method, establishing guidelines for the request for authorization, establishing guidelines for evaluation and approval of the request, and providing for promulgation of rules establishing the use of alternative procurement methods; and made minor changes in style. Amendment effective October 1, 2001, and terminates June 30, 2005.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 in (1), at end of first sentence, substituted "awarded by a source selection method provided for in this title" for "awarded by competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of this title, and subsections (2) and (3) of this section"; in (2), near beginning, substituted "department or another agency opens" for "department or a purchasing agency opens" and near end substituted "department or agency may reject" for "department or purchasing agency may reject"; and in (3), in first sentence near beginning after "central stores program", deleted "through bulk purchase or procured under a term contract", substituted "may be purchased by an agency" for "may be purchased by a purchasing agency", after "discount price offered" substituted "to the agency" for "to the purchasing agency", after "price offered by the central stores program" deleted "or under the term contract", and at end, after "quality offered by the central stores program", deleted "or under the term contract".

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1993 Special Session Amendment: Chapter 11 near middle of (3), after "publicly advertised", inserted "price", after "catalog price" inserted "or discount price offered to the purchasing agency", and after "term contract" inserted "if the office supply"; and made minor changes in style.

1989 Amendment: In (2), after "agency", substituted "opens" for "mails an invitation for", after "or" deleted "a request for", after "proposals" deleted "for office supplies", substituted "if a supplier's" for "a Montana supplier's", after "price" substituted "is received at or before the time the bids or proposals are opened and is less than the" for "available to the public may be registered as a", after "bid" deleted clause concerning bid or proposal requirements, inserted language concerning the lowest responsible and responsive bidder or improvement of conditions for best proposal received, after "department" deleted language requiring Department to certify exact time of price receipt before bid or proposal is mailed and to make registered price available for bidder inspection, and inserted language authorizing Department to reject bids and purchase supplies without competitive sealed proposal and procurement requirements; in (3) substituted "department central stores" for "department through a bulk purchase", after "program" inserted "through bulk purchase", after "or" substituted "procured under a" for "contracted for by means of a", before "supplier" deleted "Montana", after "catalog price" deleted language concerning availability of catalog price at time of bid mailing, and after "the price" substituted language allowing purchase at price lower than central stores program or term contract price for former

language authorizing purchase at price less than that of Department or contract; and made minor changes in style and grammar. Amendment effective July 1, 1989.

Applicability: Section 5, Ch. 329, L. 1989, provided: "[This act] applies to a term contract entered into after [the effective date of this act]." Effective July 1, 1989.

1987 Amendment: In (1), at end of first sentence, inserted "and subsections (2) and (3)"; inserted (2) allowing advertised or catalog price to be registered as a bid; and inserted (3) exempting purchase of certain office supplies from general purchasing requirements.

Applicability: Section 4, Ch. 303, L. 1987, read: "This act applies to term contracts entered into after the effective date of this act." Effective July 1, 1987.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§33, 36, 46.

18-4-303. Competitive sealed bidding.

Compiler's Comments

2005 Amendment: Chapter 289 in (3) in second sentence near beginning after "bidder" inserted "and any member of the public" and at end inserted "after they are opened and reviewed by the procurement officer for release, subject to the same limitations specified in 18-4-304(4) for competitive sealed proposals"; in (5) at end substituted "18-4-126" for "2-6-102 and are subject to the requirements of subsection (4)"; deleted former (4) that read: "(4) Bids must be available for public inspection when the bids are opened if:

(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and

(b) acceptance of bids would result in the displacement of five or more state employees"; in (8) at beginning of first sentence substituted "If an award is made, it must be made" for "The contract must be awarded"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 443 in (3), near beginning of first sentence after "opened publicly", deleted "in the presence of one or more witnesses"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1991 Amendment: At end of (3) inserted "and are subject to the requirements of subsection (4)"; and inserted (4) requiring bids to be available for public inspections when opened if bid invitation is issued by state agency to contract with private sector to provide services currently conducted by state employees and if bid acceptance would result in displacement of five or more state employees. Amendment effective May 15, 1991.

Administrative Rules

ARM 2.5.503 Public notice.

ARM 2.5.505 Mistakes in bids.

ARM 2.5.601 Competitive sealed bids.

Case Notes

Lateness of Bid — Irregularity Not Requiring Waiver by State: Petri attempted to submit a hand-carried, written bid to state officials for a painting contract at Montana State University (now Montana State University-Bozeman). Petri arrived at the site of the bid opening several minutes after the announced closing of the time for submitting bids. At trial in the District Court, Petri submitted evidence showing that the clock in the room where bids were being accepted was several minutes fast according to a confidential U.S. West telephone number for obtaining the correct time. The Supreme Court held that there was no evidence that late bids were an irregularity requiring waiver by state officials. There was evidence that rejection of late bids is the industry-wide practice. The U.S. West time source was not established as more accurate than the clocks in the bid opening room, nor can MSU be held responsible for coordinating its clocks with a source not available to it. Under these circumstances, the District Court did not err in treating the lateness of the bid as a material irregularity. Petri v. Mont. St. Univ., 260 M 392, 860 P2d 154, 50 St. Rep. 1133 (1993).

Immaterial Irregularities in Bid May Be Waived: The defendant accepted the low bid for an airport construction contract. In its bid, the successful bidder listed the same subcontractor as fulfilling the requirement for a minority-owned business and a woman-owned business. Subsequently, it was learned that federal regulations would not allow one subcontractor to meet the requirements for both categories. The defendant allowed the contractor to amend its bid and list a second minority-owned subcontractor. The plaintiff was the second lowest bidder and argued that the low bid should have been rejected for not conforming to the bid requirements. The Supreme Court held that there had been no attempt by the defendant or successful bidder to circumvent minority hiring rules and that the state had the authority to waive immaterial

irregularities in any bid offered. Sebena Paving, Inc. v. Gallatin Airport Authority, 245 M 389, 801 P2d 614, 47 St. Rep. 2194 (1990).

Attorney General's Opinions

Janitorial Services — Bidding Requirement: Janitorial services contracts are subject to competitive bidding requirements because they do not involve the exercise of special skills, taste, or discretion. 30 A.G. Op. 5 (1963).

Collateral References

73A C.J.S. Public Contracts §14.

64 Am. Jur. 2d Public Works and Contracts §§52 through 73.

18-4-304. Competitive sealed proposals.

Compiler's Comments

2005 Amendment: Chapter 289 in (4) near middle after "proposals" inserted "and reviewed by the procurement officer for release"; deleted former (4)(c) that read: "(c) information requested by the department to establish vendor responsibility unless prior written consent has been given by the vendor, pursuant to 18-4-308"; in (5) in first sentence substituted "criteria" for "factors", at beginning of second sentence substituted "If an award is made, it" for "The award", and in third sentence near beginning after "Other" deleted "factors or"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Chapter 416 substituted (4) authorizing inspection of documents by public and outlining inspection limitations for former (4) that read: "(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award. After the contract is executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4"; and deleted second sentence in (6) that read: "In conducting discussions, there may not be disclosure of any information derived from proposals submitted by competing offerors." Amendment effective October 1, 1999.

1997 Amendment: Chapter 443 deleted former (1) that read: "When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding"; inserted (1) allowing Department to procure supplies and services through competitive sealed proposals; in (4) inserted third sentence allowing proposal documents to be inspected after contract executed; in (5), at end of first sentence, substituted "state the evaluation factors and their relative importance" for "state the relative importance of price and other evaluation factors" and inserted second through fourth sentences establishing to whom award must be made, limiting use of other factors or criteria, and requiring contract file to demonstrate basis of award; in (6) deleted former first two sentences that read: "As provided in the request for proposals and under rules adopted by the department, discussions with responsible offerors who submit apparently responsive proposals may be conducted for the purpose of clarification in order to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers", inserted first sentence allowing Department to discuss proposal with offeror for clarification or revision, and deleted last sentence that read: "The department may require the submission of cost or pricing data in connection with an award under this section"; and deleted (7) that read: "(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file must contain the basis on which the award is made."

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1995 Amendment: Chapter 130 in (1), in first sentence after "determines", deleted "in writing"; and made minor changes in style. Amendment effective March 13, 1995.

Administrative Rules

ARM 2.5.503 Public notice.

ARM 2.5.505 Mistakes in bids.

ARM 2.5.602 Competitive sealed proposals.

Case Notes

Economic Advantage Inadequate Reason for Denial of Public Right to Observe Government Deliberations in Corrections Vendor Process: A newspaper company sought to restrain the Department of Corrections from excluding the public from meetings of the committee that reviewed proposals for operating private prison facilities. The District Court held that the public had no right to observe the negotiation phase of the committee's work, but that once negotiations were completed, the process by which the conclusions were arrived at must be open to public observation. Both parties appealed. The Supreme Court noted that as part of an Executive Branch agency, the Department and the committee were considered governmental bodies pursuant to 2-15-104 for purposes of procurement and that under the constitutional right to know, proposals submitted by private vendors were considered documents of a public body or agency that, under 2-6-102, the public has a right to inspect. Under the two-part test in Missoulian v. Bd. of Regents, 207 M 513, 675 P2d 962 (1984), the only exception to the constitutional provision arises when the demand of individual privacy clearly exceeds the merits of public disclosure. The state contended that the meetings at issue were closed for economic advantage, but economic advantage is neither a privacy interest nor a sufficient reason for denying the public the opportunity to observe deliberations of public bodies or to examine public documents, including proposals submitted to the public body by a vendor, unless the proposal concerns a privacy interest involving legitimate trade secrets or individual safety. A public agency's desire for privacy does not provide an exception to the public's constitutional right to observe its government at work. To the extent that provisions in ARM 2.5.602 or this section require exclusion of the public from the competitive bid process, those provisions are unconstitutional and unenforceable. Great Falls Tribune Co., Inc. v. Day, 1998 MT 133, 289 M 155, 959 P2d 508, 55 St. Rep. 524 (1998), following Mtn. States Tel. & Tel. Co. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181 (1981), State ex rel. Great Falls Tribune Co., Inc. v. District Court, 238 M 310, 777 P2d 345 (1989), Great Falls Tribune Co., Inc. v. Great Falls Pub. Schools, 255 M 125, 841 P2d 502 (1992), and Common Cause of Mont. v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices, 263 M 324, 868 P2d 604 (1994). See also Assoc. Press, Inc. v. Dept. of Revenue, 2000 MT 160, 300 M 233, 4 P3d 5, 57 St. Rep. 657 (2000).

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§51, 58.

18-4-305. Small purchases and limited solicitations.

Compiler's Comments

1997 Amendment: Chapter 443 near end of first and second sentences, after "with small purchase", inserted "or limited solicitation".

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Administrative Rules

ARM 2.5.603 Small purchases of supplies and services.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §36.

18-4-306. Sole source procurement — records.

Compiler's Comments

2001 Amendment: Chapter 181 in (1)(a) before "supply" deleted "required"; inserted (1)(b) referring to the existence of only one source of the supply or service item; inserted (1)(c) requiring the supply or service item to be compatible with existing supplies or services; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Administrative Rules

ARM 2.5.604 Sole source procurement.

Law Review Articles

Competition and Sole-Source Procurements—A View Through the Unsolicited Proposal Example, Keyes, 14 Pub. Cont. L.J. 284 (1984).

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§37, 38.

18-4-308. Nonresponsibility of bidders and offerors.

Compiler's Comments

2005 Amendment: Chapter 289 deleted former (2) that read: "(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror"; and made minor changes in style. Amendment effective July 1, 2005.

Administrative Rules

ARM 2.5.402 Suspension or debarment from contract eligibility.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §59.

18-4-309. Prequalification of suppliers.

Compiler's Comments

1997 Amendment: Chapter 443 in first sentence, after "may be prequalified", inserted "in accordance with department rules" and deleted second sentence that read: "Solicitation mailing lists of potential contractors must include but not be limited to such prequalified suppliers."

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Administrative Rules

ARM 2.5.507 Prequalification of vendors.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§49, 54.

18-4-310. Types of contracts.

Compiler's Comments

1997 Amendment: Chapter 443 at beginning deleted "Subject to the limitations of this section" and after "may be used" deleted "except that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies or services required except under such a contract"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

18-4-311. Approval of accounting system.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§88, 100 through 104.

18-4-312. Bid and contract performance security.

Compiler's Comments

2005 Amendment: Chapter 289 in (2)(a)(ii) after "credit" deleted "not to exceed $100,000"; in (3) in third sentence at end inserted exception clause; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 203 inserted (2)(b) restricting requiring bond from particular company or producer; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 443 in (1)(b), after "suppliers", deleted "materialmen"; and in (3), at end of second sentence and beginning of third sentence after "payable to the state of Montana", substituted "Contract performance security must remain in effect" for "and must remain in effect".

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1995 Amendment: Chapter 130 in (1), after "procurement of services", deleted "in the amount of $10,000 or less" and after "require" deleted "the filing of"; deleted former (2) that read: "(2) For state contracts for the procurement of services exceeding $10,000, the department shall require bid security and contract performance security, except for purchases described in 18-4-305 and 18-4-306"; in (2)(d) inserted "certificate of deposit, money market certificate" and after "drawn or issued by" substituted current language relating to federally chartered or state-chartered bank or savings and loan association for "any banking corporation incorporated under the laws of Montana or by a banking association located in Montana"; deleted (3)(c) that read: "(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana"; in (3), in first sentence after "risk involved to the state", deleted "except that the same shall not be less than 10% of the bid price for bid security

and 25% of the total contract price for contract performance security, and" and after "Montana" inserted "and must remain in effect for the entire contract period"; in (4), near end of first sentence, substituted "security" for "bond" and in second sentence, after "bid bond", inserted "or other security"; adjusted subsection references; and made minor changes in style. Amendment effective March 13, 1995.

1985 Amendment: In lead-in of (1), after "procurement of", substituted "services in the amount of $10,000 or less or of supplies" for "supplies and services"; inserted (1)(a) referring to bid security; at beginning of (1)(b) inserted "contract performance"; inserted (1)(c) referring to bid and performance security; inserted (2) referring to contracts exceeding $10,000; at beginning of (3), after "If", deleted "contract performance"; near middle of lead-in of (3), after "(1)", inserted "or (2)"; in (4) in first sentence, after "less than", inserted "10% of the bid price for bid security and" and after "contract price", inserted "for contract performance security", in second sentence, after "type of", inserted "contract performance", inserted third sentence requiring consideration of risks to the state in determining need for and amount of bid security, in fourth sentence substituted "these determinations" for "this determination", and at beginning of last sentence substituted "Bid and" for "Any"; inserted (5) referring to forfeiture of bid security; inserted (6) requiring refund of negotiable instruments; and in (7) after "provisions of" inserted "Title 18, chapter 1, part 2, and Title 18", and after "3", deleted "of this title".

Collateral References

73A C.J.S. Public Contracts §§42 through 47.

64 Am. Jur. 2d Public Works and Contracts §§59, 60.

18-4-313. Contracts — terms, extensions, and time limits.

Compiler's Comments

2005 Amendment: Chapter 289 in (1) at beginning inserted exception clause and deleted former second sentence that read: "However, the department may contract for hardware, software, or other information technology resources, the department of revenue may contract with liquor agencies, and the department of public health and human services may contract for the medicaid management information system (MMIS) for a period not to exceed 10 years"; inserted (2) concerning exceptions from contract term limit; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendments — Composite Section — Coordination: Chapter 181 in (1) near middle of second sentence after "purchase of" substituted "hardware, software, or services for telecommunications or data processing" for "telecommunications equipment and systems, data processing equipment"; and made minor changes in style. Amendment effective October 1, 2001. The amendment by Ch. 313 rendered the reference to services for telecommunications or data processing meaningless, and it has not been codified.

Chapter 313 in (1) in second sentence substituted "contract for hardware, software, or other information technology resources" for "contract for the lease or purchase of telecommunications equipment and systems, data processing equipment"; and made minor changes in style. Amendment effective July 1, 2001.

Pursuant to sec. 46, Ch. 313, L. 2001, a coordination section, the amendment to this section made by sec. 40, Ch. 313, L. 2001, was replaced by the amendment made by sec. 46.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1995 Amendments: Chapter 130 in (1), near beginning of first sentence, substituted "for a period of more than 7 years" for "for a longer period than 3 years" and in second sentence, after "renewed", deleted "notwithstanding the time limits stated in this section" and at end inserted "and if the total contract period, including any extension or renewal, does not exceed 7 years"; in (2) inserted "issuance" and after "determined" deleted "in writing"; and made minor changes in style. Amendment effective March 13, 1995.

Chapter 546 in (1), in second sentence, substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 228 in (1), in second clause of first sentence, inserted "the department of revenue liquor agencies"; and made minor changes in style. Amendment effective March 30, 1993.

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

1985 Amendment: In middle of (1) inserted "the department of social and rehabilitation services medicaid management information system (MMIS)".

Collateral References

73A C.J.S. Public Contracts §§27, 28.

64 Am. Jur. 2d Public Works and Contracts §§24, 109, 110.

18-4-314. Reporting of anticompetitive practices.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§30 through 32.

Part 4
Cooperative Purchasing

18-4-401. Definitions.

Compiler's Comments

1999 Amendment: Chapter 200 in definition of public procurement at end inserted "or a tribal procurement unit"; and inserted definition of tribal procurement unit. Amendment effective March 29, 1999.

18-4-402. Cooperative purchasing authorized.

Compiler's Comments

1997 Amendment: Chapter 443 at end of first sentence inserted "independent of the requirements of part 3" and in second sentence inserted "purchasing through federal supply schedules of the United States general services administration"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§8, 10.

18-4-406. Information and services — fees.

Collateral References

64 Am. Jur. 2d Public Works and Contracts §49.

CHAPTER 5
SPECIAL PURCHASING CONDITIONS

Part 1
Sheltered Workshops

18-5-101. Definitions.

Compiler's Comments

1997 Amendment: Chapter 472 in introductory clause and in two places in definition of certified shelter workshop substituted "this part" for "18-5-101 through 18-5-103"; in definition of certified sheltered workshop, in introductory clause, substituted "persons with disabilities" for "disabled vocationally handicapped individuals" and in (c) substituted "persons with disabilities" for "vocationally handicapped individuals"; substituted person with a disability for vocationally handicapped as defined term and substituted "impediment" for "handicap"; and made minor changes in style.

18-5-102. Duties and powers of department of administration.

Compiler's Comments

1997 Amendment: Chapter 472 in (3) substituted "this part" for "18-5-101 through 18-5-103"; and made minor changes in style.

1985 Amendment: In (1) substituted current language requiring Department to maintain a list of facilities, products, and services for "The department shall establish and publish a listing of the products and services purchased by the state. From this list, facilities may select products or services to be produced or provided by one or more facilities. A product or service shall be removed from the list approved for facilities whenever the department ascertains that the

product or service exceeds 20% of the gross sales of any business in Montana producing that product or providing that service"; and deleted former (3) that read: "The department shall determine the fair market price to be charged for products and services on the procurement list which is competitive with readily available alternative sources. In determining and revising the prices of products and services, the department must give consideration to reasonable costs of labor, materials, and overhead and a percentage of gross sales to fund the activities of the nonprofit organization specified in (2)(a), (2)(b), and (2)(c) above."

Administrative Rules

ARM 2.5.607 Procurement from sheltered workshops or work activity centers.

18-5-103. Procurement requirements.

Compiler's Comments

1997 Amendment: Chapter 472 at end of second sentence substituted "this part" for "18-5-101 through 18-5-103".

1985 Amendment: Near middle of first sentence substituted "may procure listed products and services" for "shall, after promulgation of the product and service list, procure listed products and services".

Administrative Rules

ARM 2.5.607 Procurement from sheltered workshops or work activity centers.

Part 2
Surplus Property Procurement

18-5-201. Administration of the state agency for federal surplus property.

Compiler's Comments

1989 Amendment: In first sentence inserted "federal" and substituted language allowing Governor to designate Department for reference to Department of Administration; and made minor changes in phraseology. Amendment effective July 1, 1989.

Collateral References

States *key* 85.

81A C.J.S. States §§145, 146.

18-5-202. Authority and duties of the state agency for surplus property.

Compiler's Comments

Federal Statutes: The Federal Property and Administrative Services Act of 1949, referred to in subsection (1)(a) of this section, is compiled in the United States Code as Title 5, sec. 630 through 630h; Title 40, sec. 471 through 475, 481 through 492, 511 through 514, 521 through 524; Title 41, sec. 5, 251 through 255, 256a through 260; Title 44, sec. 391 through 401; Title 50, App., sec. 1622, 1641.

Section 203(k) of the Federal Property and Administrative Services Act of 1949, referred to in subsection (2) of this section, is compiled in the United States Code as Title 40, sec. 484(k).

Administrative Rules

ARM 2.5.801 Adoption of state plan of operation — federal surplus property.

18-5-203. Agency for surplus property — authorization for financing.

Compiler's Comments

2001 Amendment: Chapter 42 at end substituted "an enterprise fund" for "an internal service fund"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: Substituted "internal service fund" for "revolving fund".

18-5-205. Officers or employees authorized to secure transfer of federal surplus property.

Compiler's Comments

1989 Amendment: In (1)(a) substituted reference to Department designated in 18-5-201 for reference to Department of Administration; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Federal Statute: Section 203(j) of the Federal Property and Administrative Services Act of 1949, referred to in this section, is compiled in the United States Code as Title 40, sec. 484(j).

Part 4
Vending Facilities

Part Compiler's Comments

Saving Clause: Section 12, Ch. 175, L. 1981, provided: "This act [18-5-401 through 18-5-416] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Severability: Section 13, Ch. 175, L. 1981, was a severability section.

18-5-402. Definitions.

Compiler's Comments

2005 Amendment: Chapter 249 in definition of federal property after "government" deleted "excluding military reservations"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

18-5-403. Certification and eligibility of blind persons.

Administrative Rules

ARM 37.30.2510 Issuance and conditions of certification.
ARM 37.30.2515 Transfer and termination.

18-5-404. Vending facilities, equipment, and supplies — available to certified blind persons.

Administrative Rules

ARM 37.30.2530 Training of blind vendors.
ARM 37.30.2540 Necessary compliance.
ARM 37.30.2570 Informing vendors of rights and responsibilities.

18-5-405. Right to fair hearing.

Administrative Rules

ARM 37.30.2570 Informing vendors of rights and responsibilities.

18-5-406. Health and retirement fund — services to vendors.

Administrative Rules

ARM 37.30.2535 Department's set-aside funds.
ARM 37.30.2565 Distribution and use of vending machine income on federal property.

18-5-411. Administration of vending facilities — state properties.

Administrative Rules

ARM 37.30.2505 Establishment of business enterprise facilities.
ARM 37.30.2515 Transfer and termination.

18-5-413. Implementation of Randolph-Sheppard Act, as amended.

Compiler's Comments

Federal Statute: The Randolph-Sheppard Act referred to in this section may be found at 20 U.S.C. §§107 through 107f.

Administrative Rules

ARM 37.30.2540 Necessary compliance.
ARM 37.30.2545 Organization and election — state committee of blind vendors.
ARM 37.30.2550 Functions of committee.
ARM 37.30.2565 Distribution and use of vending machine income on federal property.

18-5-414. Authority to adopt rules.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 67 (Ch. 175, L. 1981) provided: "The current statutory authority providing a preference to blind and handicapped persons in the leasing of vending facilities on state property is not adequate for the purposes of authorizing the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] to administer the federal Randolph-Sheppard Act for either federal or state

purposes. The state statutory scheme for providing a preference to blind vendors in the leasing of vending areas in state property is poorly defined and difficult to administer.

This act will provide specific statutory authority in Section 10 [18-5-413] by which the Department may administer the programs it has established for the purposes of the federal Randolph-Sheppard Act. Section 10, subsection 2 authorizes the Department to adopt rules for the purposes of implementing the administration of vending facilities on federal property by the department as authorized in the federal Randolph-Sheppard Act and for administering programs mandated by the federal Randolph-Sheppard Act.

This act provides for a state program administered by the Department which will make available to qualified blind persons vending facilities to be operated by them. This programmatic statutory scheme is a more appropriate mode for providing vocational opportunities to blind persons than was the prior preference system. This scheme will insure that federal and state vocational programs are available to those blind persons who are most qualified to become blind vendors. The preference system did not distinguish as to degree of handicap or economic need. This scheme will also insure continuity in the administering of these vending facilities and related programs. The preference system did not insure that vending facilities would be available to qualified blind persons nor did it encourage the investment of program resources in the training of qualified blind persons and the equipping of vending facilities for operation by them. This act clearly defines what state property is subject to the act. This act also provides that the Department may enter into agreements with private parties and local governments in order to make vending facilities on their properties available to qualified blind vendors. The prior preference system in not defining the property subject to the preference raised serious questions as to its intended scope, nor did the prior preference system allow for the expansion by agreement of the blind vendor program into vending facilities on private property.

The act is intended to provide vocational training and active employment for persons handicapped by blindness or serious visual impairment. Since active employment is an important objective of the legislation, the act limits the department's ability to directly operate or to include in its vocational program such passive operations as maintenance of self-service vending machines, particularly on state property. While the department will be able to derive the revenues from vending machines which are now received by the Department of Administration, it is anticipated that the Department will continue the present practice of the Department of Administration and let contracts for provision of vending machines by competitive bid. The act specifically provides for a gradual phasing in of blind-vendor operated vending facilities in any case where the immediate implementation of the program would cause an economic hardship to the current vendor, who could otherwise expect a renewal of contract. The language is written in discretionary terms in order to permit the Department to respond to situations as they actually exist and to preclude the language being used to provide a new contract to a private vendor whose contract, in the normal course of events, would have been terminated without this act. However, it is intended that the Department employ its discretion in a compassionate manner to avoid inflicting economic hardship on an otherwise satisfactory private vendor. The Department is authorized to charge a fee in lieu of rental to blind vendors on state property whose operations become financially successful. Again, the language is made discretionary so that the Department can deal with the situation as it actually exists in practice. However, the intent of this provision is that the Department charge to the financially successful blind vendor a fee in lieu of rental which will provide the state with some compensation for the use of the space without working a financial hardship on the blind vendor.

The certification of blind persons qualified to be blind vendors provided for in this act is necessary for administration by the Department of the federal Randolph-Sheppard Act on federal properties. This certification will constitute the "licensing" mandated in the federal Randolph-Sheppard Act. This certification will be utilized for the purposes of the state program as well. The administration of the program for federal and state purposes will be therefore more congruent.

This act provides that the Department may administer a health and retirement fund for the blind vendors. This fund as well as the blind vendors' program may be funded by a set-aside from the net income of blind vendors. This set-aside is to be a reasonable percentage which will not affect the financial status of the blind vendors to such a degree as to deny them the intended vocational and economic benefits of the program. The health and retirement fund and the blind vendors' program may be funded as well by the Department from the income the Department may receive from vending facilities which it may operate directly. The health and retirement fund is authorized for the purpose of implementing that aspect of the federal Randolph-Sheppard Act. The applicability of this fund to blind vendors on state property will

insure that there will be congruence between the program as administered for federal and state purposes.

This act states the authority of the Department for the purposes of the act and provides the general criteria and procedure for the transfer of the administration of vending facilities on state property to the Department. The prior preference system did not define administrative authority nor did it state what the appropriate criteria and procedure would be.

The act provides the Department with the rulemaking authority necessary for the implementation in a definitive manner of the purposes of this act."

Administrative Rules

Title 37, chapter 30, subchapter 25, ARM Blind vendors program.

18-5-415. Operation of facilities.

Administrative Rules

ARM 37.30.2515 Transfer and termination.
ARM 37.30.2520 Equipment, stocks, and insurance.
ARM 37.30.2525 Vendor responsibilities.
ARM 37.30.2530 Training of blind vendors.
ARM 37.30.2540 Necessary compliance.
ARM 37.30.2555 Temporary operation of facility by the department.

18-5-416. Vending machines.

Administrative Rules

ARM 37.30.2560 Contracts with vending companies.
ARM 37.30.2565 Distribution and use of vending machine income on federal property.

Part 5
Blind Person Preference

Part Compiler's Comments

Applicability: Section 3, Ch. 36, Sp. L. June 1986, provided: "A contract for the operation of a vending facility entered into prior to July 1, 1986, is not subject to this part while the contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on July 1, 1986, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both."

1986 Statement of Intent: The statement of intent attached to Ch. 36, Sp. L. June 1986, provided: "A statement of intent is required for this bill because section 5 [18-5-504] grants rulemaking authority to the department of administration to establish procedures for the implementation by state agencies of the preference authorized by this bill. It is intended that the rules include but not be limited to provisions governing the method of determination of eligibility for the preference authorized in section 2 [18-5-502]."

Effective Date: The 1986 enactment was July 23, 1986.

18-5-502. Preference to blind persons.

Administrative Rules

ARM 2.5.405 Blind vendors' bidding preference.

Part 6
Nonvisual Access Technology Procurement

Part Compiler's Comments

Effective Date: Section 7, Ch. 429, L. 2001, provided that this part is effective July 1, 2001.

CHAPTER 6
SALES

Part 1
Sale of State Property

18-6-101. Power to sell state property — proceeds credited to general fund.

Compiler's Comments

1999 Amendment: Chapter 441 in (1) inserted second sentence concerning donation of property to school district; and made minor changes in style. Amendment effective April 23, 1999.

1991 Amendment: At beginning of (1) inserted exception clause.

Termination Date: Section 6, Ch. 234, L. 1991, provided: "[This act] terminates October 1, 1993."

1983 Amendment: In (3), substituted "enterprise or internal service fund" for "revolving fund" in two places.

1981 Amendment: Added (3) referring to revolving funds and designated subfund accounts.

Case Notes

Employee — No Power to Sell: An employee of the State Park Commission (now Department of Fish, Wildlife, and Parks) sold a road roller to a private citizen. Neither the Park Commission nor its employee was authorized to sell the roller. The purchaser took no title or right to the roller from the state and passed none of the state's rights to a subsequent purchaser. The state was able to regain possession of the roller through an action of claim and delivery. State ex rel. Olsen v. Sundling, 128 M 596, 281 P2d 499 (1955).

Attorney General's Opinions

Exclusive Authority to Dispose of State Property Vested in Department of Administration: State agencies do not have authority to trade in state property without approval by the Department of Administration. 39 A.G. Op. 44 (1981).

Collateral References

States *key* 89.
81A C.J.S. States §149.
72 Am. Jur. 2d States §66.

18-6-102. Interagency transfers.

Attorney General's Opinions

Exclusive Authority to Dispose of State Property Vested in Department of Administration: State agencies do not have authority to trade in state property without approval by the Department of Administration. 39 A.G. Op. 44 (1981).

Collateral References

States *key* 89.
81A C.J.S. States §149.

18-6-103. Highway equipment by bid.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: Sec. 1, Ch. 277 substituted "state special revenue fund" for "earmarked revenue fund".

Sec. 3, Ch. 277 substituted "enterprise or internal service fund account" for "revolving fund account".

1981 Amendment: Added "or in the appropriate revolving fund account" at the end of the section.

Collateral References

States *key* 89.
81A C.J.S. States §149.

CHAPTER 7
PRINTING AND LEGAL NOTICES

Part 1
State Printing

18-7-101. Power to contract for printing — exception.

Compiler's Comments

2001 Amendment: Chapter 314 inserted (4) relating to certain state compensation insurance fund materials. Amendment effective April 21, 2001.

1989 Amendment: Deleted former (3) that read: "(3) All forms, blanks, and documents printed for distribution to the state agencies and institutions shall be serially numbered and indexed by the department and sample copies of each permanently retained, and the department shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution."

Collateral References

States *key* 94.
81A C.J.S. States §157.
64 Am. Jur. 2d Public Works and Contracts §45.

18-7-104. Union label.

Compiler's Comments

1983 Amendment: In (2) and (3), deleted "18-7-103" and inserted "18-7-107, or chapter 4 of this title".

Collateral References

States *key* 100.
81A C.J.S. States §§158, 159.
64 Am. Jur. 2d Public Works and Contracts §72.

18-7-105. Penalty.

Compiler's Comments

1983 Amendment: Near beginning of section, after "any printed matter" deleted "except certificates named in 18-7-103"; and after "as set forth in" deleted "18-7-103" and inserted "chapter 4 of this title" and after "18-7-104" inserted "or 18-7-107".

18-7-107. State printing, binding, and stationery work.

Compiler's Comments

2001 Amendment: Chapter 181 in first sentence after "Montana" substituted "is subject to the preference in 18-1-102(1)(b)" for "must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state." Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1991 Amendment: In first sentence, before "responsible", inserted "the lowest" and after "bidder" substituted "if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%" for "if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102", inserted second sentence regarding contingency for lack of responsible in-state bidder, and inserted third sentence regarding federal exemptions.

1987 Amendment: Extended preference to all state printing by deleting exception for the Montana Code Annotated and certificates of appointment and election to office.

Law Review Articles

Awarding Public Works Contracts: Granting Preference to Resident Bidders: Galesburg Construction Co. v. Board of Trustees, 641 P2d 745 (Wyo.), 18 Land & Water L. Rev. 393 (1983).

Collateral References

64 Am. Jur. 2d Public Works and Contracts §§26, 45.

Part 2
Publication of Legal Notices

18-7-201. Requirements for choice of newspaper — price.

Collateral References
States *key* 96.
81A C.J.S. States §155.

18-7-204. Affidavit of printer — allowance of claims.

Collateral References
States *key* 176.
81A C.J.S. States §277.

18-7-205. Penalty for false affidavit or overcharge.

Collateral References
Fraud *key* 68.
37 C.J.S. Fraud §154.

Part 3
Control of State Printing

18-7-303. Duties of committee.

Compiler's Comments
1993 Amendment: Chapter 349 at beginning of (3) inserted "at its discretion" and after "legislature" deleted "as provided in 5-11-210".
1991 Amendment: In (3) inserted reference to 5-11-210; and made minor change in style. Amendment effective March 20, 1991.

CHAPTER 8
PROCUREMENT OF SERVICES

Part 2
Architectural, Engineering, and Land Surveying Services

Part Compiler's Comments
Saving Clause: Section 9, Ch. 51, L. 1987, was a saving clause.
Severability: Section 10, Ch. 51, L. 1987, was a severability section.
Effective Date: Section 11, Ch. 51, L. 1987, provided that the act was effective on passage and approval. Effective February 25, 1987.

18-8-202. Definitions.

Compiler's Comments
1999 Amendment: Chapter 51 in definition of agency after "state agency" deleted "as defined in subsection (7)", after "local agency" deleted "as defined in subsection (4)", and after "special district" deleted "as defined in subsection (6)"; in definition of licensed professional at end deleted "and who is exempt under 18-8-103"; and made minor changes in style. Amendment effective March 15, 1999.

18-8-204. Procedures for selection.

Compiler's Comments
2003 Amendment: Chapter 192 inserted (3) exempting from section procurement of services for design-build contracting pilot program projects. Amendment effective April 1, 2003.

Attorney General's Opinions
Fee Not to Be Considered When Selecting Services: A state agency may not consider a proposed fee when selecting architectural, engineering, or land surveying services, but may negotiate a fair and reasonable fee after the most qualified firm has been selected. 44 A.G. Op. 45 (1992).

18-8-205. Negotiation of contract for services.

Compiler's Comments

2003 Amendment: Chapter 192 inserted (3) exempting from section design-build contracting pilot program projects; and made minor changes in style. Amendment effective April 1, 2003.

Attorney General's Opinions

Fee Not to Be Considered When Selecting Services: A state agency may not consider a proposed fee when selecting architectural, engineering, or land surveying services, but may negotiate a fair and reasonable fee after the most qualified firm has been selected. 44 A.G. Op. 45 (1992).

18-8-210. Energy performance contracts exempt.

Compiler's Comments

Effective Date: Section 14, Ch. 162, L. 2005, provided that this section is effective on passage and approval. Approved April 7, 2005.

18-8-211. Coordination with other statutes.

Compiler's Comments

1997 Amendment: Chapter 443 deleted (4) that read: "(4) The exception for services estimated to cost less than $5,000 in 18-8-105 applies to this part"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

18-8-212. Exception.

Compiler's Comments

2003 Amendment: Chapter 162 in (1) increased estimated fees from $10,000 to $20,000; and made minor changes in style. Amendment effective March 28, 2003.

1993 Amendments: Chapter 22 in (1) inserted second sentence exempting procurement of services for the honors college program building; and made minor changes in style. Amendment effective February 8, 1993, and terminates July 1, 1995.

Chapter 518 in (1) increased "$5,000" to "$10,000"; and made minor changes in style. Amendment effective April 24, 1993.

CHAPTER 11
STATE-TRIBAL COOPERATIVE AGREEMENTS

Chapter Compiler's Comments

Interim Study Committee Bill: Chapter 309, L. 1981 (HB 25), was introduced at the request of the Interim Committee on Indian Affairs. See committee report, Legislative Council, 1980.

Preamble: The preamble to Ch. 309, L. 1981 (HB 25), provided: "WHEREAS, it is in the best interest of the State of Montana to establish a legal framework that will enable this state, its political subdivisions, and Indian tribes to achieve maximum harmony and facilitate cooperative efforts in the orderly administration of their respective governments; and

WHEREAS, it is in the best interest of the state of Montana to establish a legal framework for viable agreements between itself and tribal governments located in Montana that are based on mutual consent and mutual benefit; and

WHEREAS, it is in the best interest of the state of Montana to permit public agencies to make the most efficient use of their powers by enabling them to cooperate with tribal governments on a basis of mutual benefit and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of public agencies and local communities."

Chapter Attorney General's Opinions

County Reimbursement by Board of Crime Control for Indian Youth Placed in Regional Detention Facility by Tribal Court: Title 18, ch. 11, the State-Tribal Cooperative Agreements Act, includes broad authority for counties to enter into agreements with tribes for the delivery of services to their citizens. Although tribes have jurisdiction over tribal member youth, those youth remain citizens of Montana as well as citizens of the tribes, and if the tribes do not provide services, such as youth detention facilities, those tribal youth are nevertheless entitled to be

offered state services in the same manner as any other Montana youth. The fact that a tribal court adjudicates the youth does not necessarily disqualify the youth from the receipt of state services. In the present case, Blaine County entered into an agreement with the Fort Belknap Tribe to allow detention in the Blaine County youth detention facility of youth determined by the tribal court to be in need of detention, and Blaine County included the tribal youth population in its survey of youth to be served. The youth detention services were appropriately covered in the county's grant application. Thus, when the county applies for reimbursement for each youth served, regardless of whether the youth is a tribal member or not, the Montana Board of Crime Control is required to reimburse the county for detention costs for the youth, including tribal youth served in a regional detention facility pursuant to an order of a tribal court. 49 A.G. Op. 10 (2001).

Part 1
General Provisions

Part Compiler's Comments

Preamble: The preamble attached to Ch. 625, L. 1993, provided: "WHEREAS, the Legislature finds it necessary to clarify provisions of the State-Tribal Cooperative Agreements Act in order to reduce the delays in implementing taxation agreements entered into between the State of Montana and Montana Indian Tribes; and

WHEREAS, clarifying provisions of the State-Tribal Cooperative Agreements Act will also reduce the need for duplicative language, which results in increased costs associated with publication of the Montana Code Annotated; and

WHEREAS, the Supreme Court, in Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S. Ct. 905 (1991), stated, among alternatives, that the state and a tribe may adopt a "mutually satisfactory regime" for collection of a tax but did not mandate that a state collect the tax; and

WHEREAS, in an effort to promote a government-to-government relationship between the State of Montana and Montana Indian Tribes and in recognition that both the state and tribal governments must be trusted to act responsibly, it is appropriate that the party designated to collect taxes on an Indian reservation pursuant to any agreement be subject to negotiation.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the State-Tribal Cooperative Agreements Act to specifically include tax assessment and collection or refund and to establish specific requirements for tax assessment and collection or refund by the state, a public agency, or a Montana Indian Tribe."

18-11-101. Short title — purpose.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] [enacting subsections (2) and (3) of 18-11-101] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

18-11-103. Authorization to enter agreement — general contents.

Compiler's Comments

1993 Amendment: Chapter 625 inserted (1)(b) authorizing agreement to collect refund of tax or fee and to share refund; in (2) inserted second sentence appointing Governor or designee as governing body; inserted (4) requiring public notice and meeting; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

Attorney General's Opinions

Open Meeting Law Inapplicable to Departmental-Tribal Cooperative Agreement Negotiations: Negotiations between a Department Director and tribal representatives relating to establishment of a cooperative agreement authorized under this section are not subject to Montana's open meeting law. Such discussions do not constitute a "meeting" under 2-3-203 because the Director, when acting alone on behalf of the Department, does not fall within the scope of the term "quorum of the constituent membership" as used in 2-3-203. (See 1993 amendment.) 42 A.G. Op. 51 (1988).

Agreements — Method for Performance of Child Protection Services: Although none have been reached in Montana, state and tribal agreements provide a method for the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) to

perform child protection services that constitute a child custody proceeding under the Indian Child Welfare Act, with respect to an Indian child residing or domiciled on his tribe's reservation. 41 A.G. Op. 76 (1986).

18-11-104. Detailed contents of agreement.

Compiler's Comments

1993 Amendment: Chapter 625 inserted (1)(h) concerning other matters in agreement; inserted (3) specifying content of agreement involving tax or fee; deleted (9) that read: "(9) any other necessary and proper matters"; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

18-11-107. Filing of agreement.

Compiler's Comments

2001 Amendment: Chapter 54 in (1) at beginning substituted "60 days" for "10 days"; and in (1)(a) at beginning substituted "regional office" for "area office". Amendment effective March 16, 2001.

Effective Date — Applicability: Section 4, Ch. 54, L. 2001, provided: "[This act] is effective on passage and approval [approved March 16, 2001] and applies to agreements entered into on or after [the effective date of this act]."

1985 Amendment: In introductory phrase of (1) substituted "signature of the parties" for "prior to commencement of its performance", in (1)(a) substituted "area office of the bureau of Indian affairs" for "secretary", at end of (1)(a) added "having trust responsibility for the tribe that is party to the agreement or its successor agency", at end of (1)(b) inserted "except as provided in (2) of this section"; and inserted (2) exempting agreements to which a state agency is a party from filing requirement.

Interim Study Bill: House Bill 13 (Ch. 38, L. 1985), amending this section, was introduced by request of the Select Committee on Indian Affairs. See Select Committee on Indian Affairs 1983-84 Activities, A Report to the 49th Legislature, December 1984, Montana Legislative Council.

18-11-110. Specific limitations on agreements.

Compiler's Comments

1985 Amendment: In (1) substituted present language (see 1985 Session Law) for "enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either the state of Montana or tribal governments located in Montana"; and deleted former (4) that read: "provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States".

Interim Study Bill: Senate Bill 24 (Ch. 81, L. 1985), amending this section, was introduced by request of the Select Committee on Indian Affairs. See Select Committee on Indian Affairs 1983-84 Activities, A Report to the 49th Legislature, December 1984, Montana Legislative Council.

18-11-112. Revenue account — administrative account — distribution of revenue.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

TITLE 19
PUBLIC RETIREMENT SYSTEMS

Title Administrative Rules

Title 2, chapter 43, ARM Public Employees' Retirement Board.

Title 2, chapter 44, ARM Teachers' Retirement Board.

Title Case Notes

Teachers' Pension Postretirement Adjustment Age Classification Violative of Equal Protection Guarantee: The 1989 Legislature enacted 19-4-711 (now repealed), which allowed a postretirement adjustment increase in the pensions of the beneficiaries of the Teachers' Retirement System. The law provided that to be eligible, retirees or their beneficiaries must be 55 years of age or older (see 1997 amendment) or, irrespective of age, must be receiving disability or survivorship benefits. Applying the rational basis test, the District Court declared the law unconstitutional, finding no reason rationally related to a legitimate state purpose to justify granting a postretirement adjustment to the class of beneficiaries under age 55 receiving disability or survivorship benefits, while denying it to another class of beneficiaries under age 55 receiving benefits from retirees. The Supreme Court noted that while nearly all legislation classifies or sets forth classifications of applicability, benefits, and recipients, the fact that some of these classifications are imperfect does not necessarily violate the equal protection clause. However, the court was unable to find any rational relationship to the purpose of the establishment of the classification in 19-20-711 (now repealed), holding that it was wholly arbitrary and an example of the Legislature picking and choosing who will receive benefits without making any distinction between the affected classes. The District Court ruling of unconstitutionality was affirmed. Arneson v. St., 262 M 269, 864 P2d 1245, 50 St. Rep. 1546 (1993).

Title Law Review Articles

Is Your Retirement Plan Really Safe? Protect Your Clients' Assets From Creditors, Naegele & Altieri, 199 U. Acct. 34 (2005).

Investment and Planning Strategies for Retirement (Panel Discussion), 82 Taxes 39 (2004).

Obtaining an Equitable Distribution of Retirement Plans in a Divorce Proceeding, Wilde, 49 S.D.L. Rev. 141 (2004).

Retirement Security Through Asset Protection: The Evolution of Wealth, Privacy, and Policy, Eason, 61 Wash. & Lee L. Rev. 159 (2004).

Review Tax Strategies to Ensure that Retirement Years Are "Golden", Saftner & Fink, 72 Prac. Tax Strategies 266 (2004).

The Flashing Yellow Lights of Retirement Planning: False Expectations, Reality, and Some Good News, Cutler, 58 J. Fin. Serv. Prof. 37 (2004).

Current Developments (in retirement plans), Wagenbach, 34 Tax Adviser 678 (Part I), 745 (Part II) (2003).

How to Perform a Pension Valuation in a Divorce Case (Part II of II): Retired Parties, Disability, Guideposts, Snyder, 17 Am. J. Fam. L. 82 (2003).

The Diminished Appeal of the 401(k) in a Post-911, Post-Enron World, Howard, 29 J. Pension Plan. & Compliance 1 (2003).

Retirement Planning, Krass & Weinstein, 79 Taxes 18 (2001).

Pension Underfunding and Liberal Retirement Benefits Among State and Local Government Workers, Johnson, 50 Nat'l Tax J. 113 (1997).

New Developments Affecting Governmental Plans, Calhoun, 23 Tax Mgmt. Compensation Plan. J. 39 (1995).

Economically Targeted Investments—Can Public Pension Plans Do Good and Do Well?, Cross, 68 Ind. L.J. 931 (1993).

Public Pension Plans: The Need for Federal Regulation, Kemp. 10 Hamline L. Rev. 27 (1987).

Pensions: Public Employee Pension Plans as Contractual Obligations Granted Constitutional Protection, Slowinski, 20 Washburn L.J. 169 (1980).

Title Collateral References

Montana's Public Retirement Systems, A Legislators' Guide, Leg. Serv. Div. (2001).

Legislative Policy Objectives for Montana's Public Employee Retirement Systems: 1999-2000 Interim, Leg. Serv. Div. (2000).

Promoting Fair and Consistent Legislative Policy for Public Retirees, Report to the Governor and the 53rd Legislature, Mont. Leg. Council (1992).

CHAPTER 1
SOCIAL SECURITY

Chapter Law Review Articles

Is Postponing Social Security Benefits the Better Choice?, Baxenda, 73 Prac. Tax Strategies 330 (2004).

Making Social Security a Marital Asset, Danninger & Buland, 14 Fam. Advoc. 55 (1991).

When to Take Early Social Security Retirement Benefits, Doyle, 44 J. Am. Soc'y CLU & ChFC 30 (1990).

Part 1
General Provisions

19-1-101. Declaration of policy.

Compiler's Comments

Federal Statute: The Social Security Act referred to in this section may be found at 42 U.S.C. §301, et seq.

Collateral References

Social Security and Public Welfare *key* 131.

81 C.J.S. Social Security and Public Welfare §§27 through 29.

70A Am. Jur. 2d Social Security and Medicare §22.

Acceptance of, or assertion of right to, pension or retirement as abandonment of public office or employment. 76 ALR 2d 1312.

19-1-102. Definitions.

Compiler's Comments

2003 Amendment: Chapter 114 inserted definition of employee tax; in definition of Federal Insurance Contributions Act after "means" deleted "subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and" and at end substituted "Internal Revenue Code" for "federal Internal Revenue Code of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended"; in definition of political subdivision near middle of first sentence substituted "legally constituted" for "juristic"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 58 in definition of state agency substituted "department of administration provided for in 2-15-1001" for "public employees' retirement board of the public employees' retirement system of the state of Montana". Amendment effective July 1, 1999.

1993 Amendment: Chapter 10 throughout section substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Federal Statutes: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

Subchapter A of Chapter 9 of the Federal Internal Revenue Code of 1939 referred to in this section is superseded by subchapters A and B of Chapter 21 of the Federal Internal Revenue Code of 1954, known as the Federal Insurance Contributions Act, which may be found at 26 U.S.C. §3101, et seq.

Collateral References

Right to unemployment compensation of retired employee receiving pension or the like. 32 ALR 2d 901, superseded by 56 ALR 3d 520, 56 ALR 3d 552.

19-1-103. Exclusions.

Collateral References

81 C.J.S. Social Security and Public Welfare §31.

70A Am. Jur. 2d Social Security and Medicare §§385, 386, 388 through 394, 482 through 488, 501 through 503.

19-1-104. Retirement systems to be considered separate.

Compiler's Comments

1997 Amendments — Code Commissioner Instruction — Name Change: Chapter 42 in (1) and (2) inserted parenthetical references to United States Code sections of the Social Security Act; in (2) substituted "218(l)(1)" for "218(p)(1)"; and made minor changes in style. Amendment effective March 12, 1997.

Pursuant to sec. 12, Ch. 223, L. 1997, in (2) the Code Commissioner has substituted "game wardens' and peace officers' retirement system" for "game wardens' retirement system". Amendment effective July 1, 1997.

1989 Amendment: In (2) changed "patrolmen's" to "patrol officers'".

1981 Amendment: Inserted "the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' retirement system" after "Social Security Act" in (2).

Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

Collateral References

70A Am. Jur. 2d Social Security and Medicare §§489, 491, 494 through 496, 500 through 503, 506, 508 through 511, 635, 636, 686, 718, 719, 722.

Part 2
Administration

19-1-201. State agency to make rules.

Collateral References

81 C.J.S. Social Security and Public Welfare §8.

70A Am. Jur. 2d Social Security and Medicare §§8, 11 through 14.

19-1-202. Costs of administration.

Compiler's Comments

1999 Amendment: Chapter 58 at end substituted "to the state agency" for former language that read: "to the pension trust fund of the public employees' retirement system. The amount of administrative costs not defrayed by interest and income earned upon the contribution account, which had been credited to the pension trust fund of the public employees' retirement system, as provided in 19-1-602, prior to July 1, 1987, must be paid to the state agency for deposit to the pension trust fund of the public employees' retirement system by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions." Amendment effective July 1, 1999.

1995 Amendment: Chapter 412 throughout section substituted "pension trust fund of the public employees' retirement system" for "retirement division pension trust fund"; in second sentence inserted "prior to July 1, 1987"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1983 Amendment: Substituted "retirement division pension trust fund" for "earmarked revenue fund, retirement division account" in three places.

Part 3
Referendum and Certification

Part Collateral References

81 C.J.S. Social Security and Public Welfare §28.

19-1-301. Authorization of referendum by governor.

Compiler's Comments

1997 Code Commissioner Instruction — Name Change: Pursuant to sec. 12, Ch. 223, L. 1997, the Code Commissioner has substituted "game wardens' and peace officers' retirement systems" for "game wardens' retirement systems". Amendment effective July 1, 1997.

1989 Amendment: Changed "patrolmen's" to "patrol officers'".

1981 Amendment: Substituted "members of the public employees', highway patrolmen's, judges', and game wardens' retirement systems" for "employees of the state other than highway patrolmen and with respect to highway patrolmen".

19-1-302. Conduct of referendum.

Compiler's Comments

Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

19-1-303. Notice of referendum.

Compiler's Comments

Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

19-1-304. Certification by governor.

Compiler's Comments

1993 Amendment: Chapter 10 at end substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

Part 4
Federal-State Agreement

19-1-401. Authority for federal-state agreement.

Compiler's Comments

1993 Amendment: Chapter 10 near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Collateral References

70A Am. Jur. 2d Social Security and Medicare §2.

19-1-402. Contents of federal-state agreement.

Compiler's Comments

1997 Amendment: Chapter 42 in (3) substituted "218(e) of the Social Security Act (42 U.S.C. 418(e))" for "218(f) of the Social Security Act"; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment: Chapter 10 throughout section deleted citations to defined terms; in introductory clause, at beginning, substituted "The agreement authorized by 19-1-401" for "Such agreement" and near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Federal Statutes: Title II of the Social Security Act referred to in this section may be found at 42 U.S.C. §401, et seq. Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

Attorney General's Opinions

Social Security — Public Employees' Retirement System: For the purpose of Social Security coverage under Ch. 270, L. 1955 (now Title 19, ch. 1), and the agreement between the state of Montana and the Secretary of Health, Education and Welfare (now Secretary of Health and Human Services), the positions of state Superintendent of Public Instruction, County Superintendent of Schools, the professional staff of the state Superintendent of Public Instruction, and teachers in custodial institutions are positions covered by the Public Employees' Retirement System. 26 A.G. Op. 103 (1956).

Part 5
Plans for Employees of Political Subdivisions

19-1-501. Submission of plan.

Compiler's Comments

Federal Statute: Title II of the Social Security Act referred to in this section may be found at 42 U.S.C. §401, et seq.

19-1-503. Required provisions of plan.

Compiler's Comments

1997 Amendment: Chapter 42 in (2) substituted "218(c)(3)(B) of the Social Security Act (42 U.S.C. 418(c)(3)(B))" for "218(c)(3)(C) of the Social Security Act"; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment: Chapter 10 in (2) deleted citation to defined term; in (5) substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

Part 6
Contribution Account

19-1-602. Management of account.

Compiler's Comments

1999 Amendment: Chapter 58 in (4) after "administration" inserted "and the state agency's administrative expenses necessary to administer this chapter". Amendment effective March 15, 1999.

1995 Amendment: Chapter 412 in (3), in first sentence, substituted "as part of the unified investment program described in Title 17, chapter 6, part 2" for "in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund"; in (4) substituted "By the end of the fiscal year during which all payments determined to be due and payable from the state to the social security administration have been paid" for "No later than June 30, 1986" and substituted "transfer any funds remaining in the contribution account" for "calculate an amount equal to the earned income from current and previous fiscal years in the contribution account, less all payments and credits due or owing, and transfer this amount"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1986 Amendment: At end of (3) in version effective July 1, 1987, after "in 19-1-603 to the" substituted "state general fund" for "funds of the state agency, to be used by it to defray the costs of administering the state agency as it may determine"; and inserted (4) requiring calculation and transfer of excess funds to state general fund, effective June 30, 1986.

1981 Amendment: Deleted "earmarked revenue fund or" after "19-1-603 to the" in (3); deleted "either" after "used by it" in (3); deleted "or for distribution pro rata to the contributing state departments, political subdivisions, school districts, and instrumentalities" before "as it may determine" at the end of (3).

Part 7
Payments into Contribution Account

19-1-702. Contributions by state employees.

Compiler's Comments

Federal Statute: The Federal Insurance Contributions Act referred to in this section may be found at 26 U.S.C. §3101, et seq.

Collateral References

70A Am. Jur. 2d Social Security and Medicare §§81, 249 through 306, 309, 311 through 314.

19-1-705. Deduction of employee contribution by political subdivision.

Compiler's Comments

Federal Statute: The Federal Insurance Contributions Act referred to in this section may be found at 26 U.S.C. §3101, et seq.

19-1-706. Collection of delinquent payments from political subdivision.

Compiler's Comments

1981 Amendment: Inserted (1) stating purpose of section and permitting waiver of interest penalty; increased the interest rate on delinquent payments from 6% to 9% a year; inserted "or $10 per day, whichever is greater" in (2).

Part 8
Participation of Teachers

Part Collateral References
81 C.J.S. Social Security and Public Welfare §29.

19-1-811. Referendum by school district.

Compiler's Comments
Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

19-1-813. Collection of contributions.

Compiler's Comments
Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

19-1-822. Referendum — institution of higher education.

Compiler's Comments
Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. §418.

19-1-823. Certification by governor.

Compiler's Comments
1993 Amendment: Chapter 10 near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare".
Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 46 U.S.C. §418.

19-1-824. Federal-state agreement.

Compiler's Comments
Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 46 U.S.C. §418.

19-1-825. Collection of contributions.

Compiler's Comments
Federal Statute: Section 218 of the Social Security Act referred to in this section may be found at 46 U.S.C. §418.

CHAPTER 2
PUBLIC EMPLOYEES' RETIREMENT GENERAL PROVISIONS

Chapter Compiler's Comments
Severability: Section 29, Ch. 17, L. 1974, was a severability clause.

Chapter Administrative Rules
Title 2, chapter 43, ARM Public Employees' Retirement Board rules.

Chapter Law Review Articles
On Public Pensions, State Constitutional Contract Protection, and Fiscal Constraint, Simko, 69 Temp. L. Rev. 1059 (1996).
Federal Civil Service Disability Retirement Benefits Received After Divorce, Haman, 28 Idaho L. Rev. 1107 (1992).
Retirement and Worker Choice: Incentives to Retire and the Age Discrimination in Employment Act, McMorrow, 29 B.C.L. Rev. 347 (1988).

Part 3
General Provisions

19-2-301. Short title.

Compiler's Comments
Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-302. Applicability.

Compiler's Comments

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

1999 Amendment: Chapter 471 inserted "Except as otherwise provided in this title" and inserted "and plans within the systems"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

The amendment to this section made by Ch. 562, L. 1999, was rendered void by sec. 99(1)(a), Ch. 562, L. 1999, a coordination section.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-303. Definitions.

Compiler's Comments

2005 Amendment: Chapter 329 in definition of inactive member substituted "terminates service and does not retire or take a refund of the member's accumulated contributions" for "is not an active or retired member"; in definition of retirement or retired in (a) substituted "terminated from service" for "been terminated from service for at least 30 days"; in definition of termination of employment at beginning inserted termination from employment, terminated employment, terminated from employment, terminate employment, and terminates employment as defined terms, deleted termination of service as defined term, and substituted (a) and (b) providing that there has been a complete severance by the positive act of the employee, employer, or both, and that the member no longer receives compensation for the job other than any outstanding lump-sum payment for various leaves for "the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination"; inserted definition of termination of service and similar terms; in definition of vested member in (a) substituted "at least 5 years of membership service" for "attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 114 in definition of Internal Revenue Code substituted "has the meaning provided in 15-30-101" for "means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999". Amendment effective October 1, 2003.

Chapter 429 in definition of benefit in (a) after "service" inserted "retirement benefit, early retirement benefit"; deleted definition of credited service that read: ""Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan"; in definition of disability inserted "or disabled" as defined term; inserted definitions of early retirement benefit, service credit, and service retirement benefit; in definition of retirement account near middle substituted "member" for "employee"; in definition of retirement benefit in (a) after "service" and "early" inserted "retirement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in definition of employee at end inserted "or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105"; in definition of employer in first sentence after "governmental" substituted "agency" for "entity" and inserted second sentence including certain interlocal government entities in the definition; in definition of membership service at beginning deleted "or "years of service""; inserted definition of normal retirement age; in definition of

written application at beginning inserted "or "written election"", after "instrument" substituted "prescribed" for "specified", after "by the board" inserted "or required by law", and after "properly" substituted "signed" for "executed"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 149 in definition of actuarial equivalent substituted "the mortality table and interest rate assumptions adopted by the board" for "the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually". Amendment effective March 29, 2001.

Chapter 423 in version effective on occurrence of contingency or July 1, 2002, in definition of benefit in (b) inserted reference to a disability payment under 19-3-2141. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

(Temporary version) Chapter 490 inserted definition of retirement plan; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Deleted definition of account balance that read: ""Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan"; inserted definition of retirement plan; inserted definition of vested account; in definition of vested member in (b) after "member or status of a" substituted "member who meets the minimum membership service requirements of 19-3-2116" for "member who, pursuant to 19-3-2116, is entitled to employer contributions and income on those contributions in the member's retirement account"; and made minor changes in style.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendments — Composite Section — Coordination: Chapter 58 in definition of fiscal year after "means" inserted "a plan year, which is"; inserted definition of Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 1999. The amendments to definition of retirement system or system made by sec. 4, Ch. 58, L. 1999, were rendered void by sec. 46(1), Ch. 58, L. 1999, a coordination section.

Chapter 471 throughout section substituted "plan", "defined benefit plan", or "defined benefit retirement plan" for "system" or "retirement system"; inserted definitions of account balance, covered employment, covered position, defined benefit retirement plan or defined benefit plan, defined contribution retirement plan or defined contribution plan, plan choice rate, and retirement account; in definition of additional contributions inserted "of a defined benefit plan"; in definition of annuity in (a) at beginning inserted "in the case of a defined benefit plan" and inserted (b) referring to, in the case of a defined contribution plan, a payment of a fixed sum of money at regular intervals; in definition of benefit inserted (b) relating to a payment or distribution under a defined contribution retirement plan for the exclusive benefit of a plan member or a member's beneficiary or an annuity purchased under 19-3-2124; in definition of designated beneficiary inserted "or benefit from a retirement account"; in definition of member inserted (b) relating to a person with a retirement account in the defined contribution plan; in definition of pension substituted "retirement plan" for "system"; in definition of pension trust fund inserted "or plan"; in definition of retirement benefit in (a) in first sentence inserted "in the case of a defined benefit plan" and inserted "a defined benefit plan of" and in second sentence substituted "With respect to a defined benefit plan, the term does not mean an annuity" for "An annuity is not a retirement benefit" and inserted (b) relating, in the case of a defined contribution plan, to a benefit as defined in definition of benefit; in definition of vested member in (a) at

beginning inserted "with respect to a defined benefit plan" and inserted (b) relating, with respect to a defined contribution plan, to a member or the status of a member who under 19-3-2116 is entitled to employer contributions and income on those contributions in the member's retirement account; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Section 4, Ch. 562, L. 1999, in definition of active member substituted "board" for "division"; deleted definition of division that read: ""Division" means the public employees' retirement division of the department of administration"; in definition of retirement or retired substituted "has been terminated from service for at least 30 days" for "has terminated from service"; in definition of retirement system or system after ""system"" inserted "or "plan"" and substituted "retirement plans enumerated in 19-2-302 and known as retirement systems" for "retirement systems enumerated in 19-2-302"; in definition of written application after "written instrument" substituted "specified by the board, properly executed" for "duly executed" and substituted "including documentation the board considers necessary" for "including such proofs of age as the board considers necessary"; and made minor changes in style. Amendment effective July 1, 1999.

The amendments to definition of retirement system or system made by sec. 4, Ch. 562, L. 1999, were rendered void by sec. 99(1)(b), Ch. 562, L. 1999, a coordination section.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in definition of active member, after "who is", substituted "a paid" for "an" and after "contributions" substituted "and is properly reported to the division for the most current reporting period" for "to the system based on the member's compensation paid by the employer"; in definition of benefit, after "benefit", inserted "payment"; in definition of contingent annuitant, after "continuing", substituted "monthly benefit" for "annuity"; in definition of designated beneficiary, in two places after "member", inserted "or payment recipient"; in definition of inactive member, after "member who", substituted "is not an active or retired member" for "has terminated service with an employer and has not withdrawn the member's accumulated contributions from the retirement system"; in definition of pension, after "means", inserted "benefit"; in definition of retirement, after "service", substituted "and has received and accepted" for "with" and after "benefit" substituted "from" for "under"; in definition of retirement benefit, in first sentence after "payable", substituted "as a result of" for "following" and inserted second sentence clarifying that an annuity is not a retirement benefit; in definition of retirement system, near beginning, inserted "or "system""; inserted definition of statutory beneficiary; in definition of survivorship benefit, after "life to the", inserted "statutory or designated"; inserted definition of termination of employment or termination of service; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier

commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 throughout section inserted "retirement" before "system"; and inserted definition of essential elements of the position. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in introduction inserted reference to retirement systems; inserted definitions of active member, actuarial cost, actuarial liabilities, contingent annuitant, department, designated beneficiary, Division, inactive member, normal cost or future normal cost, pension trust fund, regular contributions, supplemental cost, unfunded actuarial liabilities or unfunded liabilities, and vested member or vested; substituted definition of accumulated contributions for former definition that read: ""Accumulated contributions" means the sum of all the contributions standing to the credit of a member's individual account, together with the regular interest thereon"; substituted definition of additional contributions for former definition that read: ""Additional contributions" means contributions by members under the provisions of 19-3-702"; substituted definition of annuity for former definition that read: ""Annuity" means payments for life derived from contributions made by a member as provided in this chapter"; deleted definition of beneficiary that read: ""Beneficiary" means the person so designated pursuant to part 13 of this chapter"; substituted definition of benefit for former definition that read: ""Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter"; deleted definition of compensation that read: ""Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year"; deleted definition of contracting employer that read: ""Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system"; substituted definition of credited service or service credit for former definition of creditable service that read: ""Creditable service" means the aggregate of membership service and prior service"; substituted definition of disability for former definition that read: ""Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion"; substituted definition of employee for former definition that read: ""Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402"; substituted definition of employer for former definition that read: ""Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system"; deleted definition of employer contributions that read: ""Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board"; deleted definition of final compensation that read: ""Final compensation", except as provided in 19-3-907, means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation"; deleted definition of head of department that read: ""Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment"; substituted definition of member for former definition that read: ""Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406"; substituted definition of membership service or years of service for former definition that read: ""Membership service"

means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (9) of this section"; deleted definition of normal contributions that read: ""Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704"; substituted definition of pension for former definition that read: ""Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter"; deleted definition of prior service that read: ""Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana"; substituted definition of retirement or retired for former definition that read: ""Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter"; substituted definition of retirement benefit for former definition of retirement allowance that read: ""Retirement allowance" means the periodic benefit payable following service, early, or disability retirement"; deleted definition of retirement fund that read: ""Retirement fund" means the public employees' retirement system pension trust fund"; substituted definition of retirement system for former definition that read: ""Retirement system" means the public employees' retirement system created by this chapter"; substituted definition of service for former definition that read: ""Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502"; substituted definition of survivorship benefit for former definition of survivorship allowance that read: ""Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In definition of final compensation inserted reference to exception in 19-3-907. Amendment effective July 1, 1989.

1987 Amendment: At end of definition of actuarial equivalent substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

1983 Amendment: In definition of retirement fund substituted "retirement system pension trust fund" for "retirement account in the agency fund".

1981 Amendment: Deleted "additional" before "contributions" both times it appears in definition of accumulated contributions; deleted definition of accumulated normal contributions and former definition of accumulated contributions; deleted language relating to credit for part time employment continuing for more than a year.

Commissioner Correction: Changed "subsection (11)" to "subsection (9)" in definition of membership service to correct inadvertent omission in HB 197 (Ch. 496, L. 1981), which renumbered the subsections.

Case Notes

Constitutional Authority of Public Employees' Retirement Board to Make Actuarial Calculations — No Overbroad Delegation of Legislative Authority: The District Court held that 2001 amendments contained in House Bill No. 294, which included a definition of actuarial equivalent that changed the method by which the Public Employees' Retirement Board calculated certain benefits, unconstitutionally delegated unconstrained discretion to the Board in violation of the separation of powers doctrine in Art. III, sec. 1, Mont. Const. On appeal, the Board asserted that Art. VIII, sec. 15, Mont. Const., gave the Board the authority to make actuarial evaluations and thus to implement the 2001 amendments, so there was no constitutional violation. The Supreme Court agreed. Article III, sec. 1, Mont. Const., allows one branch of government to exercise power properly belonging to another branch if the constitution expressly directs or permits that exercise. Because Art. VIII, sec. 15, Mont. Const., delegated authority to the Board to make actuarial determinations, the District Court committed reversible error in concluding that the Legislature and House Bill No. 294 (2001) unconstitutionally delegated authority to the Board to make determinations allowed by another section of the constitution. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

District Court Decision Regarding Constitutionality of One Issue Precluding Consideration of Other Constitutional Questions — Certification to Supreme Court Proper: Baumgardner raised numerous issues concerning the constitutionality of 2001 amendments to the Public Employees'

Retirement System. The District Court decided that the amendments were an unconstitutional delegation of legislative power but did not consider other issues related to the amendments. The Public Employees' Retirement Board moved to certify the judgment as final, and the motion was granted. On appeal, Baumgardner contended that certification was improper because the District Court did not resolve all of the pending issues. The Supreme Court disagreed. Once the amendments were declared unconstitutional on the delegation question, there was no need for the District Court to consider other challenges to the constitutionality of the amendments, so certification was appropriate, and the case was properly submitted to the Supreme Court. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005).

Public Defender Considered Employee Entitled to Purchase Service Credits: Lewis worked as a county public defender for about 2 1/2 years and then began working for the state Department of Transportation. Lewis sought to purchase service credits pursuant to the applicable 1979 version of 19-3-505 for the time spent as a public defender. The District Court affirmed the finding of the Public Employees' Retirement Board that Lewis's service was creditable service (definition changed to credited service or service credit in 1993 and deleted in 2003), as defined in 19-3-104 (renumbered 19-2-303), that did not qualify for conversion to membership service, so Lewis was denied the right to purchase service credit. On appeal, the Supreme Court reversed. The definition of membership service in 19-3-104 (renumbered 19-2-303) was service with respect to which contributions are paid. No contributions were paid, so Lewis's service was not membership service and therefore was also not creditable service. Lewis was an employee rather than an independent contractor, the county was a participating member of the public employees' retirement system, and Lewis's service was not creditable service. Thus, Lewis was entitled to purchase service credits in the retirement system. (Note that the statutes were substantially revised beginning in 1993.) In re Lewis, 2004 MT 160, 322 M 13, 92 P3d 1218 (2004).

Proof That Multiple Sclerosis Caused Disability: A doctor for the claimant for state retirement disability benefits testified that the claimant had multiple sclerosis (MS) prior to 1988 and that it became disabling (in regard to his job) in that year and remained disabling after that year. He was not conclusively diagnosed with and told that he had MS until 1991. The Public Employees' Retirement Board, which denied benefits, presented no medical evidence and did not deny that a job disability due to MS existed since 1988, the year when the claimant resigned. Instead, the Board relied on the claimant's 1988 indications that he was resigning to preserve a higher payout of unused benefits (his position was about to be reclassified downward) and that he felt he could do the job. His doctor's uncontradicted testimony was entitled to special weight and should not have been disregarded absent specific legitimate evidence and reasons to the contrary. The claimant's 1988 statements showed only that he did not believe that he was disabled and did not show that he in fact was not. They could have been made during a period of remission when symptoms were minor and he thought himself in good health. The lower court properly ruled that the Board's treatment of the claimant's doctor's testimony was erroneous and that the denial of benefits was also erroneous. Weber v. Pub. Employees' Retirement Bd., 270 M 239, 890 P2d 1296, 52 St. Rep. 162 (1995).

Collateral References

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon. 91 ALR 5th 225.

Part 4
Administration

19-2-401. Location of board — jurisdiction and venue for judicial review — quorum — officers and employees.

Compiler's Comments

2001 Amendment: Chapter 490 in (3) in second sentence near end in list of chapters inserted 2 and 50; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (2) increased quorum from three to four; and in (3) substituted reference to chapter 17 for references to chapters 12 and 15. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1995 Amendment: Chapter 412 in (1) inserted second sentence providing that jurisdiction and venue for judicial review of final administrative decisions of the Board are in the First Judicial District unless otherwise stipulated by the parties. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 in (3), in second sentence after "members", deleted "which shall have authority", after "retirement" substituted "benefits" for "allowances", substituted "systems" for "system", and substituted reference to enumerated chapters for "this chapter"; deleted (4) that read: "(4) The department of administration shall appoint and fix the compensation of the administrator and other necessary employees"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-402. Compensation of board members.

Compiler's Comments

1985 Amendment: Substituted "Members shall be entitled to compensation as provided in 2-15-124" for: "The travel expenses of members of the board shall be as allowed in 2-18-501 through 2-18-503, as amended, and reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive, in addition to travel expenses, compensation as provided in 2-15-1009".

1983 Amendment: Substituted "as provided in 2-15-1009" for "at the rate of $25 a day".

19-2-403. Powers and duties of board.

Compiler's Comments

2003 Amendment: Chapter 429 in (10) near middle of second sentence substituted "the appropriate retirement system fund" for "an account in the state special revenue fund and must be appropriated to the board". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (5) inserted second sentence allowing payment of benefits only if the board determines that an applicant is entitled to the benefits; and in (11) inserted second sentence regarding issuance and enforcement of subpoenas. Amendment effective March 21, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

1999 Amendments — Composite Section: Chapter 471 in (9) after "retirement system" inserted "or plan", inserted "in a defined benefit plan or in contributions under the defined contribution plan", and before "members" deleted "retired"; in (10) near end inserted "or plans"; and inserted (13) providing that the board has other duties and powers as provided in chapter 3, part 21, of this title. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in (8) substituted "actuarial rates" for "actuarial tables"; inserted (11) authorizing hearings, administration of oaths and affirmation, depositions, certification of acts and records, and issuance of subpoenas; and inserted (12) authorizing delegation of board's powers or duties. Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 412 inserted (10) allowing third-party mailings by the Board under 2-6-109, requiring rules governing mailings, and requiring mailing fees to be deposited in the state special revenue fund, to be appropriated to the Board for the benefit of retirement systems participants. Amendment effective April 13, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 412, L. 1995, provided in part: "A statement of intent is further required for this bill [the bill amends three sections to grant rulemaking authority] because [section 2] [codified as subsection (10) of 19-2-403] gives the board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to provide the board with the option of generating fees from the sale of the use of mailing lists composed of participants in the retirement systems administered by the board. However, the legislature intends that such use be restricted by the board so that retirement system participants are neither deprived of their right of privacy concerning confidential information nor inundated with excessive mailings, particularly as concerns commercial interests, individual political candidates and ballot issues, or other specific political issues.

The legislature intends to allow the board discretion in promulgating rules concerning procedures to effectuate this intent. The legislature intends that the board have discretion to determine, for example, that mailings may not be allowed at all under this provision, that mailings may be tried for a limited period of time only, that mailings may be limited to tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code, that specific types of mailings may be allowed, that mailings can be limited to specific categories of participants, or that participants have a right to be excluded from mailings on request.

The legislature intends that the fees generated by mailings for third parties not reduce the amount of appropriation otherwise allocated for the administration of the retirement system but be used as the board considers appropriate, such as for additional communication by the board with retirement system participants regarding retirement system rights, obligations, and similar issues."

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendments: Chapter 265 inserted (1) relating to chapters administered by the Board; in (2) substituted "systems" for "system" and at end substituted "enforcement of the chapters under which each retirement system is established" for "enforcement of this chapter, subject to its limitation"; in (3), before "credit", inserted "service"; in (4), at end of first sentence, substituted "each retirement system" for "this chapter" and in second sentence, after "authority", deleted "under this chapter" and at end substituted "systems" for "system"; in (5) substituted "modify retirement benefits under the retirement systems" for "modify allowances for service and disability under this chapter"; substituted (6) requiring uniform and nondiscriminatory treatment for "All persons in similar circumstances shall be treated alike"; at end of (7) substituted "the retirement systems" for "this chapter"; at end of (8) substituted "appropriate for the administration of the retirement systems" for "appropriate to comply with the provisions of this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 481 inserted (9) requiring Board to review sufficiency of benefits paid by retirement system and to recommend to Legislature changes that may be necessary for retired members and their beneficiaries to maintain stable standard of living; and made minor changes in style.

Administrative Rules

Title 2, chapter 43, subchapter 2, ARM Procedural rules.
Title 2, chapter 43, subchapter 3, ARM General rules.
ARM 2.43.308 Mailing for nonprofit groups.
ARM 2.43.309 Acceptable materials — nonprofit mailing.
ARM 2.43.310 Right to be excluded — nonprofit organizations.
Title 2, chapter 43, subchapter 4, ARM Membership and service credits.
ARM 2.43.410 Proof of service.
ARM 2.43.429 Full salary credit for temporary work reductions.
ARM 2.43.430 Out-of-state or federal public service.
Title 2, chapter 43, subchapter 5, ARM Service and disability retirement.
Title 2, chapter 43, subchapter 6, ARM Payments and adjustments.
Title 2, chapter 43, subchapter 8, ARM Volunteer firefighters.
Title 2, chapter 43, subchapter 10, ARM Defined contribution retirement plan.
Title 2, chapter 43, subchapter 11, ARM Municipal Police Officers' Retirement System.
Title 2, chapter 43, subchapter 17, ARM Family law orders.

Case Notes

Constitutional Authority of Public Employees' Retirement Board to Make Actuarial Calculations — No Overbroad Delegation of Legislative Authority: The District Court held that 2001 amendments contained in House Bill No. 294, which included a definition of actuarial equivalent that changed the method by which the Public Employees' Retirement Board

calculated certain benefits, unconstitutionally delegated unconstrained discretion to the Board in violation of the separation of powers doctrine in Art. III, sec. 1, Mont. Const. On appeal, the Board asserted that Art. VIII, sec. 15, Mont. Const., gave the Board the authority to make actuarial evaluations and thus to implement the 2001 amendments, so there was no constitutional violation. The Supreme Court agreed. Article III, sec. 1, Mont. Const., allows one branch of government to exercise power properly belonging to another branch if the constitution expressly directs or permits that exercise. Because Art. VIII, sec. 15, Mont. Const., delegated authority to the Board to make actuarial determinations, the District Court committed reversible error in concluding that the Legislature and House Bill No. 294 (2001) unconstitutionally delegated authority to the Board to make determinations allowed by another section of the constitution. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

Reinstatement of Prior Member: Once the PERS board agreed to reinstate a disabled claimant as a member of PERS it was required by statute to start his retirement disability from the date of the injury. State ex rel. Stowe v. Bd. of Administration, 172 M 337, 564 P2d 167 (1977).

19-2-404. Appointment and compensation of administrative staff.

Compiler's Comments

1999 Amendment: Chapter 562 in two places substituted "executive director" for "administrator". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 532 at beginning substituted "The board shall hire" for "The department shall appoint" and inserted second sentence regarding compensation of the administrator and employees. Amendment effective July 1, 1997.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-405. Employment of actuary — biennial investigation and valuation.

Compiler's Comments

2003 Amendment: Chapter 114 in (4)(b) deleted reference to subsection (5)(b) of 19-21-203. Amendment effective October 1, 2003.

1999 Amendment: Chapter 471 in (2) near end inserted "each defined benefit plan that is a part of"; in (3) near beginning substituted "each defined benefit retirement plan" for "the retirement system" and near end substituted "retirement plan" for "retirement system"; in (4)(a) in two places substituted "retirement plan" for "retirement system" and inserted "current and future defined benefit plan"; inserted (4)(b) providing that in determining the amortization period, the actuary shall consider the plan choice rate contributions to be made to the defined benefit plan; in (5) at end inserted "and plans"; inserted (6) allowing the board to require the actuary to conduct any valuation necessary to administer retirement systems and plans subject to this chapter; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 in (1), in first sentence after "retain", deleted "on a full-time basis" and substituted "an enrolled member" for "a member" and in second sentence, at end, substituted "retirement systems" for "system"; in (2), at beginning, substituted "The board shall require the actuary to make a biennial actuarial investigation" for "Biennially he shall make an actuarial investigation", in two places substituted references to retirement systems for references to system, and deleted last two sentences that read: "From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board"; inserted (3) relating to calculation of normal cost contribution rate; inserted (4)

relating to calculation of unfunded liability contribution rate; inserted (5) relating to periodic actuarial investigation; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.304 Actuarial rates and assumptions.

19-2-406. Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules.

Compiler's Comments

2001 Amendments — Composite Section: (Temporary version) Chapter 99 in (1) inserted third sentence regarding issuance and enforcement of subpoenas; and in first sentence of (4) substituted "normal retirement age" for "the minimum age required for normal service retirement". Amendment effective March 21, 2001.

(Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) In (1) inserted third sentence regarding issuance and enforcement of subpoenas; and near beginning of first sentence of (4) after "to a member" inserted "of a defined benefit plan" and at end substituted "normal retirement age" for "the minimum age required for normal service retirement".

Chapter 423 in version effective on occurrence of contingency or July 1, 2002, in (4) after "member" inserted "of the defined benefit plan"; and deleted former (5) that read: "(5) This section does not apply to members of the defined contribution plan." Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1999 Amendments — Composite Section: Chapter 471 inserted (5) providing that this section does not apply to members of the defined contribution plan. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in (1) near middle of second sentence after "official acts" inserted "and records". Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 412 inserted (2) requiring Board rules that require employers to identify and explain elements and accommodations; and inserted (4) requiring conversion of a disability retirement benefit to a service retirement benefit if a member attains the minimum age required for normal service retirement and requiring notification of status change. Amendment effective April 13, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 412, L. 1995, provided in part: "A statement of intent is further required for this bill [the bill amends three sections to grant rulemaking authority] because general rulemaking authority is granted to the board [by

amendment of 19-2-406] to establish rules requiring employers to provide information germane to processing an application for disability retirement of a public employee retirement system member.

The Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq., requires employers to define the essential elements of each position and to make reasonable accommodations for employees with disabilities.

In recognition of the purpose of the ADA, it is intended that the board, when determining if an applicant is totally and permanently disabled and thereby eligible for benefits from one of the retirement systems administered by it, consider whether the member is able to perform the essential elements of the position after the employer makes accommodations required by the ADA."

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in (1) deleted last sentence that read: "The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice"; inserted (2) relating to retention of medical personnel; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1722 through 1724.

19-2-407. Report by board to governor.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 471 at end of third sentence inserted "or plan"; inserted fourth sentence requiring the report to include information concerning the defined contribution plan; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in first sentence substituted "board" for "division". Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in first sentence substituted "division" for "department of administration" and in second sentence substituted "pension trust funds" for "retirement fund"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-408. Administrative expenses.

Compiler's Comments

2003 Amendment: Chapter 114 in (3)(c) after "19-3-112(1)(b)" deleted "or (1)(c)". Amendment effective October 1, 2003.

1999 Amendments — Composite Section: Chapter 286 in (2) at end of first sentence deleted "except as provided in subsection (3)"; deleted former (3) and (4) that read: "(3) On January 1 of each year, each employer under the public employees' retirement system shall contribute on behalf of each member then in its service a membership fee of $1 in addition to other required contributions. The fees must be used for the purpose of defraying the administrative expense of chapters 2, 3, 5 through 9, and 13 and this chapter.

(4) The board may assess and the division may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in (2)(a) in first sentence at end substituted "retirement system's defined benefit plan, except as otherwise provided in this section" for "retirement system, except as provided in subsection (3)" and in second sentence at beginning deleted "Before the fiscal yearend closing", after "system" inserted "or plan", after "board" deleted "for the immediately preceding fiscal year", after "system's" inserted "or plan's", and at end deleted "system" and inserted "system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund"; in (2)(b) inserted "defined benefit plan"; inserted (3) providing that in calculating the percentage specified in subsection (2)(b), certain administrative expenses are not included; in (4) deleted reference to chapter 2 (amendment rendered void by Ch. 286 amendment); inserted (4) requiring defined contribution plan administrative expenses to be paid from plan assets; and made minor changes in style. Amendment effective April 27, 1999.

Chapter 562 in (4) after "board may assess and" deleted "the division may". Amendment effective July 1, 1999. The amendment by Ch. 286 rendered the amendment by Ch. 562 void.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 532 in (2) inserted third sentence limiting the Board's total administrative expenses; in (3), at beginning of second sentence after "The", deleted "appropriation of these", after "fees" deleted "together with other money appropriated for that purpose", and after "chapters" inserted "2"; deleted former (4) that read: "Any request for an increase in spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1) substituted "pension trust funds" for "retirement fund"; in (2), at beginning of first sentence, deleted "Effective July 1, 1986" and near end substituted "investment earnings on the pension trust fund of the public employees' retirement system" for "income earnings on the retirement fund" and at beginning of second sentence inserted introductory clause, near middle, after "board", inserted "for the immediately preceding fiscal year", before "retirement system's" substituted "each" for "the", and at end substituted "pension trust fund of the public employees' retirement system" for "retirement fund"; in (3), in first sentence, deleted introductory clause that read: "In addition to the contributions elsewhere provided in this chapter", after "employer" inserted "under the public employees' retirement system", substituted "service" for "employ", and after "$1" inserted "in addition to other required contributions" and in second sentence, at end, inserted reference to other chapters; inserted (5) relating to collection of a fee from Department of Fish, Wildlife, and Parks; and made minor changes in style. Amendment effective July 1, 1993.

1986 Amendment: Inserted (1) regarding proper administration of the retirement fund; and inserted (2) providing for payment of administrative expenses from income earnings.

1985 Amendment: Deleted former (1) that read: "The expense of administering this chapter, exclusive of the payments of retirement allowances and other benefits, may be paid from the fund"; at beginning of second sentence, changed "These fees" to "The appropriation of these fees"; and inserted last sentence referring to budget amendments.

1981 Amendments: Chapter 254 substituted the language in (1) (see 1985 amendment note for text) for language providing for a fee, not to exceed 0.3%, collected by the department from an employer for defraying expenses of the chapter.

Chapters 254 and 496 substituted "January" for "July" in the middle of (2).

19-2-409. Plans to be funded on actuarially sound basis — definition.

Compiler's Comments

1999 Amendment: Chapter 471 in second sentence substituted "retirement plan" and "plan" for two references to "system"; at beginning of third sentence inserted "For a defined benefit plan"; and inserted sentence at end providing that for the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The

contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

Law Review Articles

Shoot the Patient or Find the Cure: The Florida Constitutional Requirement That the Increases in Public Employee Pensions be Funded on a Sound Actuarial Basis, Sicking, 18 Nova L. Rev. 1465 (1994).

Part 5
Management and Investment of Pension Trust Funds

19-2-501. Pension trust funds established.

Compiler's Comments

1999 Amendment: Chapter 471 inserted "plan within a". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-502. Payments from pension trust funds.

Compiler's Comments

2005 Amendment: Chapter 329 in (2) at end of third sentence inserted "of membership". Amendment effective July 1, 2005.

1997 Amendment: Chapter 532 in (1), at beginning, inserted "The board shall administer the", after "funds" substituted "as provided in Article VIII, section 15, of the Montana constitution" for "are statutorily appropriated, as provided in 17-7-502, to the division for payment of benefits and refunds to eligible recipients and for paying the necessary administrative and investment expenses of the retirement systems", and after "chapters" inserted "2"; inserted (2) regarding contract provisions; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.617 Payment of estimated benefits.

Attorney General's Opinions

Transfer of Money Between State Treasury Accounts — Statutory Appropriation Not Required: Article VIII, sec. 14, Mont. Const., requires a statutory appropriation only when money is paid out of the state treasury, but neither the constitution nor state law requires a statutory appropriation when money is transferred between accounts within the state treasury. 44 A.G. Op. 43 (1992). (See 17-8-101.)

19-2-503. Management of pension trust funds.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 471 in (3) at beginning inserted exception clause. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in (2) substituted "received by the board" for "received by it". Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002,

whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section substituted references to pension trust funds for references to retirement fund; in (1) substituted "systems" for "system"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-504. Investment of pension trust funds.

Compiler's Comments

1999 Amendment: Chapter 471 in (1) at beginning inserted exception clause. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 in (1) and in two places in (2) substituted references to pension trust funds for references to fund; and inserted (3) relating to commingling of funds and separate accounts. Amendment effective July 1, 1993.

1991 Amendment: In (1), at end, substituted "unified investment program described in Title 17, chapter 6, part 2" for "long-term investment fund"; in (2), at beginning of first sentence, substituted "All income" for "Interest", before "assets" deleted "cash deposited in a bank by the state treasurer and income on other", and deleted second sentence that read: "Income, of whatever nature, earned on the retirement fund during any fiscal year in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies"; and made minor changes in style. Amendment effective March 29, 1991.

19-2-505. Restrictions on use of funds.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (3) requiring that retirement system assets remain in trust until a warrant is negotiated or an electronic funds transfer is deposited; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 in (1) substituted "board" for "department"; inserted (1)(e) prohibiting board or board of investments from engaging in transaction prohibited by section 503(b) of the Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in (1) in introductory clause inserted "the board"; in (2) near beginning inserted "including the assets of retirement accounts"; and inserted (4) providing that the section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 at end of (1)(c) substituted "board" for "division"; and inserted (3) providing for forfeiture of unclaimed benefits. Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1) inserted reference to Board of Investments; at end of (1)(c) substituted "division" for "department"; at end of (1)(d) substituted "pension trust funds" for "retirement system"; in (2), near beginning, substituted "systems" for "system"; and made minor changes in style. Amendment effective July 1, 1993.

1986 Amendment: At end of (2) substituted "reasonable administrative expenses of the retirement systems administered by the board" for "reasonable expenses of administering the retirement system".

19-2-506. Payment of contributions by employers — accompanying reports — penalty.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) inserted third sentence concerning delinquent payments; and in (3) inserted fifth sentence concerning establishment of penalty fees. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) substituted language regarding submission of contributions for former language that read: "At a time prescribed by the rules of the board, each employer shall remit to the board all contributions required of the employer and its employees under retirement systems subject to this chapter on the basis of covered compensation paid during the previous pay period"; in (3) substituted language regarding submission of employer reports and specifying data in reports for former sentence that read: "Employers shall submit reports to the board, as the board requires by rule, of compensation paid to both member and nonmember employees"; in (4) deleted former first sentence that read: "The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death", at beginning substituted "Each employer" for "The chief administrative officer", after "members" deleted "that the board may require in the administration of the retirement systems, including the services of the employer's office and departments", and near end after "benefits" inserted "or service"; inserted (5) regarding distribution of materials to employees; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (1) substituted "board" for "division"; and in (3) substituted "reports to the board, as the board requires by rule, of compensation paid to both member and nonmember employees" for "reports of their covered payroll and contributions remitted as the board requires by rule". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1) substituted "each employer" for "each agency of the state", substituted "division" for "public employees' retirement system", after "under" inserted "retirement systems subject to", before "compensation" inserted "covered", and at end, after "period", deleted "including any contributions payable with respect to members absent in the armed forces of the United States"; in (2), in first sentence after "whichever is greater", deleted "from the appropriation account of the reporting agency by submission of a claim to the state treasurer", in second sentence, before "penalty", deleted "interest", and inserted last clause concerning collection; inserted (2)(a) relating to court action; inserted (2)(b) relating to deductions; inserted (4) relating to monthly reports and additional information; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), at beginning, substituted "At a time prescribed by the rules of the board, each agency of the state shall" for "No later than the 15th day of each month or 5 working days after payroll warrants have been issued for the last normal pay period of the previous month, whichever is later, the state auditor and each agency of the state which is not paid through the state central payroll system shall", substituted "pay period" for "month", and deleted former second sentence that read: "These remittances shall be accompanied by such reports as the board requires"; and inserted (3) requiring submission of reports by employers. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 138, L. 1991, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-3-802, renumbered 19-2-506, 19-3-804, now repealed, 19-5-408, now repealed, 19-6-409, now repealed, 19-7-409, now repealed, 19-8-505, now repealed, 19-9-707, now repealed, and 19-13-609, now repealed] grant to the public employees' retirement board the authority to adopt rules setting timeframes for agency payments into the retirement systems that the board administers and rules requiring reports.

(1) The legislature understands that capabilities for expediting deposits to the retirement systems are afforded by the increasing computer resources of both employers and the retirement systems.

(2) Therefore, it is the intent of the legislature that:

(a) contributions payable to the retirement systems administered by the board be paid within timeframes that are reasonable and cost-effective to contributors and the retirement systems;

(b) while expedited deposits can result in increased investment earnings for the retirement systems and the individual members of those systems, current contribution deadlines may not be shortened unless the resulting increase in investment income would help forestall increases in employer contribution rates required to actuarially fund the systems; and

(c) employers be responsible for providing accurate reports containing sufficient information to allow the board to both account for overall retirement system contributions and precisely record and credit membership service, monthly compensation, and membership contributions to individual member's accounts."

1979 Statement of Intent: The statement of intent adopted with Ch. 348, L. 1979, provided: "A statement of intent is included with this Bill because the Committee felt that there is a need to clarify the conditions under which an interest penalty may be waived. This pertains to Section 1, subsection (2) and Section 2, subsection (2), of Senate Bill No. 156.

1. When an agency or contracting employer requests a time extension upon a showing of good faith effort or because of circumstances beyond their control, the board will grant a reasonable extension of time without penalty."

Administrative Rules

ARM 2.43.404 Required employer reports.

19-2-507. Transfer between funds.

Compiler's Comments

1999 Amendment: Chapter 562 at end substituted "board" for "division" and deleted former last sentence that read: "The division shall certify to the department the amounts to be transferred and the funds from and to which the transfer is to be made, and the division shall make the transfer as directed in the certificate." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in two places substituted "pension trust fund" for "fund"; in two places substituted "division" for "disbursing officer"; in first sentence, after "provisions of", substituted "this title" for "this chapter"; near end substituted "division" for "department"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Changed "state auditor" and "auditor" to "department of administration" and "department".

Administrative Rules

ARM 2.43.420 Requalification of service.

19-2-511. Limitation of liability.

Compiler's Comments

2003 Amendment: Chapter 38 in (2) near middle after "program" inserted "established pursuant to 19-21-101"; in (3) near middle of first sentence after "omissions of any" inserted "employer or reporting agency or of any"; inserted (5) limiting the liability of plan fiduciaries for certain investment losses; and made minor changes in style. Amendment effective February 19, 2003.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

Part 6
Termination of Membership and Refunds

Part Compiler's Comments

Sections Not Codified: Section 68-2504(part 1), R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 52, Ch. 323, L. 1973, as amended by sec. 12, Ch. 128, L. 1975.

Section 68-2513, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 61, Ch. 323, L. 1973, as amended by sec. 13, Ch. 128, L. 1975.

Section 68-2513.1, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 241, L. 1977.

Section 68-2514, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 62, Ch. 323, L. 1973.

19-2-601. Termination of membership.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding termination of membership for former section that read: "If any part of a member's accumulated normal contributions is refunded pursuant to 19-3-703, he ceases to be a member and all membership service to his credit is canceled. Any person who is retired ceases to be a member." Amendment effective July 1, 1993.

19-2-602. Refund of member's contributions on termination of service.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) near beginning substituted "who has terminated service" for "whose service has been discontinued"; in (2) and in (3) near beginning substituted "has terminated" for "terminates from" and near end after "administratively feasible" deleted "after termination"; and in (4) in first sentence after reference to 19-2-909 substituted "or by a member who is terminating service and is eligible" for "or a terminating member eligible". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (4) in first sentence substituted "Upon the filing of a written application by an alternate payee eligible to receive a single distribution of $200 or more under 19-2-907 or 19-2-909 or a terminating member eligible to receive a refund of $200" for "Upon the written application of a terminating member with $200" and after "401(a)(31)" deleted "of the eligible portion of a refund of the member's accumulated contributions", at beginning of third sentence substituted "The applicant is responsible for designating an" for "The terminating member shall designate the", and at beginning of fourth sentence substituted "The portion of the account" for "Amounts of the member's accumulated contributions that are" and after "paid" substituted "directly to the recipient" for "to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section — Coordination: Chapter 58 at end of (1) substituted language regarding written application by member for "at the member's request" and inserted second sentence prohibiting member from receiving refund of accumulated contributions prior to termination of service; inserted (2) requiring that nonvested member who terminates service with accumulated contributions of less than $200 be paid contributions in lump sum as soon as feasible without written application; inserted (3) requiring that nonvested member who terminates service with accumulated contributions of $200 to $5,000 be paid contributions in lump sum as soon as feasible unless written application made for rollover; near beginning of (4) substituted "written application" for "written request" and after "member" inserted "with $200 or more of accumulated contributions"; deleted former (3) through (5) that read: "(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the members' written request"; and made minor changes in style. Amendment effective July 1, 1999.

Section 99(2), Ch. 562, L. 1999, in (1) at end of first sentence substituted "contributions on written application by the member and board approval" for "contributions at the member's request" and inserted last sentence prohibiting refund of contributions prior to termination of service; inserted (2) relating to termination with less than $200 accumulated contributions; inserted (3) relating to termination with $200 to $5,000 accumulated contributions; in (4) at beginning substituted "Upon the written application of a terminating member with $200 or more of accumulated contributions" for "Upon the written request of a terminating member" and in two places substituted "board" for "division"; deleted former (3) through (5) that read: "(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request"; and made minor changes in style. Amendment effective July 1, 1999.

The amendments to this section made by sec. 14, Ch. 562, L. 1999, were rendered void by sec. 99(2), Ch. 562, L. 1999, a coordination section.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (2) substituted present subsection regarding direct rollover distribution for former subsection that read: "Upon qualification for any other benefit under this chapter, a member having any accumulated contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made"; at end of (3) substituted "the pension trust fund" for "the retirement fund as provided in 19-3-704"; in second sentence of (4) substituted "division" for "department of administration"; inserted (5) relating to repayment of additional contributions; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Changed "such part of his accumulated contributions, including regular interest thereon, as he requests" to "his accumulated contributions at his request" at the end of (1); and deleted from (1) provision relating to automatic payment of accumulated contributions to employees with less than 5 years of service who leave service and do not reenter for 5 years.

Administrative Rules

ARM 2.43.425 Incomplete payments.

ARM 2.43.603 Refunds.

Case Notes

Reinstatement of Prior Member: Once the PERS board agreed to reinstate a disabled claimant as a member of PERS it was required by statute to start his retirement disability from the date of the injury. State ex rel. Stowe v. Bd. of Administration, 172 M 337, 564 P2d 167 (1977).

19-2-603. Reinstatement after withdrawal of contributions.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) at end of first sentence substituted "previous membership service or service credit" for "credit for any previous membership service", in second sentence after "membership service" inserted "or service credit", and in third sentence substituted "membership service and service credit" for "service credits"; and in (2) at end substituted "19-2-801" for "this section". Amendment effective July 1, 2003.

1999 Amendment: Chapter 471 in (1) near beginning inserted "chapter 3, part 21, of this title and" and inserted "of a defined benefit plan". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified],

that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 in (1), in two places, substituted "accumulated contributions" for "accumulated normal contributions", near end of second sentence substituted "accumulated contributions" for "account", and substituted last sentence relating to reinstatement of service credits for former sentence that read: "If he makes this redeposit, his membership shall be the same as if unbroken by such last termination"; and made minor changes in style. Amendment effective July 1, 1993.

Case Notes

Reinstatement of Prior Member: Once the PERS board agreed to reinstate a disabled claimant as a member of PERS it was required by statute to start his retirement disability from the date of the injury. State ex rel. Stowe v. Bd. of Administration, 172 M 337, 564 P2d 167 (1977).

Attorney General's Opinions

Qualification of Prior PERS Service and Non-PERS Service: Reinstatement of membership in PERS with past service credit under this section does not preclude a member from earning credit under 19-3-512 for non-PERS service that occurred during the period between initial membership and reinstatement of membership in PERS. 42 A.G. Op. 74 (1988).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1637, 1638, 1640.

Part 7
Service Credit and Additional Contributions

Part Administrative Rules

ARM 2.43.408 Calculation of service credit on termination of employment.

19-2-701. Service credit.

Compiler's Comments

1999 Amendment: Chapter 562 in (1) inserted first two sentences requiring cumulation of service credit and limiting amount of credit; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in first sentence, after "13", deleted "of this title" and inserted third sentence clarifying that a retired member is not eligible to earn service credits. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit

adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.406 Basic period of service.

ARM 2.43.418 Elected officials.

19-2-702. Membership service.

Compiler's Comments

2003 Amendment: Chapter 429 in introductory clause in second sentence before "service" inserted "membership"; and in (2) substituted "service retirement, early retirement" for "early or normal service retirement". Amendment effective July 1, 2003.

1997 Amendment: Chapter 370 at beginning, after "A member", inserted "who is not retired". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.418 Elected officials.

19-2-703. No duplication of benefits for same service.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) near end substituted "same service" for "same period of service". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (1) at beginning substituted "A member may not receive service credit or membership service" for "A period of service of the member may not be credited" and after "system" substituted "plan, or program under Title 19 for the same period of service" for "enumerated in 19-2-302 for purposes of calculation of retirement benefits"; and inserted (2) precluding service credit or membership service in more than one system. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 at end substituted "retirement benefits" for "retirement allowances". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted present section relating to duplication of benefits for former section that read: "There may not be any duplication of retirement allowances to a member or beneficiary due to there being more than one period of service of the member." Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.407 No duplication of credits.

19-2-704. Purchasing service credits allowed — payroll deduction.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in middle substituted "make additional contributions" for "contribute amounts in addition to the mandatory employee contributions required by the member's retirement system"; in (5)(e) and (6)(a) near beginning before "contributions" inserted "additional"; in (6)(d) in middle of first sentence substituted "employee's additional" for "employee" and in third sentence near beginning after "apply to any" inserted "additional"; and in (7) in first sentence near beginning substituted "employment" for "service" and near end after "the amount paid" deleted "as of the date of termination" and in second sentence near beginning after "termination" inserted "from employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (3) near middle after "service" inserted "credit"; in (6)(f) at end of second sentence inserted exception clause; in (7) near middle of second sentence after "for" inserted "up to" and after "service" inserted "credit remaining to be purchased"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (2) after "purchase" deleted "qualify"; in (3) after "may" inserted "elect to"; in (4) in first sentence substituted "member elects to make" for "member makes"; in (5) after "employer" deleted "a binding"; in (5)(a) substituted "must be signed" for "must be executed"; in (6) in introductory clause after "been" substituted "filed with" for "received by"; in (6)(e) at beginning of first sentence substituted "Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files" for "A contract for installment payments initiated before July 1, 1999, may be made only if the member executes" and in second sentence after "member" substituted "does not file" for "does not execute"; in (6)(f) in first sentence after "member" substituted "may file" for "may make", after "one" deleted "binding", after "deduction" inserted "agreement and", and after "previous" deleted "binding", and in second sentence after "under" deleted "a binding"; in (7) in first sentence after "authorization" substituted "filed" for "made"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted former (2) that read: "(2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all or a portion of the member's accumulated contributions on deposit in a pension trust fund from which service is being transferred to the pension trust fund of another plan in which service is being credited. The transfer of contributions may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the accumulated contributions on deposit in a pension trust fund is being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall identify at the time of the transfer the taxed and taxed-deferred amounts being transferred"; inserted (3) authorizing lump-sum payments, installment payments, or combination for member wishing to redeposit amounts withdrawn or who is eligible to purchase service; inserted (4) requiring installments payment to be paid directly to board unless member makes irrevocable payroll deduction and establishing minimum installment period; inserted (5) requiring member to file binding, irrevocable, written application and authorization for payroll deduction with board and employer to elect installment payments and outlining application requirements; inserted (6) requiring employer to initiate payroll deduction upon notification of properly filed application and authorization and outlining payroll deduction procedures; inserted (7) regarding procedure upon termination or death of member prior to completing all required payroll deduction payments; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 47(3), Ch. 58, L. 1999, provided: "(3) The provisions in [section 7] [19-2-704] providing for the making of contributions required to purchase service by employer pickup are effective on the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pickup method of making contributions provided in that section comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan." The contingency has occurred. The letter was received from the internal revenue service on December 21, 1999.

1997 Amendment: Chapter 370 inserted (3) allowing only active or vested inactive members to purchase, qualify, or transfer service credits, membership service, or contributions. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 inserted (2) allowing a member eligible to qualify service under certain sections to, prior to retirement, transfer all or part of the member's contributions in a trust fund to another plan. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 substituted present section relating to purchase of service credits for former section that read: "Subject to the rules promulgated by the board, any member may elect to contribute at rates in excess of those provided for in 19-3-701 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application, shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions." Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.425 Incomplete payments.

ARM 2.43.441 Purchase of service through direct trustee-to-trustee transfer of funds.

19-2-706. Additional service credit for active member involuntarily terminated from employment.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) at beginning inserted "The provisions of subsection (3) apply to" and near end after "system" deleted "is entitled to the involuntary termination provision provided in subsection (3)"; in (1)(a) near beginning substituted "an active" for "a" and inserted "firefighters' unified"; in (1)(b) at beginning substituted "the employee has involuntarily terminated from employment" for "the employee's active service is involuntarily terminated" and at end substituted "in the case of a member who is a legislator, the legislator is terminated from office in either one of the houses of the legislature because of term limits" for "in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature"; in (1)(d) substituted "the rights and benefits" for "termination benefits"; in (3) at end of first sentence inserted reference to 19-13-405; in (3)(c) in second sentence at end deleted "by the terminated employee"; in (6)(a) in first sentence after "in a calendar year in" deleted "a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2) in two places, in first sentence of (3), in (3)(a), in (3)(c), in first sentence of (4), and in (6)(a) in three places after "service" inserted "credit"; in (1)(c) before "service" deleted "normal"; in (3) in second sentence after "portion" deleted "applied toward the service purchase"; in (4) near middle of first sentence substituted "contribution required from" for "amount contributed by"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 66 in (6) in first sentence after "jurisdiction for" inserted "960 or more hours in a calendar year in a position covered by the public employees' retirement system or for" and after "year" inserted "in a position covered under any other retirement system". Amendment effective March 16, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former second sentence in (4) that read: "A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section"; and in second sentence in (6) substituted "must be credited" for "must be refunded". Amendment effective July 1, 1999.

Chapter 118 in (1)(b) at end deleted "on or after July 1, 1997, but before July 1, 1999". Amendment effective July 1, 1999.

Chapter 471 in (1)(b) at end deleted "on or after July 1, 1997, but before July 1, 1999" and inserted "or, in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature". Amendment effective April 27, 1999.

1997 Amendment: Chapter 361 in (1)(b), at end, substituted "July 1, 1997, but before July 1, 1999" for "January 1, 1995, but before July 1, 1997"; inserted (2) establishing the cost of service as the total actuarial cost of purchasing the service; in (3), near beginning of first sentence after "pay", inserted "a portion of" and inserted second sentence and (2)(a) through (2)(c) regarding the formula for calculating the employer-paid portion; in (4) inserted first sentence requiring the member to pay the difference between the full actuarial cost and the amount contributed by the employer and inserted third sentence allowing the member to purchase less than the full amount of service; deleted former (3) that read: "(3) A retired member who was involuntarily terminated because of a reduction in force on or after January 1, 1995, but before April 21, 1995, and whose effective date of retirement was before April 21, 1995, is eligible for the involuntary termination benefits described in this section if a properly completed application for those benefits is received by the division on or before June 1, 1995"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1997 Code Commissioner Instruction — Name Change: Pursuant to sec. 12, Ch. 223, L. 1997, the Code Commissioner has substituted "game wardens' and peace officers'" for "game wardens'". Amendment effective July 1, 1997.

Effective Date — Retroactive Applicability: Section 11, Ch. 524, L. 1995, provided that this section is effective April 21, 1995, and sec. 10 provided that it applies retroactively to an employee involuntarily terminated from the state or University System because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the Legislature on or after January 1, 1995.

Administrative Rules

ARM 2.43.451 Purchase of additional service by employers.

ARM 2.43.452 Return to employment within same jurisdiction.

19-2-707. Qualified military service.

Compiler's Comments

2005 Amendment: Chapter 381 inserted second sentence providing that certain contributions, benefits, and service credits are governed by the Montana Military Service Employment Rights Act. Amendment effective April 25, 2005.

Effective Date: Section 47(1), Ch. 58, L. 1999, provided that this section is effective July 1, 1999.

Administrative Rules

ARM 2.43.421 Credit for service in uniformed services.

19-2-708. Rollover of contributions.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) in two places after "service" inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) in first sentence after "who" substituted "elects" for "wishes", after "eligible to" substituted "purchase" for "qualify", and after "prior to retirement" substituted "file a" for "make"; and made minor changes in style. Amendment effective March 21, 2001.

Effective Date: Section 47(1), Ch. 58, L. 1999, provided that this section is effective July 1, 1999.

19-2-709. Transfer of service and contributions from other Montana public employee retirement systems.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) after "service" inserted "credit", inserted reference to 19-2-715, and deleted references to 19-3-509, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date: Section 47(1), Ch. 58, L. 1999, provided that this section is effective July 1, 1999.

19-2-710. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1015 Purchase of service not permitted by participant in defined contribution retirement plan.

19-2-715. Purchase of Montana public service.

Compiler's Comments

Effective Date: Section 123, Ch. 429, L. 2003, provided that this section is effective July 1, 2003.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.423 Purchase of other types of service.

ARM 2.43.428 Acceptable documentation of public service employment.

Part 8
Beneficiaries

Part Collateral References

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-2-801. Designation of beneficiary.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) near middle of first sentence after "organizations" inserted "estate of the payment recipient" and inserted third sentence concerning most recent beneficiary designation; inserted (2) concerning beneficiary predeceasing member or payment recipient; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 inserted (2) providing that a beneficiary who renounces an interest in payment rights is considered to have predeceased the member or payment recipient; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in first sentence after "natural persons" inserted "charitable organizations, or trusts for the benefit of natural living persons" and in first and second sentences substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in first sentence, after "any", substituted "statutory beneficiaries, designated beneficiaries" for "statutorily designated persons, the beneficiaries of a member", after "natural persons" deleted "charitable organizations, or trusts for the benefit of natural living persons", near middle, after "member", inserted "or payment recipient", and at end inserted "or other form provided by the division" and in second sentence, after "member", inserted "or payment recipient", after "different" inserted "designated", after "filing" inserted "with the board", and after "membership card" substituted "or other form provided by the division" for "with the board". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 substituted present section relating to designation of beneficiary for former section that read: "The beneficiaries of a member shall be such natural persons, charitable organizations, or trusts for the benefit of natural living persons as the member shall designate in the appropriate written application. A member may revoke such designation and name different beneficiaries by filing written notice with the board." Amendment effective July 1, 1993.

1985 Amendment: In first sentence inserted "natural" before "persons" and inserted charitable organizations and trusts as permissible beneficiaries.

1981 Amendment: Changed "beneficiary" to "beneficiaries" and "person" to "persons"; changed "revised written instrument" to "written notice" near the end of section.

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

ARM 2.43.605 Designation of beneficiary.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1651, 1652, 1654 through 1656.

19-2-802. Effect of no designation or no surviving designated beneficiary.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) in second sentence near beginning after "estate" inserted "as either a designated beneficiary or as a beneficiary by default as provided in this subsection" and in two places after "due" inserted "to the estate"; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 in (1) at end of first sentence substituted "any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death" for "any lump-sum payment or retirement benefit accrued but not received prior to the statutory or designated beneficiary's death"; and in (3) in second sentence substituted "board" for "retirement division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in (1), at beginning of first sentence after "If a", substituted "statutory or designated beneficiary does not survive the member or payment recipient" for "living beneficiary, existing charitable organization, or natural living person who is the beneficiary of a trust is not designated", after "estate of the member" inserted "or payment recipient", and after "is" substituted "entitled to any lump-sum payment or retirement benefit accrued but not received prior to the statutory or designated beneficiary's death" for "the designated beneficiary" and in second sentence, after "due", deleted "including retirement benefits accrued but not received prior to death"; and in (4), after "member's", inserted "or payment recipient's". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), near end of first sentence before "beneficiary", inserted "designated" and in second sentence, after "including retirement", substituted "benefits" for "allowances"; in first sentence of (3), after "groups", inserted "listed in subsection (2)" and in second sentence substituted "division" for "board"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: In (1) near beginning of first sentence, after "beneficiary", inserted "existing charitable organization, or natural living person who is the beneficiary of a trust".

Administrative Rules

ARM 2.43.607 Payment to an estate.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1651, 1652, 1654 through 1656.

19-2-803. Payment to custodian of minor beneficiary.

Compiler's Comments

2005 Amendment: Chapter 369 in (1) at beginning inserted exception clause; inserted (2) concerning payment of benefits for dependent child to a trust for the child; in (3) near beginning of second sentence inserted "receiving benefit payments pursuant to this section"; and made minor changes in style. Amendment effective April 21, 2005.

1993 Amendment: Chapter 265 in (1) substituted "a system" for "the system"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Deleted "not to exceed $500" after "benefit from the system", deleted "who has no guardian of his estate" after "minor", changed "may" to "must", and deleted "the person entitled to the custody of a minor to hold for the minor, upon execution and filing with the board of a written statement by such person that the total estate of the minor does not exceed $1,000 in value." in the first sentence of (1); and added list of persons to whom benefit to be paid in (1).

19-2-804. Limitations on payment of benefits to a person causing a member's death or disability.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section relating to limitations on payment of benefits for former section that read: "(1) If a member's beneficiary is convicted of knowingly, purposely, or intentionally causing the member's death, the beneficiary is not entitled to receive benefits as the member's beneficiary, and, except as provided in subsection (2), the benefits must be payable as provided in 19-3-1302.

(2) In lieu of the payment of benefits as provided in subsection (1), the board may grant a survivorship allowance in the amount provided for in 19-3-1205 to the member's surviving next of kin other than the beneficiary who caused the member's death. Determination of the surviving next of kin must be made according to the order provided in 19-3-1302(2)." Amendment effective July 1, 1993.

Part 9
Management of Benefit Payments

19-2-901. Estimate of benefit when information incomplete.

Compiler's Comments

1993 Amendment: Chapter 265 near end substituted "this title" for "this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1695, 1697, 1698.

19-2-902. Payment of benefits.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 58 at end of (1) substituted "except as provided in this part" for "except that the board may elect to convert payments of at least $20 per year to a single sum of actuarial equivalent value"; inserted (2) requiring board to pay present value of benefit in single lump sum if total actuarial present value is equal to or less than $5,000 unless member or beneficiary chooses monthly benefit, requiring lump sum to be paid at time of initial monthly benefit, and requiring monthly election 30 days prior to first payment; in (3) inserted introductory clause regarding death of recipient and substituted language requiring amount otherwise payable to recipient to be paid to designated or statutory beneficiary, contingent annuitant, or recipient's estate for former language that read: "A smaller pro rata amount may be paid for part of a month when the retirement benefit ends before the last day of the month"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in first sentence after "chapter" inserted "other than a benefit under the defined contribution plan"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 substituted present section relating to frequency of benefit payments for former section that read: "A retirement allowance or survivorship allowance granted under the provisions of this chapter shall be payable in monthly installments, except that the board, at its discretion, may convert payments of less than $20 per month to larger periodic payments which are the actuarial equivalent of such smaller payments but which occur less frequently. If payments of at least $20 per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance ends before the last day of the month." Amendment effective July 1, 1993.

19-2-903. Adjustment of errors in payments.

Compiler's Comments

2005 Amendment: Chapter 329 inserted (2) relating to methods for correcting an incorrect purchase of service credit under 19-2-704; in (3) at beginning substituted "If fraud or error results" for "If any fraudulent change or any inadvertent mistake in records results", near end before "adjust the payments" inserted "if necessary, equitably", and at end deleted "to the member, survivor, or beneficiary in an equitable manner"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (1) substituted "If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

(a) adjustment of subsequent payments from a member or an employer;

(b) installment payments or a lump-sum payment from an employer; or

(c) a lump-sum payment or a rollover from a member" for "If more or less than the correct amount of contribution required by a retirement system subject to this chapter is or has been paid, proper adjustment must be made in connection with the subsequent payments or the adjustments may be made by direct cash payments between the member, state, or contracting

employer in connection with whom the error was made and the board." Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in (1), near beginning, substituted "required by a retirement system subject to this chapter" for "required by this chapter of a member, the state, or a contracting employer" and deleted last sentence that read: "Adjustments to correct any other errors in payments to or by the board may be made in the same manner"; inserted (2) relating to adjustments for fraudulent changes and inadvertent mistakes; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.403 Optional membership.

ARM 2.43.409 Improper credit.

19-2-904. Withholding of group insurance premium from retirement benefit.

Compiler's Comments

Committee Created: Chapter 677, L. 1985, created a Select Committee on Health Insurance for Retired Public Employees.

19-2-905. Payments under workers' compensation.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "except as otherwise provided" for "except as provided in 19-7-604" and after "benefits" deleted "now or hereafter". Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1693, 1694, 1710.

19-2-906. Limitations on disability or survivorship benefits.

Compiler's Comments

1999 Amendment: Chapter 471 near beginning inserted reference to a defined benefit plan; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 substituted present section regarding limitations on disability or survivorship benefits for former section that read: "The board may revoke, refuse to grant, or suspend a member's annuity for disability or death caused by wrongful conduct. If the disability causing a member to retire or the death of a member is directly and proximately caused by the member's immoral or intemperate conduct or gross negligence, the board may refuse to grant, revoke, or suspend the employer annuity." Amendment effective July 1, 1993.

Law Review Articles

Public Officials—Pensions—Determination of Dishonorable Service as Basis for Benefit Forfeiture Requires Balancing Approach, 14 Seton Hall L. Rev. 164 (1983).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1648, 1685, 1722 through 1724.

19-2-907. Alternate payees — family law orders — rulemaking.

Compiler's Comments

2005 Amendment: Chapter 329 in (6)(a) in fourth sentence near beginning substituted "may be established" for "may not be established" and at end inserted "but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a) at beginning deleted "Service"; in (6)(b) near beginning after "payments" substituted "or" for "from"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (5)(a) after "payments or" substituted "refunds" for "withdrawals of member contributions". Amendment effective March 21, 2001.

Chapter 490 in definition of participant near beginning after "means" inserted "an identified person who is" and near middle after "of a retirement system" inserted "or plan"; in (3) in first sentence near beginning after "order must identify" inserted "a participant and" and after "current address" inserted "date of birth"; in (4)(b) at end after "retirement system" inserted "or plan"; in (5) in introductory clause at beginning substituted "With respect to" for "In"; in (5)(a) in first sentence near middle after "directing payment of" inserted "either" and after "amount payable or" deleted "payment of" and inserted second sentence regarding payments to alternate payee; in (5)(c) in three places after "apportioned" inserted "as a percentage"; deleted former (5)(d) that read: "(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance"; inserted (6) regarding apportionment of a defined contribution plan by a family law order to an alternate payee; inserted (7) regarding duration of monthly payment; in (10) after "provide for the" substituted "administration of family law orders" for "application of a family law order within the defined contribution plan"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (4)(a) at end inserted "or plan"; in (5) in introductory clause inserted "In a defined benefit plan"; in (5)(e) after "system" inserted "or plan"; inserted (8) requiring rules; and made minor changes in style. Amendment effective April 27, 1999.

1997 Amendment: Chapter 370 in (5)(b) inserted second sentence regarding conversion of a disability retirement to a service retirement; and inserted (7) requiring a statement that a family law order that establishes a final obligation is subject to Board review and approval. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 111 in (2)(a), after "17", deleted "or 20"; and made minor changes in style. Amendment effective March 10, 1995.

1993 Statement of Intent: The statement of intent attached to Ch. 259, L. 1993, provided: "A statement of intent is required for this bill because [section 1] [19-2-907] grants rulemaking authority to the public employees' retirement board or the teachers' retirement board. [Section 1] [19-2-907] provides for the assignment and payment of retirement system benefits to alternate payees but differs from federal qualified domestic relations orders. Alternate payees will not be eligible to receive payments that could not otherwise be paid by the retirement system."

Coordination Instruction: Section 11, Ch. 259, L. 1993, provided: "If Senate Bill No. 385 is passed and approved, [section 1] [19-2-907] is to be codified only as an integral part of the general retirement provisions and the bracketed language in [section 1] [19-2-907] replaces the

references to the enumerated chapters of Title 19." Senate Bill No. 385 was passed and approved as Ch. 265, L. 1993; therefore, the reference to enumerated chapters of Title 19 in 19-2-907(2)(a) was codified as instructed.

Administrative Rules

ARM 2.43.1017 Family law orders, executions, and income withholding orders and elections.

ARM 2.43.1701 Family law orders — general requirements.

ARM 2.43.1702 Family law orders for the PERS defined contribution retirement plan.

ARM 2.43.1703 Family law orders — approval and implementation for the defined contribution retirement plan.

ARM 2.43.1704 Family law orders — contents and duration for defined benefit plans.

ARM 2.43.1705 Family law orders — approval and implementation for defined benefit plans.

ARM 2.44.522 Teachers' retirement — family law order — contents and duration.

ARM 2.44.523 Teachers' retirement — family law orders — approval and implementation.

ARM 2.44.524 Teachers' retirement — adjustment of disability allowance for outside earnings.

Case Notes

Offset of Unpaid Retirement Benefits Proper Under Prior Family Law Order: The District Court ordered the husband to pay $734 a month from his retirement benefits, as ordered in a dissolution decree, and allowed the wife to offset her obligations to the husband when he became eligible to share in her retirement benefits to cover accrued payments of more than $10,000 owed by the husband. On appeal, the husband contended that he was exempt from this legal process under 19-2-1004 because 11 years had passed since the decree was issued, so the decree should no longer be considered a family law order under this section. The Supreme Court disagreed and affirmed. The husband cited no authority for the proposition that a family law order is no longer a family law order after 11 years. The District Court did not err in allowing the wife to collect accrued payments by setoff or otherwise. In re Marriage of Weber, 2004 MT 206, 322 M 324, 95 P3d 694 (2004).

Writ of Mandamus Ordering State Agency to Pay Highway Patrol Benefits to Ex-Wife Improper: The petitioner obtained a writ of mandamus from the lower court directing the Department of Administration to pay one-half of her ex-husband's highway patrol retirement benefits to her as required by the couple's divorce decree. The Supreme Court reversed, holding that the agency had no legal duty to pay the benefits to the petitioner because she was not a beneficiary under the applicable law. (See 1993 and 2001 amendments.) State ex rel. Neuhausen v. Nachtsheim, 253 M 296, 833 P2d 201, 49 St. Rep. 559 (1992).

19-2-908. Time of commencement of benefit — rulemaking.

Compiler's Comments

2005 Amendment: Chapter 329 in (1)(a) in first sentence near beginning substituted "active or inactive member who is vested" for "member"; in (1)(b) substituted "termination from employment" for "terminating service"; in (2)(a) and (2)(b) near beginning before "retirement" inserted "service"; and in (3) at end substituted "employment" for "service". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1)(a) in first sentence and in (1)(b) before "service" deleted "covered"; and in (2)(a) and in first sentence in (2)(b) before "retirement" deleted "service". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1)(a) at end of first sentence inserted "with the board"; in (2)(a) near end after "following" substituted "filing" for "receipt"; in (2)(b) inserted second sentence requiring written application and in third sentence after "calculating" substituted "highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system" for "final average salary under the retirement system"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 inserted second sentence in (1) authorizing board to begin benefit payments to comply with section 401(a)(9) of the Internal Revenue Code. Amendment effective July 1, 1999.

Chapter 471 in (2)(b) and (4) near beginning inserted "from a defined benefit plan"; and inserted (6) requiring rules. Amendment effective April 27, 1999.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 43, Ch. 370, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 23, 1997.

19-2-909. Execution or withholding for support obligation — rulemaking.

Compiler's Comments

2005 Amendment: Chapter 329 in (5)(a) in fourth sentence near beginning substituted "may be" for "may not be" and at end inserted requirement that account money be disbursed to the alternate payee as soon as feasible after participant's termination of service or death. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (4)(a) at beginning deleted "Service"; in (5)(b) near beginning after "payments" substituted "or" for "from"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (4)(a) near beginning after "payments or" substituted "refunds" for "withdrawals of member contributions". Amendment effective March 21, 2001.

Chapter 490 in (2)(c) near beginning after "means" inserted "an identified person who is"; deleted former (4)(d) that read: "(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount each month if the number of payments is specified"; inserted (5) regarding income-withholding order; inserted (6) regarding duration of monthly or periodic payments; in (7) after "provide for the" substituted "administration of execution or income-withholding orders" for "application of an execution or income-withholding order within the defined contribution plan"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (1) inserted "or plans"; in (2)(c), (3)(a), and (3)(b) inserted "or plan"; in (4) in introductory clause inserted "applied to a defined benefit retirement plan"; inserted (5) requiring rules; and made minor changes in style. Amendment effective April 27, 1999.

Effective Date: Section 103(1), Ch. 552, L. 1997, provided that this section is effective July 1, 1997.

Administrative Rules

ARM 2.43.1017 Family law orders, executions, and income withholding orders and elections.

Part 10
Special Provisions

19-2-1001. Maximum contribution and benefit limitations.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (1) after "contributions and benefits" deleted "in". Amendment effective October 1, 2001.

Chapter 490 in (1) near middle after "paid from" substituted "a retirement system or plan" for "the retirement systems"; in (3) in introductory clause near middle after "a retirement system" inserted "or plan"; in (3)(a) near beginning after "If the" deleted "retirement system's"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 58 at beginning of (1) substituted "Employee contributions paid to and retirement benefits paid from" for "A monthly benefit paid under", after "limits on" substituted "contributions and benefits in, respectively allowed by" for "benefits as specified in", and at end after "Code" deleted "of 1986 and adjusted annually by the commissioner of internal revenue"; inserted (2) prohibiting member from receiving annual benefit that exceeds dollar amount specified by Internal Revenue Code; inserted (3) authorizing board to modify member request to make contribution exceeding allowable federal limit to retirement system by one of two methods; inserted (4) establishing limitation year for purposes of section 415 of Internal Revenue Code; inserted (5) defining salary for purposes of determining compliance with Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 1999.

The amendment to this section made by Ch. 471, L. 1999, was rendered void by sec. 46(2), Ch. 58, L. 1999, a coordination section.

1993 Amendment: Chapter 265 near beginning substituted "retirement systems" for "retirement system provided for in this chapter" and at end, after "revenue", deleted "for calendar years 1988 and thereafter"; and made minor changes in style. Amendment effective July 1, 1993.

Federal Statute: Section 415 of the Internal Revenue Code of 1986 referred to in this section may be found at 26 U.S.C. 415.

19-2-1002. Vesting of retirement benefits upon termination of plan.

Compiler's Comments

2001 Amendment: Chapter 490 in three places after "retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in three places substituted "plan" for "system". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1993 Amendment: Chapter 265 near middle substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1619 through 1621, 1626.

19-2-1003. Transfer of dormant, nonvested member-accumulated contributions.

Compiler's Comments

2001 Amendment: Chapter 490 in first sentence in three places before "plan" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in first sentence inserted "of a defined benefit plan" and substituted "plan" for "system". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1993 Amendment: Chapter 265 in two places substituted "accumulated contributions" for "savings account"; in first sentence, before "member", inserted "nonvested" and substituted "pension trust fund of the system in which the member is participating if the member has not participated in the plan as an employee" for "pension accumulation fund if the account has been dormant"; in second sentence, at end, substituted "return to service or subsequent application for refund" for "reentry to membership"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-1004. Exemption from taxes and legal process.

Compiler's Comments

2001 Amendment: Chapter 490 in introductory clause near middle after "or payment from" substituted "a retirement system or plan" for "the retirement systems" and near end after "money in the" inserted "system or plan's"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1997 Amendment: Chapter 552 in introductory clause inserted "and 19-2-909". Amendment effective July 1, 1997.

1993 Amendments: Chapter 259 at beginning inserted exception clause.

Chapter 265 in introductory clause substituted "any benefit or payment from the retirement systems" for "a retirement allowance or any other benefit under this chapter" and substituted "pension trust funds is" for "fund created under this chapter are"; in (2)(a) substituted "benefit or annuity" for "retirement allowance"; in (2)(b), after "refund", deleted "paid under 19-3-703", before "contributions" inserted "regular", and at end, after "19-3-315", inserted additional references; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (2)(a) concerning an adjusted retirement allowance or retirement allowance in excess of $3,600; and made minor changes in style. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1985 Amendment: At end of introductory language substituted "is not" for "shall not be"; in (1) after "attachment", deleted "state or municipal taxes"; inserted (2) providing for tax on refund of certain contributions; and in (3) made minor changes in phraseology.

Case Notes

Offset of Unpaid Retirement Benefits Proper Under Prior Family Law Order: The District Court ordered the husband to pay $734 a month from his retirement benefits, as ordered in a dissolution decree, and allowed the wife to offset her obligations to the husband when he became eligible to share in her retirement benefits to cover accrued payments of more than $10,000 owed by the husband. On appeal, the husband contended that he was exempt from this legal process under this section because 11 years had passed since the decree was issued, so the decree should no longer be considered a family law order under 19-2-907. The Supreme Court disagreed and affirmed. The husband cited no authority for the proposition that a family law order is no longer a family law order after 11 years. The District Court did not err in allowing the wife to collect accrued payments by setoff or otherwise. In re Marriage of Weber, 2004 MT 206, 322 M 324, 95 P3d 694 (2004).

No Private Contract Created by Statute — State Prohibited From Surrendering Power to Tax: After the Legislature enacted Ch. 823, L. 1991, to tax retirement pension benefits that had previously been untaxed, the retirees sued, claiming that they had a contractual right to a continued exemption from taxation. Citing Wage Appeal v. Bd. of Personnel Appeals, 208 M 33, 676 P2d 194 (1984), the Supreme Court held that the former tax exemption was only a policy statement that could be changed by the Legislature and that the Legislature did not clearly manifest an intention in the law in question to create a private contractual right. Additionally, the Supreme Court held that the state was prohibited by Art. VIII, sec. 2, Mont. Const., from promising any group of taxpayers that it would never tax them. Sheehy v. Pub. Employees Retirement Div., 262 M 129, 864 P2d 762, 50 St. Rep. 1477 (1993).

Federal Retirees Not Entitled to Retroactive Tax Refunds: Applying the U.S. Supreme Court's decision in Davis v. Mich. Dept. of the Treasury, 489 US 803, 103 L Ed 2d 891, 109 S Ct 1500 (1989), the District Court adopted a stipulation that the state income tax assessed on benefits received by federal retirees under 4 U.S.C. 111 that were in excess of $3,600 was unconstitutional and invalid for tax years after 1988. The District Court denied plaintiffs' summary judgment motion that Davis be applied retroactively, thus entitling retirees to refunds for previous tax years. On appeal, the Montana Supreme Court affirmed, ruling that it would be inequitable to refund taxes to retirees because the refunds would be made at the expense of all state taxpayers. Sheehy v. St., 250 M 437, 820 P2d 1257, 48 St. Rep. 1008 (1991).

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

Collateral References

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings. 93 ALR 3d 711.

Distributions to employee from pension or profit sharing plans as taxable under §402 of the 1954 Internal Revenue Code as ordinary income or capital gain. 3 ALR Fed. 719.

19-2-1005. Compensation limit.

Compiler's Comments

2001 Amendment: Chapter 490 near beginning after "A retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 substituted "plan" for "system". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-1006. Use of forfeitures.

Compiler's Comments

2001 Amendment: Chapter 490 in first sentence near beginning and in second sentence near end after "retirement" inserted "system or"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendments — Composite Section — Coordination: Chapter 58 near beginning substituted "retirement plan" for "retirement system" and after "benefits" inserted "resulting from the member's termination of employment, the death of the member, or any other reason"; and inserted second sentence authorizing use of forfeitures to reduce the costs of administration of retirement plan subject to chapter. Amendment effective July 1, 1999.

The amendments to this section made by sec. 15, Ch. 58, L. 1999, were rendered void by sec. 46(3), Ch. 58, L. 1999, a coordination instruction.

Chapter 471 substituted "plan" for "system".

Purported Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The amendment contained in sec. 27, Ch. 471, L. 1999, was the same as the amendment contained in sec. 46(3), Ch. 58, L. 1999. The effect of the two amendments is that the substitution of "retirement plan" for "retirement system" is not subject to the contingency in sec. 79(4), Ch. 471, L. 1999. Instead, that substitution is effective July 1, 1999, pursuant to sec. 47(1), Ch. 58, L. 1999.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-1007. Required distributions.

Compiler's Comments

2001 Amendment: Chapter 490 in introductory clause after "The benefits payable by" substituted "a retirement system or plan" for "the retirement plans"; in (1) in second sentence near middle after "by the retirement system" inserted "or plan"; and in (2) in first sentence near beginning after "in a retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendments — Composite Section: Chapter 58 near beginning of (1) after "by" inserted "the later of", substituted "calendar year" for "plan year", after "age" substituted "or April 1 of the calendar year following the calendar year in which the member terminates employment" for "or retires, whichever is later", and inserted second sentence requiring the board to begin distribution according to statute if member fails to apply for benefits; inserted second sentence in (2) requiring distribution of death benefits in accordance with section 401(a)(9) of the Internal Revenue Code and regulations; inserted (3) prohibiting recalculation of life expectancy of member or beneficiary after benefit payments begin; in (4) after "distributed" inserted "beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be distributed"; inserted fourth and fifth sentences in (5) regarding prompt distributions to beneficiary and requiring payment in form of lifetime monthly payment or lump sum if beneficiary has not elected payment form; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in introductory clause substituted "plans" for "systems"; in (2) substituted "a retirement plan" for "the retirement system" and before "over a period" inserted "or"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002,

whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.1045 Distribution to participant.

ARM 2.43.1046 Distribution upon death of participant.

19-2-1009. Penalty for fraud.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding penalty for fraud for former section that read: "(1) No person shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding $1,000 or suffer imprisonment not exceeding 1 year, or both, in the discretion of the court." Amendment effective July 1, 1993.

19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) near end after "rules" inserted "policies, and plan documents". Amendment effective July 1, 2003.

1999 Amendment: Chapter 58 inserted first sentence in (1) requiring board to administer plan to satisfy requirements of qualified government plan provided by the Internal Revenue Code, in second sentence after "Code" inserted "or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code", and at end substituted "plan to retain its qualified status" for "system to retain tax-deferred status"; inserted (2) regarding composition of the plan document for each retirement system for purposes of the Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 1999.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 43, Ch. 370, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 23, 1997.

19-2-1015. Probate and nonprobate transfer statutes superseded.

Compiler's Comments

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 101, Ch. 562, L. 1999, provided that this section is effective July 1, 1999.

Retroactive Applicability: Section 102, Ch. 562, L. 1999, provided: "[Section 19] [19-2-1015 and 19-20-510] applies retroactively, within the meaning of 1-2-109, to July 1, 1997."

CHAPTER 3
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Chapter Administrative Rules

ARM 2.43.302 Definitions.
ARM 2.43.303 Request for release of information by members.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.

Chapter Law Review Articles

Public Employees' First Amendment Rights, Rotering, 38 Mont. L. Rev. 365 (1977).

Defined Benefit Plans Vs. Defined Contribution Plans: A Reassessment, Grubbs, 16 J. Pension Plan. & Compliance 97 (1990).

Part 1
General Provisions

19-3-103. Retirement system created — system to consist of two plans.

Compiler's Comments

1999 Amendment: Chapter 471 in (1) substituted "defined benefit retirement plan" for "retirement system" and at end deleted "and to be known as the public employees' retirement system"; inserted (2) providing that a defined contribution plan is established as provided in part 21 of this chapter; in (3) inserted "public employees' retirement", inserted "consists of the defined benefit plan and the defined contribution plan. Each plan within the system", and inserted "applicable"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

The amendment to this section made by Ch. 562, L. 1999, was rendered void by sec. 99(1)(c), Ch. 562, L. 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 inserted second sentence regarding chapters applicable to system. Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1607.

19-3-108. Definitions.

Compiler's Comments

2005 Amendment: Chapter 329 in definition of compensation in (b)(i) substituted "the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit" for "the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a)"; in definition of highest average compensation in (a) at end inserted exception clause and in (b) at beginning substituted "For" for "or, with respect to" and near middle inserted "highest average compensation means"; inserted (6)(c) stating what highest average compensation means for a vested member without 36 consecutive months of membership service; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 429 in definition of highest average compensation at end of first sentence inserted language concerning member who is 65 years of age. Amendment effective July 1, 2003.

Chapter 602 in definition of employer at end deleted "except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999"; and made minor changes in style. Amendment effective July 1, 2005.

Saving Clause: Section 18, Ch. 602, L. 2003, was a saving clause.

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term and at end of second sentence of definition after "calculation of the" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of compensation in (a) near middle inserted "in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence", inserted (b)(ii) excluding in-kind goods, inserted (b)(iii) excluding in-kind services, inserted (b)(iv) excluding contributions to group insurance, and inserted (b)(v) excluding certain lump-sum payments; in definition of final average salary in second sentence near beginning after "severance pay" inserted "including compensatory leave"; and made minor changes in style. Amendment effective March 29, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

1999 Amendments — Composite Section: Chapter 58 in first sentence of definition of compensation after "employer" inserted "before any pretax deductions allowed by state or federal law are made"; at end of definition of employer inserted exception clause regarding nonprofit mental health corporation; and at beginning of definition of final average salary after "salary" deleted "except as provided in 19-3-520". Amendment effective July 1, 1999.

Chapter 471 inserted definitions of defined benefit plan and system or retirement system; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1993 Amendment: Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.408 Calculation of service credit on termination of employment.

19-3-111. Exemption for certain university temporary employees — "temporary employee" defined.

Compiler's Comments

Effective Date: Section 4, Ch. 121, L. 1995, provided that this section is effective March 10, 1995.

19-3-112. Education fund established — allocation of employer contributions — educational program requirements.

Compiler's Comments

2005 Amendment: Chapter 329 in (1)(a) near middle substituted "to be used to educate and inform" for "and provide for educational programs for"; in (1)(b) in first sentence near beginning substituted "educational services and communication services" for "educational and communication programs" and near middle substituted "the compensation paid to all of the employer's employees who are members of the system" for "covered payroll"; in (2)(a) in first sentence near beginning substituted "services" for "programs" and at end inserted "benefits, and features", in second sentence substituted "services must be provided in a variety of formats" for "programs must involve multimedia formats", and in third sentence near middle substituted

"historical" for "real" and near end inserted "or benefits"; in (2)(b) in first sentence near beginning substituted "educational services are" for "an educational program is" and near middle substituted "services are" for "program is" and in second sentence substituted "the educational program provided for in subsection (3)" for "educational services pursuant to this section"; in (3) in first sentence near beginning substituted "offer" for "provide for an initial and" and in second sentence at beginning substituted "The program" for "The transfer educational program"; in (3)(a) at beginning inserted "determining" and after "money available" deleted "to a member"; in (3)(d) at beginning substituted "the rate" for "the aggregate rate", in middle substituted "that must" for "and the period of time over which the aggregate rate of return must", and at end inserted "assuming the same time period in each plan"; in (3)(f) substituted information on determining retirement income needs and comparing those needs to each plan's possible or expected benefit for "the benefits and historical rates of return on investments available in deferred compensation plans or a plan under section 403(b) of the Internal Revenue Code for which the employee may be eligible"; inserted (3)(g) relating to use of supplemental retirement savings programs to enhance retirement income; in (4) in introductory clause substituted text relating to ongoing educational and communications services for former text that read: "(4) An ongoing educational and communication program must provide members of either plan with information necessary to make informed decisions about choices within their plan of membership and in preparation for retirement. The program must include but not be limited to information concerning"; in (4)(c) at beginning inserted "planning for retirement, including" and at end substituted "supplemental retirement savings programs" for "a deferred compensation plan under section 457 of the Internal Revenue Code or a plan under section 403(b) of the Internal Revenue Code"; deleted former (4)(f) that read: "(f) planning for retirement"; in (6) near beginning before "plan" inserted "contracted" and at end substituted "information and tools necessary to understand the available investment alternatives and to appropriately manage their selected retirement plan" for "information necessary to make informed decisions about the defined contribution plan or the optional retirement program and investment alternatives within the defined contribution plan or the optional retirement program"; and made minor changes in style. Amendment effective July 1, 2005.

Termination Date Changed: Section 39, Ch. 490, L. 2001, amended sec. 81, Ch. 471, L. 1999, to terminate subsection (1)(b) of this section effective July 1, 2002, rather than July 1, 2001.

Effective Date — Contingent Effective Date: Section 79(3), Ch. 471, L. 1999, provided that subsections (1)(a), (1)(b), and (2) through (6) of this section are effective July 1, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsection (1)(c) (now (1)(b)) of this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Termination: Section 81(1), Ch. 471, L. 1999, provided that subsection (1)(b) of this section terminates July 1, 2001.

Part 2
Extension of Coverage by Local Government Employers

19-3-201. Contracts with political subdivisions.

Compiler's Comments

2005 Amendment: Chapter 329 in (2) inserted reference to chapter 2; in (2)(a) in first sentence after "resolution" deleted "giving notice" and in fifth sentence near beginning after "must be" deleted "by ordinance adopted", near middle increased the time period from 20 to 40 days, and at end deleted "or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract"; in (2)(b) at beginning substituted "The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract" for "The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its

opinion, the classification affects adversely the interest of the retirement system. Membership in the retirement system is compulsory for all employees who are included under the contract and who are hired after the effective date of the contract"; in (2)(c) deleted former second sentence that read: "Groups of excluded employees may be subsequently included by amendment" and inserted three sentences requiring board approval of the contract, allowing disapproval of a contract that adversely affects the system, and concerning amendments to the system; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendments — Composite Section: Chapter 471 in (2)(b) at end inserted sentence providing that membership in the defined benefit plan or defined contribution plan is determined on an individual basis; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in (2)(a) and (3)(c) after "legislative body" substituted "within 20 days" for "not less than 20 days"; and made minor changes in style. Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1), at end of first sentence, deleted "subject to the provisions of this chapter" and in second sentence inserted reference to chapter 2; in (2)(b), in second sentence after "duties", deleted "age" and in fourth sentence, at end after "contract", inserted "and who are hired after the effective date of the contract"; in (3)(c) substituted "terminating coverage under the system" for "terminating PERS coverage"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Deleted "and termination" after "approval" in (2); added subsection (3) relating to termination of the contract.

Attorney General's Opinions

CETA Programs Under PERS: A county which contracts into PERS may not adopt a policy of blanket exclusion of workers hired under a CETA program. 38 A.G. Op. 19 (1979).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1604, 1605, 1609.

19-3-203. Conversion of local or state retirement plan.

Compiler's Comments

1999 Amendment: Chapter 471 in (2) in first sentence inserted "Subject to the applicable provisions of this chapter" and inserted "either the defined benefit plan or the defined contribution plan of"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 in (3), in second sentence after "credited", substituted "as accumulated contributions" for "to the respective individual accounts" and in fourth sentence, near end before "interest", inserted "regular"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-204. Tax levy to meet employer's obligations.

Compiler's Comments

1993 Amendment: Chapter 265 in (2), before "beneficiary", inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

Attorney General's Opinions

All-Purpose Mill Levy — Forfeiture of Powers: Municipalities that adopt the all-purpose mill levy authorized in 7-6-4452 (now repealed) forfeit the power to impose levies for any particular purpose not clearly excepted by statute. Thus, the all-purpose mill levy supplants the taxing authority granted in 7-33-4111, 19-10-301 (renumbered 19-19-301), and 19-11-503 (renumbered 19-18-503) but does not supplant the taxing authority granted in 7-32-4117, 7-33-4130, 19-3-204, 19-9-704 (renumbered 19-9-209), sec. 2, Ch. 324, L. 1975 (not codified), sec. 2, Ch. 359, L. 1975 (not codified), and sec. 3, Ch. 438, L. 1975 (not codified). 38 A.G. Op. 112 (1980).

Part 3
Contributions and Refunds

Part Administrative Rules

ARM 2.43.302 Definitions.
ARM 2.43.303 Request for release of information by members.
ARM 2.43.410 Proof of service.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.

19-3-315. Member's contribution to be deducted.

Compiler's Comments

1999 Amendment: Chapter 471 in (4)(b) inserted "In the case of a member of the defined benefit plan"; inserted (4)(c) providing for contribution allocation for a member of the defined contribution plan; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1997 Amendment: Chapter 287 in (1), in first sentence, changed "July 1, 1993" to "July 1, 1997" and substituted "6.8%" for "6.70%" and inserted second sentence providing that member's contribution increases to 6.9% beginning July 1, 1999. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted (1) regarding regular contribution rate for former subsection that read: "(1) On and before June 30, 1989, the normal contribution of each member is 6% of his compensation. The normal contribution of each member increases to:

(a) 6.15% of his compensation on July 1, 1989;
(b) 6.30% of his compensation on July 1, 1990;
(c) 6.417% of his compensation on July 1, 1991;
(d) 6.55% of his compensation on July 1, 1992; and
(e) 6.70% of his compensation on July 1, 1993"; in (5), at end of first sentence after "compensation", deleted "as defined in 19-3-104"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: At beginning of (1) inserted "On and before June 30, 1989" and at end inserted "The normal contribution of each member increases to"; and inserted (1)(a) through (1)(e) specifying the percentage increases. Amendment effective April 15, 1989.

Applicability: Section 7, Ch. 558, L. 1989, provided: "[This act] applies to members retiring on or after April 15, 1989."

1985 Amendment: In (1) in middle of first sentence substituted "is" for "shall be equal to" and deleted former second sentence that read: "The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Administrative Rules

ARM 2.43.404 Required employer reports.

ARM 2.43.442 Eligible federal volunteer service.

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1626.

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

19-3-316. Employer contribution rates.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in second sentence substituted "the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees, except those properly excluded from membership" for "the amount of the employer contribution as a percentage of the employer's covered payroll is 6.9%"; and in (2) near end before "under 19-3-319" deleted "applied to their monthly covered payrolls". Amendment effective July 1, 2005.

Incorrect Effective Dates — Effective Date Amended: Section 79, Ch. 471, L. 1999, incorrectly provided two effective dates for sec. 34 of Ch. 471, one July 1, 1999, and the other effective upon a contingency, or July 1, 2002, whichever was earlier. Section 38, Ch. 490, L. 2001, amended sec. 79 to make the effective date July 1, 1999.

1999 Amendments — Composite Section: Chapter 51 in (1) near end after "payroll is" deleted "6.8% beginning July 1, 1997, and increases to"; and in (2) deleted former second sentence that read: "The payment is statutorily appropriated as provided in 17-7-502." Amendment effective March 15, 1999.

Chapter 471 in (1) in first sentence after "contribute to" deleted "the cost of benefits under" and inserted third and fourth sentences requiring allocation of a portion of employer contributions for educational programs and requiring employer contributions for members under the defined contribution plan to be allocated as provided in 19-3-2117. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1997 Amendment: Chapter 287 substituted language in second sentence in (1) inserting exception clause and language providing that an employer's contribution is 6.8% of payroll beginning July 1, 1997, and 6.9% beginning July 1, 1999, for language that read: "On and after July 1, 1993, the amount of the employer contribution is 6.70% of each employer's covered payroll"; inserted (2) requiring local government and school district to subtract state contribution rate from total employer rate; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present section regarding employer contribution rates for former section that read: "(1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates is 6.417% from July 1, 1983, to June 30, 1992. The sum of the rates increases to 6.55% on July 1, 1992, and to 6.70% on July 1, 1993.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future

benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons." Amendment effective July 1, 1993.

1989 Amendment: At end of (1), after "July 1, 1983", substituted "to June 30, 1992. The sum of the rates increases to 6.55% on July 1, 1992, and to 6.70% on July 1, 1993" for "and thereafter"; and made minor change in phraseology. Amendment effective April 15, 1989.

Applicability: Section 7, Ch. 558, L. 1989, provided: "[This act] applies to members retiring on or after April 15, 1989."

1983 Amendment: At end of (1), substituted "these rates shall be 6.417% from July 1, 1983, and thereafter" for "these rates shall be 6.32% from July 1, 1981, and thereafter".

1981 Amendments — Coordination Section: Section 3, Ch. 254, L. 1981, provided: "If both this act and HB 45, introduced in the 47th legislature, are passed and approved, the percentage amount contained in 19-3-801 [renumbered 19-3-316] shall reflect the sum of the increases in the employer contribution provided in HB 45 and this act." The pre-1981 employer rate was 5.90%. The increase in HB 45 (Ch. 549) was .12% and in SB 232 (Ch. 254) .30%. In accordance with the coordination section, the Code Commissioner inserted "6.32" in the last sentence of (1).

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Administrative Rules

ARM 2.43.404 Required employer reports.

19-3-318. Credit of contributions made after member becomes inactive.

Compiler's Comments

2005 Amendment: Chapter 329 at beginning substituted "Contributions made on the basis of compensation earned by members after they are considered to be inactive members" for "Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system". Amendment effective July 1, 2005.

1999 Amendment: Chapter 58 at end substituted "credited to the employer" for "repaid to the employer". Amendment effective July 1, 1999.

1993 Amendment: Chapter 265 substituted reference to subsection (4) of 19-3-403 for reference to subsection (8); and made minor changes in style. Amendment effective July 1, 1993.

Attorney General's Opinions

Two Retirement Systems Valid: Although a county, as an employer, is prohibited from making a contribution to both the Public Employees' Retirement System and a private union pension trust, unionized county employees may make individual contributions to a private union pension trust by assignment of benefits due them as wages even though the county made a contribution to the Public Employees' Retirement System for county employees. 35 A.G. Op. 51 (1973).

19-3-319. State contributions for local government and school district employers.

Compiler's Comments

2005 Amendment: Chapter 329 in first sentence substituted "paid to all employees of" for "of members employed by" and at end inserted "except those properly excluded from membership". Amendment effective July 1, 2005.

1999 Amendment: Chapter 562 near beginning of second sentence substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Coordination: Section 39(1), Ch. 532, L. 1997, provided: "(1) If House Bill No. 170 is passed and approved and if it contains a new [section 4] providing for state contributions to the public employees' retirement system on behalf of local governments, then:

(a) the new [section 4 of House Bill No. 170] shall read:

"Section 4. State contributions for local government and school district employers. The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation of members employed by local government entities and school districts on and after July 1, 1997. The division shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payment is statutorily appropriated as provided in 17-7-502."" House Bill No. 170 was

approved as Ch. 287, L. 1997, effective July 1, 1997, and included the enactment of section 4 as 19-3-319; therefore, the text of 19-3-319 was amended as provided in sec. 39(1), Ch. 532, L. 1997.

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

Part 4
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.405 Membership.

19-3-401. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2005 Amendment: Chapter 329 in (2)(a) and (3)(a) at beginning substituted "An inactive member" for "A member"; in (2)(a) after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (2)(b) providing what a lump-sum payment consists of; in (3)(a) after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; in (3)(b) inserted "of the defined benefit plan"; in (4) at beginning inserted exception clause and at end substituted "is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either" for "who"; substituted (4)(a) and (4)(b) relating to a member who either returns to service within 30 days of termination of employment or terminates one position and remains in another position for "returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2) after "service" inserted "credit"; and in (5) at end substituted "membership service in determining eligibility for retirement benefits" for "service in determining eligibility for membership under this chapter". Amendment effective July 1, 2003.

1999 Amendments — Composite Section — Coordination: Chapter 471 in (1) in first sentence inserted "of the defined benefit plan", near end of second sentence after "status of members" deleted "of the retirement system", and at end inserted sentence allowing an employee to join the defined contribution plan only as provided in Title 19, chapter 3, part 21; in (2) and (3) near beginning inserted "of the defined benefit plan"; in (3) at end of first sentence substituted "plan" for "system"; and in (4) near beginning of first sentence inserted "of either the defined benefit plan or the defined contribution plan, subject to the provisions of this chapter". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Section 99(1)(d), Ch. 562, L. 1999, in three places after "members" or "member" inserted "of the defined benefit plan"; in (1) in second sentence after "members" deleted "of the retirement system" and inserted third sentence relating to defined contribution plan participation; and substituted (4) providing that person who returns to service within 30 days of termination of service or who terminates one service and remains in another service is active member for former (4) that read: "(4) Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry." Amendment effective July 1, 1999.

The amendments to this section made by sec. 24, Ch. 562, L. 1999, were rendered void by sec. 99(1)(d), Ch. 562, L. 1999, a coordination section.

Purported Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code

commissioner." The amendments contained in sec. 35, Ch. 471, L. 1999, were the same as the amendments contained in sec. 99(1)(d), Ch. 562, L. 1999, except the amendment to the first sentence of (4), which was rendered void by the deletion of (4) in Ch. 562. The effect of the amendments is that this section is not subject to the contingency in sec. 79(4), Ch. 471, L. 1999. Instead, the amendments are effective July 1, 1999, pursuant to sec. 101, Ch. 562, L. 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in (1), in first sentence after "all", deleted "eligible" and at end substituted "service" for "covered employment" and at beginning of second sentence, after "Each", substituted "employer" for "eligible employee" and after "affecting" substituted "their employees' status as members" for "the employee's status as a member". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), at beginning, inserted exception clause, in two places changed references to employees to references to eligible employees, and before "employment" inserted "covered"; in (2), near beginning, substituted "membership service" for "creditable service", after "terminates" substituted "service" for "covered employment", before "contributions" inserted "accumulated", after "contributions" inserted "is an inactive vested member and", after "service" inserted "and to receive a service retirement benefit", and before "this chapter" deleted "part 5 of"; deleted (2)(b) that read: "(b) Upon reaching retirement age, a member becomes eligible to receive a retirement allowance under the provisions of 19-3-901 or 19-3-902"; in (3), in first sentence, substituted "membership service" for "creditable service", after "terminates" substituted "service" for "covered employment", after "contributions" substituted "in the pension trust fund" for "on deposit", after "is" inserted "an inactive nonvested member and is", and after "benefits" substituted "from the retirement system" for "other than" and in last sentence, before "a refund", inserted "An inactive nonvested member is eligible only for"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (2) regarding right to purchase service and eligibility for retirement allowance for member with at least 5 years' service who terminates covered employment; and inserted (3) limiting member with less than 5 years' service to refund of contributions. Amendment effective July 1, 1991.

Administrative Rules

ARM 2.43.402 Membership cards.

ARM 2.43.440 Service purchases by inactive vested members.

19-3-402. Federally subsidized employees eligible.

Compiler's Comments

1983 Amendment: Deleted, effective July 1, 1984, former (2), that read: "Each member of the Montana army and air national guard is considered an employee. Any such person may, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of 19-3-505 and 19-3-506."

Attorney General's Opinions

CETA Programs Under PERS: A county which contracts into PERS may not adopt a policy of blanket exclusion of workers hired under a CETA program. 38 A.G. Op. 19 (1979).

19-3-403. Exclusions from membership.

Compiler's Comments

2005 Amendment: Chapter 329 in (4) in third sentence at end substituted "with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions" for "solely for the purposes of making regular contributions, as permanently separated from service"; and in (4)(a) at beginning substituted "The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit" for "When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (4) in first and second sentences substituted "employment" for "service" and near end of second sentence after "applied for and" inserted "the service credit"; in (6) near end after "purchasing the service" inserted "credit" and after "receive" substituted "service credit" for "credited service"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (6) near middle substituted "becomes an active member" for "becomes a member", after "option of" substituted "purchasing" for "qualifying", and after "becoming" substituted "an active member" for "a member". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (4)(b) substituted "retirement benefits" for "retirement allowances". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendments — Composite Section: Chapter 308 in (6), after "high school", deleted "vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 412 at end of (3) deleted "unless there is a written contract that specifies the creation of an employer-employee relationship for purposes of retirement coverage under the retirement system"; and in (6), near beginning, substituted "school of technology" for "vocational-technical center". Amendment effective April 13, 1995.

The codifier did not codify the subsection (6) name change made by Ch. 412 because Ch. 308 merged the school of technology system into the University System and deleted the old reference to "vocational-technical center".

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 deleted former (1) that read: "(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded"; in (1), after "institutions", deleted "who are allowed compensation for such service as they are able to perform"; at end of (3) substituted "the retirement system" for "The Public Employees' Retirement System Act"; deleted former (5) through (7) that read: "(5) employees serving in employment which does not exceed the equivalent of 120 working days in any fiscal year who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment.

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members"; in (4), in third sentence, substituted "regular contributions" for "normal contributions"; at end of (4)(a), after "retirement system", deleted "and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system"; in (4)(b) substituted "subsection (4)" for "subsection (8)" and after "employee" deleted "as defined in this chapter"; in (5), after "court commissioners", inserted "elected officials"; deleted (10) through (12) that read: "(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth- and seventh-class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session who do not file with the board an election in writing to become members"; near end of (6) substituted "credited service" for "credit"; deleted (14) that read: "(14) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city, whichever is later"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Deleted former (15) that read: "(15) all former members receiving a retirement allowance, other than as a beneficiary, serving in employment if that employment does not exceed 60 working days in any calendar year. These former members must be reinstated into membership on the 61st working day in any calendar year unless they elect to return to membership prior to that day". Amendment effective March 29, 1991.

1985 Amendment: Deleted former (14) that read: "effective October 1, 1978, employees whose positions are funded under the federal Comprehensive Employment and Training Act (CETA) and who file with the board elections not to become members. An employee who exercises his election is considered terminated and is eligible for a refund under 19-3-703, and any employer contributions made on his behalf after October 1, 1978, must be returned to the funding agency. If he is subsequently transferred to non-CETA employment and consequently becomes a member, he may revoke his election within 1 year after the transfer date by filing a written revocation with the board and he will then be eligible to qualify the service previously excluded by this subsection under the provisions of 19-3-505"; and in (15) substituted reference to calendar year for fiscal year in two places.

1983 Amendment: At beginning of (13), substituted "full-time students employed at and attending the same" school for "students of any" school.

1981 Amendments: Chapter 60 inserted "for 6 months or less" in (12); substituted "or the legislative council to perform work related to the legislative session" for "during the legislative session" in (12).

Chapter 142 substituted "120" for "60" working days at the beginning of (5); added the balance of (5) following "any fiscal year" near the beginning of the subsection (see 1981 Session Law for text); deleted "within 1 year" before "after becoming a member" near the end of (13); added (16) allowing retired members to work 60 days without rejoining the retirement system.

Administrative Rules

ARM 2.43.403 Optional membership.

ARM 2.43.421 Credit for service in uniformed services.

ARM 2.43.432 "1-for-5" additional service.

ARM 2.43.506 Return to covered employment by retiree.

Case Notes

Retirement Pay — Accumulated Sick Leave: By this section the Legislature reaffirmed its policy that parties may collectively bargain for such things as retirement pay. Therefore, the clear language of a collective bargaining agreement regarding retirement pay derived from accumulated sick leave was upheld. School District v. Driscoll, 173 M 492, 568 P2d 149 (1977).

Attorney General's Opinions

Pension Trust for PERS Members Prohibits Use of State Funds: Subsection (8) of this section prohibits use of annual state payments received by a city pursuant to 19-10-305 (renumbered 19-19-305) for a pension trust plan for police officers who are also members of the Public Employees' Retirement System. 42 A.G. Op. 92 (1988).

CETA Programs Under PERS: A county which contracts into PERS may not adopt a policy of blanket exclusion of workers hired under a CETA program. 38 A.G. Op. 19 (1979). (See the 1985 amendment note to this section. The amendment deleted the exemption for CETA employees.)

Two Retirement Systems Valid: Although a county, as an employer, is prohibited from making a contribution to both the Public Employees' Retirement System and a private union pension trust, unionized county employees may make individual contributions to a private union pension trust by assignment of benefits due them as wages even though the county made a contribution to the Public Employees' Retirement System for county employees. 35 A.G. Op. 51 (1973).

Social Security — Public Employees' Retirement System: For the purpose of Social Security coverage under Ch. 270, L. 1955 (now Title 19, ch. 1), and the agreement between the state of Montana and the Secretary of Health, Education and Welfare, the positions of state Superintendent of Public Instruction, County Superintendent of Schools, the professional staff of the state Superintendent of Public Instruction, and teachers in custodial institutions are positions covered by the Public Employees' Retirement System. 26 A.G. Op. 103 (1956).

19-3-411. Eligible employees.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-3-412. Optional membership.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "employees and elected officials in covered positions shall elect either to" for "employees in covered employment may" and at end substituted "in the manner prescribed in subsection (3)" for "within 180 days of commencement of their employment"; deleted former (2)(c)(i) that read: "(i) A member who is a local elected official and an active member on April 17, 2003, and who is working in the member's elected position less than 960 hours in a calendar year may until January 1, 2004, decline optional membership with respect to the member's elected position"; in (3) substituted (a) through (d) requiring the board to prescribe the form of the written application required by subsection (1) and to give each employer the form, requiring each employee or elected official in a position covered by subsection (1) to obtain the form and complete and return it, requiring filing of the application, and requiring the board to retain a copy for "If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement"; inserted (4) providing that an employee or elected official who fails to file the application in time waives membership; in (5), (6), (7), and (8)(a) near beginning inserted "or elected official"; in (7) at beginning inserted exception clause; in (8)(a) substituted "for a position" for "while employed in a position"; in (8)(b) near middle substituted "employed in" for "a member in"; deleted former (8) that read: "(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 402 at beginning of (1) inserted exception clause, before "members" inserted "active", and after "system" substituted "or decline this optional membership" for "at their option"; inserted (1)(a)(ii) allowing members receiving benefits or distribution under defined benefit plan at time of election to become active members; inserted (2)(c) allowing elected local officials to decline optional membership; and made minor changes in style. Amendment effective April 17, 2003.

Chapter 429 in (2)(b) in two places and in (4) near beginning of second sentence after "service" inserted "credit"; in (3) near middle of third sentence substituted "membership service" for "membership credit"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (3) in first sentence substituted "employee shall sign" for "employee shall execute" and after "membership and" inserted "file it with the employer" and in second sentence after "employer shall" inserted "file the statement with the board and" and after "retain" inserted "a copy of"; and in (4) in first sentence substituted "member may purchase" for "member may qualify" and at beginning of second sentence substituted "Purchase" for "Qualification". Amendment effective March 21, 2001.

Chapter 285 in (1)(f) after "rest homes" deleted "in counties of the third, fourth, fifth, sixth, and seventh class". Amendment effective October 1, 2001.

Chapter 357 in (2)(a) at beginning inserted exception clause; and inserted (2)(b) concerning legislators becoming members; and made minor changes in style. Amendment effective April 23, 2001.

Retroactive Applicability: Section 3, Ch. 357, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all persons who were legislators on July 1, 1999."

1999 Amendments — Composite Section: Chapter 51 in (1)(f) after "third" inserted "fourth, fifth". Amendment effective March 15, 1999.

Chapter 58 in (1) after "option" substituted "by filing an irrevocable, written application with the board within 180 days of commencement of their employment" for "at any time during their employment in a covered position by filing a membership card with the board"; inserted (2) establishing date by which employees or officials who are not members must file an irrevocable, written application with board; inserted (8) regarding waiver of membership if member or official fails to file irrevocable written application with board within time limit; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 562 in (1)(b) at beginning before "employees" deleted "part-time", after "does not" inserted "cumulatively", and substituted "960 hours of covered employment with all employers under this chapter" for "960 hours of employment covered by this chapter"; in (3) inserted second sentence denying membership credit or service credit for employment for which optional membership was declined; inserted (4) allowing qualification of service from date of employment to commencement of membership; inserted (5) providing status of active member, inactive member, and retired member upon employment in position for which membership is optional; inserted (6) providing that decision to decline optional membership is not reversible unless there is 30-day break in service; and inserted (7) providing that membership is mandatory in certain positions. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments — Composite Section: Chapter 208 in (1)(f) inserted references to counties of the third, fourth, and fifth class; and made minor changes in style. Amendment effective April 7, 1997.

Chapter 370 in (1)(b), after "exceed", substituted "a total of 960 hours of employment covered by this chapter" for "the equivalent of 120 working days"; inserted (2) concerning an employee's decline of optional membership; and made minor changes in style. Amendment effective April 23, 1997.

Style changes were slightly different in the chapters. In each case, the codifier chose the more appropriate.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.403 Optional membership.

ARM 2.43.404 Required employer reports.

ARM 2.43.418 Elected officials.

Part 5
Service Credit

Part Administrative Rules

ARM 2.43.405 Membership.
ARM 2.43.406 Basic period of service.
ARM 2.43.408 Calculation of service credit on termination of employment.
ARM 2.43.418 Elected officials.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.

Part Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

19-3-501. Absence not included in service.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding absence from service for former section that read: "Except as provided in 19-3-502, 19-3-503, and 19-3-504, time during which a member is absent from compensated employment with an employer may not be allowed in computing service." Amendment effective July 1, 1993.

Collateral References

Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 ALR 2d 506.

19-3-503. Application to purchase military service.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "10 years of service credit". Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning after "least" substituted "5 years of membership service" for "10 years of service credit" and near middle after "service credit" inserted "and membership service"; deleted former (1)(b) that read: "(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation"; in (1)(b) substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning application to purchase military service; inserted (3) concerning cost of purchasing service credit and membership service; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(1), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 22, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 near beginning of (1)(a) after "subsection (2)" substituted "and subject to 19-3-514, a member with at least 10 years of service credit" for "a member with 10 years or more of service credits", after "retirement" substituted "file a written application" for "make a written election", after "purchase service" substituted "credit for up to 5 years" for "credits for all or any portion", and at end after "1945" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2)"; in (1)(b) substituted language regarding purchase of military service for former language that read: "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system"; in (2) at beginning of introductory clause inserted "A member is not eligible to purchase military service under this section"; in (2)(a) at end after "benefit" substituted "based on that military service" for "the member may not qualify the member's military service under subsection (1)"; and inserted (2)(b) and (2)(c) providing that a member cannot purchase military service if eligible to receive other credit for that service. Amendment effective March 21, 2001.

Section 32, Ch. 7, L. 2001, purported to amend this section. However, the temporary version terminated July 1, 2001, prior to the effective date of the amendment, which was October 1, 2001.

1999 Amendments — Composite Section: Chapter 58 near end of (1) substituted "19-2-707" for "19-2-705"; deleted former (2)(b) that read: "(b) However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States, including the first special service force or the American

merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service including reserve and active duty time"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 494 at beginning of (1)(b) inserted exception clause; at end of (2) inserted "or (3)"; inserted (3) allowing qualification of Korean conflict and Vietnam conflict military service in PERS; and made minor changes in style. Amendment effective July 1, 1999, and terminates July 1, 2001.

1997 Amendment: Chapter 287 at beginning of (1)(a) inserted exception clause and at end inserted "or is ineligible under subsection (2)(a)"; in (1)(b), after "member", substituted "shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system" for "shall contribute to the pension trust fund the amount determined by the board to be due based on the member's compensation and regular contribution rate as of the member's 11th year and as many succeeding years as are required to qualify this service, with regular interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not purchase more of this service credit than the member has service credits in excess of 10 years"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1)(a), near beginning, substituted "service credits" for "state service qualified under this chapter", before "all or any portion" substituted "purchase service credits for" for "qualify", after "August 15, 1945" deleted "for the purpose of calculating retirement benefits", and near end, before "credit", inserted "service"; in (1)(b), in first sentence, substituted "pension trust fund" for "retirement fund", substituted "regular contribution rate" for "normal contribution rate", and before "interest" inserted "regular" and in second sentence substituted "purchase" for "qualify", after "service" inserted "credit", and substituted "service credits" for "state service"; in (2), before "service retirement benefit", substituted "military" for "normal"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In three places inserted reference to the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.433 Purchase of full-time service by part-time members.
ARM 2.43.437 Military service.

19-3-504. Absence due to illness or injury.

Compiler's Comments

2003 Amendment: Chapter 429 in (2)(a) near end and in (3) near beginning before "service" deleted "covered"; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 58 deleted former (4) that read: "(4) Payment of the employee's contributions that are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 370 in (1), in first sentence after "illness", deleted "determined within 1 year after the end of the absence as arising out of and in the course of the member's employment" and at end inserted "if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment" and at end of second sentence substituted "service" for "credits"; in (2)(a), near middle after "may", inserted "upon the member's return to service" and after "retirement system" deleted "upon the member's return to service"; in (2)(b), in first sentence after "contribute", substituted "employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest" for "an amount equal to what its employer contributions would have been had the member not been absent from service. In addition, the employer may contribute an amount equal to the interest accruing" and in second sentence, after "make", substituted "an interest payment" for "a contribution"; in (5), at end after "19-2-602", inserted "or for the period of time during which retirement benefits are received if the member retires during the absence"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), in first sentence, substituted "employment is considered membership service" for "employment shall be considered as spent in service" and at end, after "service", deleted "for the purpose of qualification for service retirement benefits under Title 19, chapter 3, part 9, or survivorship allowances under Title 19, chapter 3, part 12, but not for the calculation of such benefits" and at beginning of second sentence inserted "However, the member may not earn service credits for this period" and at end substituted "service credits and membership credits" for "the calculation and qualification of benefits"; in (2)(a), before "interest", inserted "regular" and substituted "covered service" for "covered employment"; in (2)(b) inserted third sentence regarding employer contribution for all employees; in (3) substituted "covered service" for "covered employment"; at end of (4) substituted "covered service" for "covered employment"; in (5), after "member", deleted "so absent", after "contribute" inserted "for an absence", and before "contributions" deleted "normal"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: At end of (4) substituted "before termination of covered employment" for "not to exceed 24 monthly payments".

1983 Amendment: In middle of (1), substituted "service retirement benefits under Title 19, chapter 3, part 9," for "retirement benefits"; inserted "under Title 19, chapter 3, part 12," after "survivorship allowances"; at end of (2)(a) inserted "plus interest accruing ... period of absence"; near beginning of (2)(b) substituted "contribute under subsection (2)(a)" for "continue his contributions"; in (2)(b) inserted last two sentences allowing employer to pay interest on its contribution and requiring employee to pay employer's interest if not paid by employer; at beginning of (3) substituted "At some time after returning to covered employment," for "within 6 months after he returns to service"; at end of (3) deleted former sentence, which read "The employer shall provide the employee with written notice of the provisions of this section which shall be signed by the employee and returned to the employer, who shall provide a copy to the board."; and made minor phraseology changes.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.424 Service credit for period(s) of disability.

19-3-505. Purchase of previous employment with employer.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in first sentence at end inserted "and membership service"; in (2)(a) after "A purchase" deleted "of service credit"; in (2)(b) in first sentence near beginning substituted "all contributions that the member would have contributed" for "the amount that the member and the member's employer would have contributed" and deleted former second sentence that read: "However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(c)"; in (2)(c) in first sentence near beginning inserted "or retroactive employer contributions and regular interest"; inserted (2)(d) providing that if an employer establishes a policy of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2)(a) after "service" inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) in first sentence after "coverage may" substituted "file a written application with the board to purchase" for "request to qualify" and at end after "employment" substituted "for service credit" for "as membership service by filing written application with the board" and inserted second sentence requiring that the application contain salary information; inserted (2)(a) providing that a purchase of service is subject to board approval; near beginning of first sentence of (2)(b) substituted "approves the request" for "approves the application" and after "pay" deleted "to the board the sum of"; deleted former (3) that read: "(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former (4) that read: "(4) Payment may be made in one sum at the time of filling notice or by making additional contributions on an installment basis before retirement. Failure to make regular monthly payments in any month in which the member receives normal compensation forfeits the person's right to make any further installment payments, unless permission is granted by the board." Amendment effective July 1, 1999.

Chapter 562 in (1) after introductory clause substituted "a member" for "any person", after "employment" inserted "for which optional membership was declined or employment", after "employer" substituted "prior to the employer's contract coverage may request to qualify" for "that is not service may convert", after "employment" substituted "as" for "to", and after "written" substituted "application" for "notice"; and in (2) at beginning substituted "If the board approves the application, the member shall pay to the board" for "The person shall pay to the retirement system", substituted "member and the member's employer" for "person and the person's employer", and substituted "period of employment if the employment had been covered" for "period of service converted if the employer had been an employer covered". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1), in two places, substituted "employment" for "service" and before "service" deleted "creditable"; in (2)(a), near middle of first sentence after "employer", inserted "covered by the retirement system", in first and second sentences, before "interest", inserted "regular", and at end of second sentence, after "interest", inserted reference to subsection (2)(b); in (2)(b), near beginning before "retroactive", inserted "payment of"; at end of (3), after "requests", deleted "as prescribed in 19-3-304"; in (4), in first sentence, inserted reference to additional contributions and after "basis" substituted "before retirement" for "before termination of covered employment"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (4), at end of first sentence, inserted "before termination of covered employment" and deleted second and third sentences that read: "Installment payments shall not exceed 24 monthly payments. When the monthly payment exceeds 5% of compensation in the initial month of payment, the board may allow smaller payments over a period to exceed 24 months."

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.423 Purchase of other types of service.

ARM 2.43.428 Acceptable documentation of public service employment.

Case Notes

Public Defender Considered Employee Entitled to Purchase Service Credits: Lewis worked as a county public defender for about 2 1/2 years and then began working for the state Department of Transportation. Lewis sought to purchase service credits pursuant to the applicable 1979 version of this section for the time spent as a public defender. The District Court affirmed the finding of the Public Employees' Retirement Board that Lewis's service was creditable service (definition changed to credited service or service credit in 1993 and deleted in 2003), as defined in 19-3-104 (renumbered 19-2-303), that did not qualify for conversion to membership service, so Lewis was denied the right to purchase service credit. On appeal, the Supreme Court reversed. The definition of membership service in 19-3-104 (renumbered 19-2-303) was service with respect to which contributions are paid. No contributions were paid, so Lewis's service was not membership service and therefore was also not creditable service. Lewis was an employee rather

than an independent contractor, the county was a participating member of the public employees' retirement system, and Lewis's service was not creditable service. Thus, Lewis was entitled to purchase service credits in the retirement system. (Note that the statutes were substantially revised beginning in 1993.) In re Lewis, 2004 MT 160, 322 M 13, 92 P3d 1218 (2004).

19-3-510. Employment in United States government.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) near end after "service" inserted "credit"; and in (2)(b) near beginning after "purchase" inserted "service credit for". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) in introductory clause substituted "may purchase" for "may qualify"; in (2)(b) at beginning substituted "purchase" for "qualify"; in (3) near middle after "determination of" substituted "highest average compensation, provided that the highest average compensation does not" for "final average salary, provided that the final average salary cannot"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in four places, before "retirement system", deleted "public employees'"; in (1) substituted "federal employment as service" for "federal service as creditable service"; in (1)(a), before "service", inserted "membership"; in (1)(b) substituted "full-time service" for "full-time employment", before "state" substituted "former" for "prior", and after "completing" substituted "employment" for "service"; in (2)(a) substituted "pension trust fund" for "account"; in (2)(b) substituted "the period of federal employment under this section" for "this service under 19-3-505" and at end substituted "service under the retirement system" for "active status as a state or local government employee"; in (3) substituted first "final average salary" for "final compensation as defined in 19-3-104" and substituted second "final average salary" for "final compensation"; and made minor changes in style. Amendment effective July 1, 1993.

Federal Statute: Title IV, The Intergovernmental Personnel Act of 1970 referred to in this section, may be found at 42 U.S.C. §§4701 through 4772.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.423 Purchase of other types of service.

ARM 2.43.428 Acceptable documentation of public service employment.

19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) near middle, in (5) near beginning of first sentence and near end of second sentence, and in (6) near middle of first sentence after "service" inserted "credit"; in (3)(b) at end inserted exception clause; inserted (3)(c) concerning service under teachers' retirement system; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at beginning inserted exception clause, after "retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify", near middle before "the member's service" deleted "all of", and at end inserted "for the service"; at beginning of (2) substituted "The cost of purchasing service" for "The amount that must be paid or transferred to the retirement system to qualify this service"; in (3)(b) at beginning substituted "Service credit" for "Military service credit" and after "system" substituted "is subject to the provisions and limitations of 19-3-514" for "must be included in the 5-year maximum military service credit provided for in 19-3-503"; in (4) after "credit" substituted "that a member may purchase" for "qualified"; in (5) near beginning of first sentence after "member" substituted "purchases" for "qualifies" and near middle of second sentence after "necessary to" substituted "purchase" for "qualify"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 in (2), at end of introductory clause after "subsections", substituted "(2)(a) and (2)(b) as follows" for "(2) and (3)" and deleted clause that read: "In addition to the amounts directly paid or transferred by the member under subsection (3)"; in (2)(a), after "transfer", deleted "to the public employees' retirement system"; at end of (4) and (5) substituted "subsection (2)" for "subsections (2) and (3)"; inserted (6) regarding erroneous classifications; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Retroactive Applicability: Section 42, Ch. 370, L. 1997, provided: "[Section 15] [amending 19-3-511] applies retroactively, within the meaning of 1-2-109, to the period beginning January 1, 1995."

1995 Amendment: Chapter 412 in (1), in first sentence at beginning, substituted "An active member" for "A member" and at end inserted "for which the member either has received or is eligible to receive a refund" and in second sentence, after "paid", inserted "or transferred"; in (2), at beginning, inserted "In addition to the amounts directly paid or transferred by the member under subsection (3)" and at end substituted "payable by the member" for "determined in accordance with subsection (3)"; in (3), in two places in first sentence, substituted reference to member for reference to employee, near beginning, after "pay", inserted "either directly or by transferring contributions on account with the teachers' retirement system", and near end, after "system", deleted "as defined in 19-20-302"; in (6), near beginning, substituted "an active member" for "a member"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 in (1), near end of first sentence before "service", deleted "creditable"; in (3), after "membership", inserted "with the teachers' retirement system" and near end, before "retirement system", inserted "public employees'"; in (4), (5), and (6) substituted "service credit" for "creditable service"; in (6), in three places, substituted "survivorship benefit" for "death benefit" and in first sentence, before "beneficiary", inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning of (2), after "equal to", substituted "72% of the amount determined in accordance with subsection (3)" for "5% of the average final compensation, as defined in 19-4-101, earned by the member multiplied by the total years of creditable service being transferred plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the teachers' retirement system. If the member had less than 3 full years of membership service, the average final compensation must be based on the compensation reported to the teachers' retirement board by the employer"; and deleted former (3)(b) and (3)(c) that read: "(b) If the sum of the rates provided in 19-3-701 and 19-3-801 exceeded the sum of the rates provided in 19-4-602 and 19-4-605 at the time the employee terminated active membership, as defined in 19-4-302, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:

(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided for in 19-3-701 and 19-3-801 and the sum of the rates provided in 19-4-602 and 19-4-605; plus

(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.

(c) If the member chooses not to make the contribution provided for in this section, he shall receive credit for the service transferred based on the ratio between the retirement systems' employee and employer contribution rates provided for in 19-3-701, 19-3-801, 19-4-602, and 19-4-605". Amendment effective February 27, 1991.

Retroactive Applicability: Section 3, Ch. 64, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to service credits transferred between the public employees' retirement system and the teachers' retirement system on and after October 1, 1989."

1989 Amendment: Deleted former (1) that read: "(1) For the purpose of this section, "assumed salary" means the sum of the following:

(a) earned compensation for all full-time service and part-time service as defined in 19-4-101; and

(b) the amount of the first full year's teaching salary earned in Montana after any period of creditable service not included in subsection (1)(a) multiplied by the number of years or partial years granted by the teachers' retirement system"; at end of (1) substituted "to qualify this service under this section is the sum of subsections (2) and (3)" for "to qualify this service under subsection (2) is the sum of the following"; in (2) substituted language relating to transfer of amounts from teachers' retirement system to public employees' retirement system for "(a) from the teachers' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-3-701 and 19-3-801, based on the assumed salary, less the amount paid by the employee in subsection (3)(b)"; in (3)(a), at beginning, substituted "the employee shall pay an amount equal to his accumulated contributions" for "from the employee, the amount of his accumulated contributions" and at end, before "retirement system", inserted "teachers'"; inserted (3)(b) relating to calculation of additional required payments; inserted (3)(c) relating to credit for transferred service when member does not make contributions; in (4) substituted "subsection (1)" for "subsection (2)"; in (5) substituted "this section" for "subsections (2) and (4)" and substituted "subsections (2) and (3)" for "subsection (3)"; in (6), before "contributions", deleted "employee and employer" and substituted "subsections (2) and (3)" for "subsection (3)(a)"; and made minor changes in punctuation and form.

Administrative Rules

ARM 2.43.420 Requalification of service.

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.423 Purchase of other types of service.

ARM 2.43.428 Acceptable documentation of public service employment.

19-3-512. Purchase of service credit from other public retirement systems.

Compiler's Comments

2003 Amendment: Chapter 429 throughout section after references to service inserted "credit"; and in (1) at end inserted "service credit for". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at beginning of introductory clause substituted "Subject to 19-3-514, a member with at least 5 years" for "A member with 5 or more years" and at end substituted "purchase" for "qualify"; in (2) in two places in introductory clause substituted "purchase" for "qualify"; in (2)(a) after "retirement" substituted "file a written application with the board" for "make a written election with the board to qualify the service"; in (2)(b) at beginning substituted "pay" for "contribute to the pension trust fund" and after "cost of" deleted "granting"; in (3) and (4) at beginning substituted "Service purchased" for "Service qualified"; in (4) at beginning of second sentence substituted "If, upon the member's retirement, the member's purchased service cannot" for "If a member's qualified service may not", near middle after "member" substituted "must" for "may choose to", and after "refund of the" substituted "amount paid to purchase the service, plus regular interest on that amount" for "accumulated contributions made to qualify the service"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former (3) that read: "(3) Contributions to qualify service under this section may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 562 deleted former (4)(a) that read: "(a) credited in any other retirement system under Title 19"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 deleted (2)(b)(i) that required a member to contribute the actuarial cost based on "the member's compensation in the sixth year of service covered under the public employees' retirement system"; at end of (2)(b), after "valuation", inserted "of the system"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1) substituted "membership service" for "creditable service"; in (2)(b) substituted "pension trust fund" for "retirement fund"; in (2)(b)(ii), at beginning, deleted "the normal contribution rate according to"; in (3) inserted reference to

making additional contributions; in (5), in two places, substituted "retirement benefit" for "retirement allowance", in first sentence substituted "service credit" for "creditable service", and in second sentence, before "contributions", inserted "accumulated"; deleted (5)(b) that read: "(b) apply the contributions made to qualify the service under the provisions of 19-3-702"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: At end of introductory clause of (1), after "qualify", deleted "up to 5 years of"; at end of (1)(a), after "contribution", deleted "before becoming a member of the public employees' retirement system"; inserted (1)(b) that read: "(b) public service employment that occurred before the public employer adopted a public retirement system"; inserted first sentence of (2) that read: "A member may not qualify more than 5 years of service under this section"; and made minor changes in form. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.430 Out-of-state or federal public service.
ARM 2.43.433 Purchase of full-time service by part-time members.

Attorney General's Opinions

Qualification of Prior PERS Service and Non-PERS Service: Reinstatement of membership in PERS with past service credit under 19-3-704 (renumbered 19-2-603) does not preclude a member from earning credit under this section for non-PERS service that occurred during the period between initial membership and reinstatement of membership in PERS. 42 A.G. Op. 74 (1988).

19-3-513. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) in two places and in (3) after references to service inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at beginning substituted "Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end deleted "that the member has qualified under the retirement system, up to a maximum of 5 years of additional service"; at beginning of (2) substituted "To purchase this service" for "For each year of service credit purchased" and after "member shall" substituted "pay" for "contribute to the pension trust fund"; deleted former (3)(a) and (3)(b) that read: "(a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board." Amendment effective July 1, 1999.

Chapter 494 in (3)(a) after "years of service under" deleted "19-3-503"; and made minor changes in style. Amendment effective July 1, 1999, and terminates July 1, 2001.

1997 Amendment: Chapter 287 in (1), near beginning of first sentence after "person", deleted "who became a member of the retirement system before July 1, 1989"; in first sentence in (2), after "member", substituted "shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system" for "shall contribute to the pension trust fund an amount equal to the member's compensation for the 12-month period immediately preceding the date the member elects to purchase the service multiplied by the combined employee and employer contribution rates contained in 19-3-315 and 19-3-316"; and after exception clause in (3)(a) deleted "after January 1, 1990". Amendment effective July 1, 1997.

Coordination — Amendments Void: Section 41(1), Ch. 370, L. 1997, provided: "If House Bill No. 170 is passed and approved and if it amends 19-3-513, then [section 16 of this act], amending 19-3-513, is void." House Bill No. 170 was passed and approved as Ch. 287, L. 1997, and amended 19-3-513. Therefore, the amendments to 19-3-513 in Ch. 370, L. 1997, are void.

1993 Amendment: Chapter 265 in three places, after "service", inserted "credit"; in (1), at end of first sentence, substituted "retirement benefit" for "retirement allowance"; in (2), in first sentence, substituted "pension trust fund" for "retirement fund", before "compensation" deleted "normal", and at end deleted "in effect on and after July 1, 1993" and in second sentence inserted reference to making additional contributions; in (4), after "section", inserted "is not membership service and"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: At end of first sentence of (2) substituted "contained in 19-3-701 [renumbered 19-3-315] and 19-3-801 [renumbered 19-3-316] in effect on and after July 1, 1993" for "on the date he elects to purchase the service".

Effect of Coordination Instruction: Section 7, Ch. 73, L. 1989, provided: "If House Bill No. 234 [Ch. 558] is passed and approved, the employee and employer contribution rates provided for in [section 1(2)] [19-3-513(2)] are the rates in effect on and after July 1, 1993, if a member purchases service under [section 1] [19-3-513] before July 1, 1993." The effect of this instruction is to void the language in 19-3-513(2) that provides that the combined employer and employee contribution rates are those in effect on the date the employee elects to purchase the service and to implement the rates currently found in 19-3-701(1)(e) (renumbered 19-3-315(1)(e)) and 19-3-801(1) (renumbered 19-3-316(1)). The Code Commissioner will submit to the 1991 Legislature legislation amending 19-3-513 to reflect the coordination instruction.

Effective Date: Section 8, Ch. 73, L. 1989, provided that this section is effective March 13, 1989.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.432 "1-for-5" additional service.
ARM 2.43.433 Purchase of full-time service by part-time members.

19-3-514. Service purchase limit — exception.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 292 in (1) at end after "19-3-513" inserted "and 19-3-515"; in (2) in two places before "under" inserted "credit"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 429 in (2) in three places after "service" inserted "credit". Amendment effective July 1, 2003.

Version Not Codified: Section 28, Ch. 99, L. 2001, was not codified because of its short duration. The section was effective March 21, 2001, and terminated June 30, 2001. The only difference between sec. 28 and sec. 29 was that sec. 29(1) contains a reference to 19-3-503.

Effective Date: Section 132(2), Ch. 99, L. 2001, provided that this section is effective June 30, 2001.

19-3-515. Purchase of federal volunteer service.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.442 Eligible federal volunteer service.

19-3-521. Service credit for legislative members.

Compiler's Comments

2003 Amendment: Chapter 429 in middle substituted "must receive membership service and service credit" for "must be credited with membership service". Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 at end substituted "regular contributions" for "normal contributions". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-3-522. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 9
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-3-901. Eligibility for service retirement.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (2) providing that in each circumstance described in subsection (1), the member is considered to have attained normal retirement age; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in first sentence substituted "has 5 years of membership service" for "completed 5 years of qualified service"; in two places substituted "membership service" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In second sentence, after "65", inserted "while employed in a position covered by a public employee retirement system" and in third sentence substituted "creditable" for "state". Amendment effective July 1, 1991.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

Mandatory retirement of public officer or employee based on age. 83 ALR 3d 1103.

19-3-902. Eligibility for early retirement.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "has 5 years of membership service" for "completed 5 years of qualified service" and in second sentence substituted "membership service" for "state service". Amendment effective July 1, 1993.

1981 Amendment: Changed age for early retirement from 55 to 50 years; and added last sentence allowing early retirement after 25 years of state service.

19-3-904. Amount of service retirement benefit.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) near middle after "amount of" inserted "service" and after "following" deleted "service"; in (2) near beginning after "amount of" inserted "service" and at end inserted "instead of the amount calculated under subsection (1)(a)"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (1)(a) near middle substituted "highest average compensation" for "final average salary"; in (1)(b) at end of introductory clause inserted "sum of"; inserted (1)(b)(ii) regarding the actuarial equivalent of additional contributions and regular interest; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 217 at beginning of (1) inserted exception clause; inserted (2) concerning retirement benefit for 25 years of membership service; and made minor changes in style. Amendment effective July 1, 2001. In (1) the code commissioner substituted references to subsections (1)(a) and (1)(b) for references to subsections (1) and (2) to reflect the Ch. 217 amendment.

1999 Amendment: Chapter 562 in (2) substituted "monthly benefit" for "monthly annuity" and substituted "member's regular contributions plus regular interest" for "member's accumulated regular contributions"; deleted former (2) that read: "(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1501, the member's beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day the member's retirement allowance commenced over the total of the retirement allowance payments made to the retired member"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1) substituted "monthly amount of retirement benefit" for "annual amount of retirement allowance" and at end substituted "greater of subsection (1)(a) or (1)(b)" for "sum of (a), (b), and (c)"; deleted former (1)(a) that read: "(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences"; in (1)(a) substituted "final average salary" for "final compensation" and substituted "total service credit" for "creditable service and additional service purchased under 19-3-513"; substituted (1)(b) regarding monthly annuity for "any retirement allowance payable under 19-3-905"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendments: Chapter 73 at end of (1)(b) provided that additional service purchased by member will be included in calculating retirement allowance. Amendment effective March 13, 1989.

Chapter 558 at beginning of (1)(b) substituted "one fifty-sixth" for "one-sixtieth". Amendment effective April 15, 1989.

Applicability: Section 7, Ch. 558, L. 1989, provided: "[This act] applies to members retiring on or after April 15, 1989".

Administrative Rules

ARM 2.43.406 Basic period of service.

Case Notes

Constitutional Authority of Public Employees' Retirement Board to Make Actuarial Calculations — No Overbroad Delegation of Legislative Authority: The District Court held that 2001 amendments contained in House Bill No. 294, which included a definition of actuarial equivalent that changed the method by which the Public Employees' Retirement Board calculated certain benefits, unconstitutionally delegated unconstrained discretion to the Board in violation of the separation of powers doctrine in Art. III, sec. 1, Mont. Const. On appeal, the Board asserted that Art. VIII, sec. 15, Mont. Const., gave the Board the authority to make actuarial evaluations and thus to implement the 2001 amendments, so there was no constitutional violation. The Supreme Court agreed. Article III, sec. 1, Mont. Const., allows one branch of government to exercise power properly belonging to another branch if the constitution expressly directs or permits that exercise. Because Art. VIII, sec. 15, Mont. Const., delegated authority to the Board to make actuarial determinations, the District Court committed reversible error in concluding that the Legislature and House Bill No. 294 (2001) unconstitutionally delegated authority to the Board to make determinations allowed by another section of the constitution. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

19-3-905. Adjustment of benefit for certain members.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding adjustment of benefit for certain members for former section that read: "The annual amount of retirement allowance payable to a member following his service retirement must be increased by the excess, if any, of the greater of (1) or (2), as follows, over 19-3-904(1)(b):

(1) the sum of a pension for prior service equal to one-sixtieth of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age 70 in service, the lesser of $480 or one-half of his final compensation." Amendment effective July 1, 1993.

1989 Amendment: In introductory clause, before "member", deleted "person who was a" and after "member" substituted "following his service retirement must" for "on July 1, 1973, shall". Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

Ad Hoc Cost-of-Living Increase: Section 1, Ch. 663, L. 1983, provided: "Effective July 1, 1983, each monthly service or disability retirement allowance or survivorship allowance payable to a member of the public employees' retirement system or his beneficiary must be increased as follows:

(1) $1 for each year of creditable service, up to a maximum of $30, for a member retired before July 1, 1981; or

(2) 50 cents for each year of creditable service, up to a maximum of $15, for a member retired on or after July 1, 1981, but before January 1, 1983."

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-3-906. Early retirement benefit.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) near end substituted "membership service" for "service credit"; and in (3) after "service" inserted "credit". Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 in four places substituted references to retirement benefit for references to retirement allowance; in (1), near beginning before "amount", deleted "annual" and near end substituted "service credit" for "creditable service"; in (2)(a) and (2)(b) substituted "membership service" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (3) requiring adjustment of actuarial reduction upon purchase of additional service. Amendment effective March 13, 1989.

1987 Amendment: Near end of (2)(b), after "had", inserted "he".

1981 Amendment: Inserted "or upon completion of 30 years of creditable service" after "age 60" in (1); added (2) providing formula for reduction of early retirement allowance.

19-3-908. Retirement incentive program — window of eligibility.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) near middle substituted "who is involuntarily terminated from service" for "whose service is involuntarily terminated"; and in (3) in three places inserted "from service". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2)(a), (2)(b), (2)(c), and second sentence in (7) after "service" inserted "credit"; and in (3) near end after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 66 in (7) in first sentence after "jurisdiction for" inserted "960 or more hours in a calendar year in a position covered by the public employees' retirement system or for" and after "year" inserted "in a position covered under any other retirement system". Amendment effective March 16, 2001.

1993 Special Session Amendment: Chapter 27 inserted (2)(b) concerning purchase of service for qualifying county assessors and deputy assessors; at beginning of (4) inserted "Subject to subsection (2)(b)" and at end substituted "subsection (6)" for "subsection (5)"; inserted (5) concerning county assessors and deputy assessors in county not electing participation; adjusted subsection references; and made minor changes in style. Amendment effective December 27, 1993.

Retroactive Applicability: Section 171(1), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply retroactively to terminations on or after June 25, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 567, L. 1993, provided: "A statement of intent is required for this bill because [section 1] [19-3-908] gives the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to provide an active member of the public employees' retirement system who is eligible for normal or early retirement with an incentive to terminate service within the timeframe or window prescribed in this bill. The incentive provided in this bill

is that the employer, at no cost to an eligible member, will buy for the eligible member up to 3 years of additional service for the purpose of calculating the member's retirement benefit.

The employer of an eligible member will pay the total cost for purchasing the additional service, up to 3 years, that the member is eligible to purchase under existing statute. It is the intent of the legislature that the state and the university system be mandated to provide this retirement incentive but that providing the incentive be optional for contracting employers under the public employees' retirement system.

It is also the intent of the legislature that the employer may pay for the additional service on an installment basis over as many as 10 years. Interest would be charged at a rate set according to the retirement board's policy.

It is not the intent of the legislature to provide this retirement incentive to anyone who is an inactive member of the retirement system or who is ineligible for early or normal retirement within the prescribed window or to change the benefit formula used to determine benefits under the retirement system."

Temporary — Montana University System Voluntary Termination for Teachers' Retirement System Members: Section 2, Ch. 567, L. 1993, provided: "(1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all members of the teachers' retirement system employed on a full-time basis on or before February 1, 1993, who are eligible for normal service retirement under 19-4-801 [19-20-801] and 19-4-802 [19-20-802]. The termination incentive, combined with employer contributions due the teachers' retirement system under 19-4-101(5)(d) [19-20-101(5)(d)], must be an amount equal to 1 year of the combined member and employer contributions established in 19-4-602 [19-20-602] and 19-4-605 [19-20-605] for each 5 years of creditable service within the teachers' retirement system, not to exceed the amount of combined contributions for 3 years.

(2) A member who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804 [19-20-804], shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993." Effective April 28, 1993, terminates June 30, 1995, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Temporary — Montana University System Voluntary Termination for Optional Teachers' Retirement System Participants: Section 3, Ch. 567, L. 1993, provided: "(1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all optional retirement participants who are employed on a full-time basis on or before February 1, 1993, and who are at least 50 years of age on or before the date of termination. The incentive must be an amount equal to 1 year of the combined member and board of regents contributions established in 19-21-203 for each 5 years of service with the Montana university system, not to exceed the amount of combined contributions for 3 years.

(2) A participant who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804 [19-20-804], shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993." Effective April 28, 1993, terminates June 30, 1995, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Reports on Effect of Incentives: Section 4, Ch. 567, L. 1993, provided: "The department of administration, in cooperation with the university system and the public employees' retirement board, shall report to the 54th legislature on the effect of the retirement incentive offered to members of the public employees' retirement system employed by the state, including the university system. The board of regents, in cooperation with the teachers' retirement board, shall report to the 54th legislature on the effect of the voluntary termination incentives offered to members of the teachers' retirement system employed by the Montana university system. These reports must include, but are not limited to:

(1) a summary of the positions from which employees terminated employment under the provisions of [section 1] [19-3-908];

(2) whether positions vacated under [section 1] [19-3-908] were refilled and when; and

(3) the cost or savings resulting from the implementation of [section 1] [19-3-908]." Effective April 28, 1993, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Retroactive Applicability: Section 5, Ch. 567, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993."

Effective Date: Section 7, Ch. 567, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

Administrative Rules

ARM 2.43.451 Purchase of additional service by employers.

ARM 2.43.452 Return to employment within same jurisdiction.

19-3-909. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 10
Disability Retirement Benefits

Part Case Notes

Incapacity Not Result of Employment: District Court reversed decision of Public Employees' Retirement Board which refused relator's claim for an occupational disability retirement allowance based upon job-related disability caused by adverse working conditions and granted relator ordinary disability retirement allowance. This was improper since District Court substituted its judgment for that of Board and since "disease", as used in section 68-901, R.C.M. 1947 (now repealed), did not include "personality disorders, anxiety reactions, or difficulties in getting along with one's superiors or fellow workers". State ex rel. Bailey v. Grande, 154 M 437, 465 P2d 334 (1970).

19-3-1002. Eligibility for disability retirement.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) at end substituted "19-3-1008" for "19-3-1008(1)". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1) near middle after "service" inserted "retirement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (2) in second sentence after "member's" inserted "written"; in (3)(a) in third sentence after "completed" substituted "written election" for "election form"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 217 at end of (3)(b) inserted reference to 19-3-1008(3). Amendment effective July 1, 2001.

1993 Amendment: Chapter 265 in (1), at end of exception clause, deleted "and 19-3-1004", after "member" inserted reference to February 24, 1991, near middle substituted "has at least 5 years of membership service" for "has completed 5 years of creditable service", and after "while" substituted "an active member" for "in active service, as defined in 19-3-1001"; in (2), in first sentence before "member", inserted "active", substituted "membership service" for "creditable service", and near end, after "service retirement", inserted "in order" and in third sentence, after "disabled", deleted "under the provisions of 19-3-1003"; in (3)(a), near beginning of first sentence after "member", substituted "in service" for "employed" and in fourth sentence substituted "membership service" for "creditable service" and at end, after "while", substituted "an active member" for "in active service, as defined in 19-3-1001"; in (3)(b) substituted "membership service" for "creditable service" and after "while" substituted "an active member" for "in active service, as defined in 19-3-1001"; and made minor changes in style. Amendment effective July 1, 1993.

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

1991 Amendment: Near beginning of (1) inserted reference to subsection (3) and at end inserted "as provided in 19-3-1008(1)"; in (2), near end of fourth sentence before "duty-related", substituted "any" for "the"; and inserted (3) regarding a one-time election of coverage and setting out the terms of the election. Amendment effective February 24, 1991.

1989 Amendment: In (2), in fourth and fifth sentences, substituted "state compensation mutual insurance fund" for "workers' compensation division" and "state fund" for "division". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

1983 Amendment: At beginning of (1), inserted "Except as provided in subsection (2) and 19-3-1004"; and inserted (2) allowing certain members to waive service retirement for disability retirement.

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Case Notes

Proof That Multiple Sclerosis Caused Disability: A doctor for the claimant for state retirement disability benefits testified that the claimant had multiple sclerosis (MS) prior to 1988 and that it became disabling (in regard to his job) in that year and remained disabling after that year. He was not conclusively diagnosed with and told that he had MS until 1991. The Public Employees' Retirement Board, which denied benefits, presented no medical evidence and did not deny that a job disability due to MS existed since 1988, the year when the claimant resigned. Instead, the Board relied on the claimant's 1988 indications that he was resigning to preserve a higher payout of unused benefits (his position was about to be reclassified downward) and that he felt he could do the job. His doctor's uncontradicted testimony was entitled to special weight and should not have been disregarded absent specific legitimate evidence and reasons to the contrary. The claimant's 1988 statements showed only that he did not believe that he was disabled and did not show that he in fact was not. They could have been made during a period of remission when symptoms were minor and he thought himself in good health. The lower court properly ruled that the Board's treatment of the claimant's doctor's testimony was erroneous and that the denial of benefits was also erroneous. Weber v. Pub. Employees' Retirement Bd., 270 M 239, 890 P2d 1296, 52 St. Rep. 162 (1995).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

19-3-1005. Application for disability retirement benefit.

Compiler's Comments

2005 Amendment: Chapter 329 in first sentence near middle inserted "active or inactive"; and in third sentence in two places substituted "employment" for "service". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 at end of first sentence inserted "with the board", at end of second sentence deleted "may make the application", and at beginning of third sentence substituted "The application must be filed" for "Application must be made"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 near end in two places substituted "termination from service" for "discontinuance of service". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 near beginning substituted "disability retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Collateral References

Mental disorders: eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

19-3-1007. Benefit for duty-related disability.

Compiler's Comments

2001 Amendment: Chapter 99 at end of (1) substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in (1), at beginning of first sentence, substituted "retirement benefit" for "annual amount of retirement allowance" and near end substituted "final average salary" for "final compensation" and deleted last two sentences that read: "However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded workers' compensation, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period"; in (2) substituted "disability retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1), near middle of second sentence after "awarded", substituted "workers' compensation" for "compensation by the workers' compensation division". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Case Notes

No Offset of Workers' Compensation Payments: Plaintiff injured his back while operating a snowplow. He was an employee of the county, thus coming under the provisions of the Public Employees' Retirement Act (sections 68-101 through 68-1320, R.C.M. 1947, now repealed) and the Workers' Compensation Act, Title 39, ch. 71. The Public Employees' Retirement Board was without authority to make any deductions in the retirement payments to the plaintiff for total and permanent disability, compensable under workers' compensation, resulting from the accident. State ex rel. Ebel v. Schye, 130 M 537, 305 P2d 350 (1956).

Collateral References

60 Am. Jur. 2d Pensions and Retirement Funds §54.

Relationship between performance of official duties and subsequent disability or death for purpose of disability or survivorship benefits. 85 ALR 2d 1048.

19-3-1008. Benefit for disability.

Compiler's Comments

2003 Amendment: Chapter 429 in (1)(a), (2), and (3) after "service" inserted "credit"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in three places substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 217 at beginning of (2) inserted exception clause; inserted (3) concerning disability retirement for member with 25 years of membership service; and made minor changes in style. Amendment effective July 1, 2001.

1993 Amendment: Chapter 265 throughout section substituted "final average salary" for "final compensation"; in two places substituted "service credit" for "creditable service"; in four places substituted "retirement benefit" for "retirement allowance"; in (1) substituted present text regarding monthly retirement benefit for former text that read: "(1) The annual amount of retirement allowance payable to a member eligible for disability retirement under the provisions of 19-3-1002(1) is the sum of (1)(a), (1)(b), and (1)(c) of this section as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is the greater of (1)(c)(i) or (1)(c)(ii) as follows:

(i) a pension which, together with the annuity provided under subsection (1)(b), shall make the retirement allowance equal to"; in (1)(a), before "additional service", substituted "including any" for "and"; in (2), near beginning before "amount", substituted "monthly" for "annual" and near end, before "additional service", substituted "including any" for "and"; deleted former (3) that read: "(3) Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid

the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member"; in (3), in three places, substituted references to disability retirement benefit for references to disability retirement allowance; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning of (1) substituted "under the provisions of 19-3-1002(1)" for "for other than duty-related reasons"; inserted (2) setting the amount of retirement allowance payable to a member eligible under 19-3-1002(3); inserted (4) regarding continuance of retirement allowance for members retired prior to February 24, 1991; and made minor changes in style. Amendment effective February 24, 1991.

1989 Amendments: Chapter 73 at end of (1)(c)(i) provided that additional service purchased by member will be included in calculating disability retirement allowance. Amendment effective March 13, 1989.

Chapter 558 in (1)(c)(i) substituted "one fifty-sixth" for "one-sixtieth". Amendment effective April 15, 1989.

Applicability: Section 7, Ch. 558, L. 1989, provided: "[This act] applies to members retiring on or after April 15, 1989."

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-3-1015. Medical examination of disability retiree — cancellation and reinstatement.

Compiler's Comments

2005 Amendment: Chapter 329 in (3)(b) substituted "forfeits" for "terminates"; and in (4) near middle substituted "member" for "member's service" and "terminated service" for "been discontinued". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1) near end of fourth sentence after "member's" inserted "disability"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (2) in third sentence after "member may" substituted "file a written application with the board requesting that the board reconsider" for "make a written application to the board to request the board to reconsider" and in fourth sentence after "reconsideration" substituted "must be filed" for "must be made". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2) near end of third sentence substituted "may make a written application to the board to request the board to reconsider" for "may request the board to reconsider" and in fourth sentence substituted "The written application" for "The request" and after "made" deleted "in writing". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in (3)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (3)(b) regarding termination of the right to reinstatement; inserted (3)(c) providing that the section does not affect reinstatement standards; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier

commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "the essential elements of either the position" for "either the duties of the position" and after "retired or the" substituted "position" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 throughout section substituted references to disabled member or member for references to recipient of a disability retirement allowance or recipient and substituted references to retirement benefit, disability retirement benefit, or benefit for references to retirement allowance, disability retirement allowance, or allowance; in (1), in second sentence, substituted "at a place mutually agreed upon by the retired member and the board" for "at the place of residence of the recipient or another place mutually agreed upon"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Near beginning of (1) substituted "discretion" for "pleasure"; inserted (2) relating to procedure when the Board determines a recipient should no longer be subject to medical review; at beginning of (3) substituted "recipient" for "person", after "whose" inserted "disability", and after "canceled" substituted "because the board has determined that he is no longer incapacitated must be reinstated" for "shall be reinstated"; near beginning of (4) substituted "recipient" for "person" and after "whose" inserted "disability"; and made minor changes in phraseology. Amendment effective March 18, 1989.

Administrative Rules

ARM 2.43.508 through 2.43.515 Periodic medical review of disability benefit recipients.

Case Notes

Reinstatement of Prior Member: Once the PERS board agreed to reinstate a disabled claimant as a member of PERS it was required by statute to start his retirement disability from the date of the injury. State ex rel. Stowe v. Bd. of Administration, 172 M 337, 564 P2d 167 (1977).

19-3-1016. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 11
Reemployment of Retired Members

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

19-3-1103. Disability benefit reduced by earnings.

Compiler's Comments

2001 Amendment: Chapter 99 in (1)(b) at beginning substituted "The board shall annually adjust" for "The board, upon the written application of a recipient of a disability retirement benefit, may adjust"; deleted former (2) that read: "(2) At the request of a recipient of a disability retirement benefit who is age 60 or older, the board may grant service retirement status to the recipient without recalculating the recipient's monthly benefit"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 at beginning of (1)(b) substituted "The board, upon the written application" for "For the purpose of calculating a reduction under subsection (1)(a), the board, at the request". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit, disability retirement benefit, or monthly benefit for references to retirement allowance, disability retirement allowance, or monthly allowance; in (1)(a), at beginning, substituted "If the recipient of a disability retirement benefit engages" for "Should the recipient of a retirement allowance because of disability engage" and after "other than" substituted "in a position covered by the retirement system" for "as an employee as defined in 19-3-104"; in (1)(b), after "compensation", inserted "as it was"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: Inserted (1)(b) allowing adjustment of monthly compensation by inflationary factor; and inserted (2) allowing change in retirement status.

1981 Amendment: Added (2) exempting benefit adjustments granted by Legislature.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1693, 1694, 1710.

19-3-1104. Cancellation of disability retirement benefit upon reemployment.

Compiler's Comments

1997 Amendments: Chapter 42 after "receiving a" inserted "disability". Amendment effective March 12, 1997.

Chapter 370 after "receiving a" inserted "disability", after "person's" inserted "disability", and after "benefit" substituted "must be" for "is"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in two places substituted "retirement benefit" for "retirement allowance" and after "reinstated" inserted "to service"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.506 Return to covered employment by retiree.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1690.

19-3-1105. Benefit upon second retirement.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (1) extending initial retirement benefits enacted after initial retirement of member with at least 2 years of service credit accrued after reemployment; deleted former (2) that read: "(2) Except as otherwise expressly provided by law, the member must receive the benefit of provisions enacted subsequent to initial retirement only if the

member accrues at least 2 years of service credit subsequent to reinstatement and then only with respect to the service credit"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in four places substituted references to service credit for references to creditable service; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

Validity of legislation providing for additional retirement allowances for public employees previously retired. 27 ALR 2d 1442.

19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exceptions.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 402 inserted (5)(b) providing that elected official returning to covered employment who declines optional membership not subject to hour or earnings limitations; and made minor changes in style. Amendment effective April 17, 2003.

Chapter 429 in (1) in first sentence after "service retirement benefit" inserted "or early retirement benefit"; and in (2) near end of second sentence before "service" deleted "covered". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 66 in (1) in three places substituted "960" for "640"; and in (2) near beginning after "subject to the" deleted "640-hour". Amendment effective March 16, 2001.

Chapter 99 in (2) near middle of first sentence after "annualized" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (3) after "system" substituted "and the returning employee's employer shall certify" for "shall report". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 460 in four places substituted "640" for "600" and in two places, before "reduced", inserted "temporarily"; in (1), before "service", inserted "active"; in (2), in first sentence after "earn", inserted "in any calendar year", after "amount" substituted "that, when added to" for "equal to 50% of", after "benefits" inserted "will not exceed the member's annualized final average salary, adjusted for inflation as of January 1 of the current calendar year", after "provides the" substituted "higher limit on earned" for "greater", and after "compensation to the retiree" deleted "in any calendar year" and in second sentence, after "$1", substituted "of compensation" for "in other income"; inserted (5) regarding retired member 70 ½ years of age or older; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1), at beginning of first sentence, substituted "A retired member under 65 years of age receiving a service retirement benefit" for "A person under 65 years of age receiving a service retirement allowance, not as a beneficiary" and at end, after "calendar year", inserted "without returning to service and without any effect to the retiree's retirement benefit" and at beginning of second sentence substituted "retirement benefit" for "retirement allowance"; near end of (2), after "earned in", inserted "covered service beyond the applicable limitation during"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), near beginning after "person", inserted "under 65 years of age", in middle of first sentence, after "beneficiary", substituted "may return to employment covered by the retirement system" for "who is not eligible for membership may return to covered employment", at end of first sentence substituted "600 hours" for "60 working days", and in second sentence, after "allowance", substituted clause relating to dollar reduction for work in excess of 600 hours in a calendar year for "of a retiree so employed will be reduced by $1 for each $3 earned in excess of $5,000 for each calendar year"; inserted (2) relating to retirement allowance reductions for retirees 65 years of age or older; inserted (3) relating to required report of hours worked and compensation; inserted (4) relating to election to return to active membership; and made minor changes in style. Amendment effective March 29, 1991.

1985 Amendment: Near end of first sentence substituted "calendar year" for "fiscal year"; and in second sentence, increased dollar amounts for "$2" to "$3" and from "$3,500" to "$5,000".

1981 Amendment: Changed "reduced by any earnings in excess of the minimum wage per month on $1 for $1 basis" to "reduced by $1 for each $2 earned in excess of $3,500 for each calendar year".

Administrative Rules

ARM 2.43.404 Required employer reports.
ARM 2.43.418 Elected officials.
ARM 2.43.506 Return to covered employment by retiree.
ARM 2.43.1024 Retirees not entitled to election.

Collateral References

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income. 7 ALR 2d 692.

19-3-1112. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 12
Survivorship Benefits and Death Payments

Part Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Part Collateral References

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-3-1201. Eligibility for death payments.

Compiler's Comments

2003 Amendment: Chapter 429 in introductory clause substituted "death payment" for "death benefit"; inserted (5) providing for death while an inactive member; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 in introductory clause, near end before "beneficiary", inserted "designated" and at end substituted "member who dies" for "member or former member who dies in any of the following statuses"; in (3) substituted "disability retirement benefit" for "retirement allowance because of disability" and substituted "the benefit" for "such allowance"; in (4), after first "disabled", deleted "as defined in 19-3-1001" and at end substituted "disability retirement benefit" for "retirement allowance because of the disability"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: At beginning inserted "Upon receipt of a written application filed with the board by a designated beneficiary"; and in (2) and (3) increased time from 4 months to 6 months. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

19-3-1202. Amount of lump-sum death payment.

Compiler's Comments

2003 Amendment: Chapter 429 inserted (2) excluding beneficiary of inactive member from payment; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 in introduction substituted "amount of payment to be made to those eligible for death payments" for "amount of death benefit"; in (2) substituted "service credit" for "creditable service" and at end, after "credit", deleted "provided, however, that this portion of the death benefit is not payable if the board receives a certification from the state

compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment"; in (3), before "interest", inserted "regular" and at end substituted "payment is made" for "benefit is paid"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (2), near middle, substituted "state compensation mutual insurance fund" for "workers' compensation division of the state of Montana". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

1981 Amendment: Inserted "and (3)" in the first sentence; deleted "together with regular interest on the accumulated normal contributions to the date of the member's death" at the end of (1); added (3) including accumulated interest in death benefit.

Attorney General's Opinions

No Requirement for Full Year of Service: A deceased state employee who has served 8 months of state employment is entitled to that portion of the death benefit allowed under the Public Employees' Retirement System. 36 A.G. Op. 56 (1976).

Collateral References

Relationship between performance of official duties and subsequent disability or death for purpose of disability or survivorship benefits. 85 ALR 2d 1048.

19-3-1203. Election of optional death annuity.

Compiler's Comments

2001 Amendment: Chapter 99 near middle of first sentence after "elect" inserted "by filing a written application with the board" and deleted former second sentence that read: "Election of an optional death annuity must be by written application"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in first sentence, at beginning, substituted "The designated beneficiary of a member" for "A member or his beneficiary after his death" and substituted "lump-sum death payment" for "death benefit", in second sentence, after "death", substituted "annuity" for "benefit", and inserted third sentence regarding exemption from increases; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1204. Survivorship benefit elected by beneficiary.

Compiler's Comments

2005 Amendment: Chapter 329 in (2) at beginning substituted "A" for "The" and at end substituted "death payment" for "payment of the member's account". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (1) near middle of introductory clause after "payment may" substituted "instead elect a survivorship benefit by filing a written application with the board" for "elect, by written application, a survivorship benefit instead"; in (2) after "member may" inserted "by filing a written application with the board"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 inserted (2) providing for elective survivorship benefit; in (3)(b) after "behalf" inserted "and no payment has been made"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section, before "beneficiary", inserted "designated"; in three places substituted "survivorship benefit" for "survivorship allowance"; in (1) substituted "lump-sum death payment" for "death benefit"; in (1)(a) substituted "membership service" for "creditable service"; in (1)(c), at end, substituted "lump-sum death payment" for "death benefit"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1)(b), after "person", deleted "of legal age"; deleted former (2) that read: "(2) The conditions listed in subsection (1) do not apply to a survivorship allowance granted under 19-3-1305"; and inserted (2) relating to minor beneficiaries. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: Inserted (2) exempting allowances granted under 19-3-1305.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1651, 1652, 1654 through 1656.

19-3-1205. Amount of survivorship benefit.

Compiler's Comments

2003 Amendment: Chapter 429 in (1), (2), and (3) substituted "membership service" for "service credit". Amendment effective July 1, 2003.

1997 Amendment: Chapter 42 in (1) substituted "early retirement benefit pursuant to 19-3-906 that would have been payable to the member commencing at age 50" for "early retirement benefit that would have been payable to the member commencing at age 50 pursuant to 19-3-906". Amendment effective March 12, 1997.

1995 Amendment: Chapter 412 in (1), near beginning, substituted "early retirement benefit" for "service retirement benefit", substituted "age 50 pursuant to 19-3-906" for "age 60 pursuant to 19-3-904", and near end substituted "age 50 or earned 25 years of service credit" for "age 60"; and inserted (2) relating to a deceased member who had attained age 50 or earned 25 years of service credit at the time of death. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 in two places substituted "service retirement benefit" for "service retirement allowance"; in introduction, at beginning, substituted "survivorship benefit" for "annual amount of survivorship allowance" and before "beneficiary" inserted "designated"; in (2) substituted "earned 30 years of service credit" for "completed 30 years of service"; and made minor changes in style. Amendment effective July 1, 1993.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-3-1210. Death payments to designated beneficiaries of retired members.

Compiler's Comments

2003 Amendment: Chapter 429 near middle after "beneficiary" inserted "or estate". Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 near beginning after "retired member" deleted "receiving a regular retirement benefit", after "paid the" substituted "amount" for "excess", and substituted "contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account" for "contributions on the day that the member's retirement benefit commenced over the total of the retirement benefit payments made to the retired member". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-3-1211. Refund when former member dies after transferring to another system.

Compiler's Comments

1993 Amendment: Chapter 265 substituted reference to 19-3-403(4) for reference to 19-3-403(8), before "beneficiary" inserted "designated", and after "beneficiary" deleted "nominated by him to receive any death benefit payable under 19-3-1201"; and made minor changes in style. Amendment effective July 1, 1993.

Attorney General's Opinions

Two Retirement Systems Valid: Although a county, as an employer, is prohibited from making a contribution to both the Public Employees' Retirement System and a private union pension trust, unionized county employees may make individual contributions to a private union pension trust by assignment of benefits due them as wages even though the county made a contribution to the Public Employees' Retirement System for county employees. 35 A.G. Op. 51 (1973).

19-3-1212. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The

contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 15
Optional Forms of Benefit Payments

19-3-1501. Optional forms of benefits — designation of contingent annuitant.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in second sentence inserted "depending on the option selected"; in (1)(a) and (1)(b) substituted "optional retirement benefit" for "reduced amount"; substituted (1)(c) providing for a continuation of the optional retirement benefit to one or more contingent annuitants if the initial payee dies before the end of a period certain and for how it's determined for former (1)(c) that read: "(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a)(ii) and two places in (6)(a)(ii) before "family law order" deleted "dissolution settlement or"; in (5)(a)(ii) at end inserted "as defined in 19-2-907"; near end of (6)(a) inserted "designate a different contingent annuitant, or select a different option"; in (6)(a)(i) substituted "may" for "must"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) near end of introductory clause after "annuitant" deleted "whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant on the application; in (4) after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; at beginning of (5)(a) substituted "Upon filing a written application with the board" for "Upon written application to the board"; in (6)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 217 in (5)(a) inserted "that became effective before October 1, 1999"; in (5)(a)(ii) at beginning substituted "the member's marriage to the original contingent annuitant has been dissolved" for "the member has been divorced from the original contingent annuitant" and at end substituted "dissolution settlement or family law order" for "divorce settlement"; inserted (6) allowing optional retirement benefits to revert back to regular retirement benefits in cases of death of contingent annuitant or dissolution of marriage; and inserted (7) requiring written applications for changes regarding optional retirement benefits to be made within 18 months of qualifying event. Amendment effective October 1, 1999.

Chapter 562 near beginning of (5)(a) substituted "written application" for "written request"; and in (5)(b) substituted "written application" for "request". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit, optional retirement benefit, regular retirement benefit, or monthly retirement benefit for references to retirement allowance, optional retirement allowance, regular retirement allowance, or monthly retirement allowance; in (1), in first sentence after "member", inserted "or the survivorship benefit of a designated beneficiary" and at end substituted "original benefit" for "regular retirement allowance" and in second sentence, before "payable", substituted "initially" for "a reduced amount", before "lifetime" inserted "or designated beneficiary's", and at end, after "subsequent benefit", inserted remainder of clause concerning payment to contingent annuitant; in (1)(a) and (1)(b) substituted "reduced amount after the death of the initial payee and payable" for "reduced retirement allowance"; in (1)(c) substituted "upon the initial payee's death, other" for "such other" and substituted "equivalent amounts" for "equivalent benefit"; at end of (2) substituted "benefit" for "regular retirement allowance"; in (3), at beginning, substituted "benefit recipient" for "member" and substituted "before the first payment has been made" for "before the member has received the first payment"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: Inserted (5) allowing retired member to change options in case of divorce or death of contingent annuitant.

Administrative Rules

ARM 2.43.606 Conversion of optional retirement.

Case Notes

Constitutional Authority of Public Employees' Retirement Board to Make Actuarial Calculations — No Overbroad Delegation of Legislative Authority: The District Court held that 2001 amendments contained in House Bill No. 294, which included a definition of actuarial equivalent that changed the method by which the Public Employees' Retirement Board calculated certain benefits, unconstitutionally delegated unconstrained discretion to the Board in violation of the separation of powers doctrine in Art. III, sec. 1, Mont. Const. On appeal, the Board asserted that Art. VIII, sec. 15, Mont. Const., gave the Board the authority to make actuarial evaluations and thus to implement the 2001 amendments, so there was no constitutional violation. The Supreme Court agreed. Article III, sec. 1, Mont. Const., allows one branch of government to exercise power properly belonging to another branch if the constitution expressly directs or permits that exercise. Because Art. VIII, sec. 15, Mont. Const., delegated authority to the Board to make actuarial determinations, the District Court committed reversible error in concluding that the Legislature and House Bill No. 294 (2001) unconstitutionally delegated authority to the Board to make determinations allowed by another section of the constitution. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1696, 1703, 1704, 1707, 1708.

19-3-1502. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 16
Postretirement Benefits and Benefit Increases

Part Administrative Rules

ARM 2.43.609 Postretirement adjustment.

19-3-1605. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-3-1606. Purchasing power adjustment.

Compiler's Comments

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

19-3-1607. Nonapplication of part to defined contribution plan.

Compiler's Comments

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

Part 21
Defined Contribution Plan

Part Compiler's Comments

Board Request for Internal Revenue Code Ruling: Section 64, Ch. 471, L. 1999, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling or opinion from the commissioner of the internal revenue service as to whether the defined contribution retirement plan established pursuant to [this act] constitutes a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code."

Certification of Startup — Beginning of Vesting of Rights: Section 65(2) and (3), Ch. 471, L. 1999, provided: "(2) The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [this part] is ready to become operational and shall provide a copy of the certification to the code commissioner.

(3) Rights under [sections 42 through 63] [this part] do not vest until the defined contribution retirement plan becomes operational and is certified as provided in this section."

Payment of Local Government Administrative Expenses: Section 66, Ch. 471, L. 1999, provided: "To the extent that a local government unit is required to incur administrative expenses to start the defined contribution retirement plan that exceed the amount provided in 1-2-112(4)(a), the expenses must be paid by the public employees' retirement board as defined contribution plan administrative expenses."

Loan for Startup Costs: Section 74, Ch. 471, L. 1999, provided: "To pay the startup costs of the defined contribution retirement plan, the public employees' retirement board is authorized to take a long-term loan from the department of administration, which shall provide for the loan from the investment fund type established under the provisions of House Bill No. 645. The loan must be repaid with interest under terms and conditions determined by the department."

Applicability of Contract of Employment: Section 80, Ch. 471, L. 1999, provided: "Contract rights of employment are not applicable with regard to the right to elect either the defined contribution plan or the optional retirement program until the plan choice period begins. Contract rights of employment are not applicable with regard to rights in the defined contribution plan or the optional retirement program until the defined contribution plan or the optional retirement program is elected."

Part Administrative Rules

Title 2, chapter 43, subchapter 10, ARM Defined contribution retirement plan.

Part Law Review Articles

Pension Substitution in the 1980s: Why the Shift Toward Defined Contribution?, Kruse, 34 Indus. Rel. 218 (1995).

The Stampede Toward Defined Contribution Pension Plans: Fact or Fiction?, Gustman & Steinmeier, 31 Indus. Rel. 361 (1992).

Part Collateral References

Disability Benefits in the New Optional Defined Contribution Public Employees' Retirement System Plan, Leg. Serv. Div. (2000).

A Defined Contribution Retirement Plan—An Option for Members of the Public Employees' Retirement System, Leg. Serv. Div. (1998).

19-3-2101. Definitions.

Compiler's Comments

2001 Amendment: Chapter 490 in definition of member near beginning after "means" substituted "a person" for "an employee". Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 79(1), Ch. 471, L. 1999, provided that this section is effective October 1, 1999.

19-3-2102. Defined contribution plan established — assets to be held in trust — contracted services.

Compiler's Comments

2001 Amendment: Chapter 490 in (1) in second sentence near middle after "and as a "qualified" inserted "governmental"; in (2) near beginning after "The board" substituted "may" for "shall"; and deleted former (3) that read: "(3) The board shall contract for a qualified consultant to assist in preparation of the request for bid or request for proposal for plan services." Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date — Contingent Effective Date: Section 79(2), Ch. 471, L. 1999, provided that subsections (2) and (3) of this section are effective on passage and approval. Approved April 27, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsection (1) of this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1001 Adoption of defined contribution plan document and trust agreement.

19-3-2103. Legislative intent.

Compiler's Comments

2003 Amendment: Chapter 429 in (4) substituted "member" for "participant"; and in (6) substituted "members" for "employees". Amendment effective July 1, 2003.

Effective Date: Section 79(2), Ch. 471, L. 1999, provided that this section is effective on passage and approval. Approved April 27, 1999.

19-3-2104. Board powers and duties — rulemaking.

Compiler's Comments

2005 Amendment: Chapter 329 deleted (2)(a) through (2)(e) requiring board rules on the following: "(a) matters necessary for the treatment of the plan as a qualified plan under applicable sections of the Internal Revenue Code;

(b) the treatment of dormant or inactive accounts;

(c) the security and privacy of information maintained by the board concerning a member's investments, as required by applicable law;

(d) minimum asset, reserve, insurance, or other security requirements intended to ensure the solvency of a contractor used by the board for investment services; and

(e) the commencement of benefits in the plan pursuant to this part and as provided in 19-2-908"; and made minor changes in style. Amendment effective July 1, 2005.

Effective Date: Section 79(2), Ch. 471, L. 1999, provided that this section is effective on passage and approval. Approved April 27, 1999.

Administrative Rules

ARM 2.43.404 Required employer reports.

ARM 2.43.425 Incomplete payments.

ARM 2.43.441 Purchase of service through direct trustee-to-trustee transfer of funds.

ARM 2.43.502 Application process for disability benefits.

ARM 2.43.508 through 2.43.515 Rules on disability benefit payments.

Title 2, chapter 43, subchapter 10, ARM Defined contribution retirement plan.

19-3-2105. Administrative expenses and fees.

Compiler's Comments

Effective Date: Section 79(3), Ch. 471, L. 1999, provided that this section is effective July 1, 1999.

19-3-2106. Limited contract right.

Compiler's Comments

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

19-3-2111. Plan membership — written election required — failure to elect — effect of election.

Compiler's Comments

2005 Amendment: Chapter 329 in (1)(a)(i), (1)(a)(ii), and (1)(b) near end after "terminates" deleted "covered". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 at end of (1)(a)(i), (1)(a)(ii), and (1)(b) inserted "regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period"; in (2)(c) near middle of second sentence substituted "a member" for "an employee"; and inserted (7) concerning purchase of service credit and transfer of membership. Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (5) near end substituted "from the first day" for "on the first day"; and in (6) at end after "defined contribution plan" deleted "or, for university employees making an election pursuant to 19-3-2112, the optional retirement program". Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and

the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1010 through 2.43.1012 Rules on choosing membership in defined contribution retirement plan.

ARM 2.43.1015 Purchase of service not permitted by participant in defined contribution retirement plan.

ARM 2.43.1017 Family law orders, executions, and income-withholding orders and elections.

ARM 2.43.1020 Election for employees in optional PERS membership positions.

ARM 2.43.1023 Membership in other Title 19 retirement plans.

ARM 2.43.1024 Retirees not entitled to election.

19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights.

Compiler's Comments

2005 Amendment: Chapter 329 in (2)(a)(i), (2)(a)(ii), and (2)(a)(iii) near end after "terminates" deleted "covered". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 throughout section substituted "member" for references to a university system employee; at end of (2)(a)(i), (2)(a)(ii), and (2)(a)(iii) inserted "regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period"; in (2) after "transfer" inserted "membership"; in (2)(f) at beginning inserted exception clause and after "plan under" inserted "chapters 3 and 21"; inserted (2)(g) concerning optional retirement program; inserted (2)(j) concerning purchase of service credit and transfer of membership; in (3) after "transfer" inserted "membership"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1) near beginning after "Montana university system" deleted "as provided for in 20-1-101" and near middle after "instead of electing the" substituted "defined contribution plan, elect to transfer" for "plan, make a one-time irrevocable election on a form prescribed by the board to transfer"; inserted (2) regarding election to transfer to optional retirement program; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1012 Election eligibility and confirmation.

ARM 2.43.1025 Montana University System employee elections.

ARM 2.43.1030 Transfer of defined benefit retirement plan funds to defined contribution retirement plan.

19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan.

Compiler's Comments

2003 Amendment: Chapter 429 at beginning of (1)(a) and (1)(b) substituted "member" for "participant"; near end of (2)(a) and two places in (2)(b) after "membership service" inserted "and service credit"; in (2)(b) near end of first sentence after "service" inserted "credit" and near beginning of second sentence substituted "member" for "employee" and after "excess of" substituted "the member's length of service in" for "the employee's length of service as a member of"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1)(a) at beginning substituted "A participant who terminates" for "An employee who terminated" and near middle after "who returns to covered employment" substituted "in less than 24 months" for "after a break in service of less than 24 consecutive months"; in (1)(b) at beginning substituted "A participant" for "Except as provided in subsection (2), an employee" and near middle after "returns to covered employment" substituted "after 24 months" for "after a break in service of 24 consecutive months"; deleted former (2) that read: "(2) (a) An employee who returns to covered employment after terminating plan membership in the defined contribution plan or the optional retirement program shall return to the plan previously selected if the employee has accessed money derived from the employee's former retirement account by:

(i) receiving a lump-sum distribution of the member's former retirement account, unless the distribution was forced pursuant to 19-3-2126(1)(b);

(ii) receiving a lump-sum distribution from an account outside the defined contribution plan that has at any time received a transfer of funds from the member's former retirement account or any account to which the member has transferred funds from a former retirement account; or

(iii) receiving a regular benefit, payment, or distribution from an account outside the defined contribution plan in which there is money from the member's former retirement account.

(b) For the purposes of this subsection (2), "retirement account" also includes an employee's account under the optional retirement program"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2114. Amount available to transfer.

Compiler's Comments

2005 Amendment: Chapter 329 in (1)(a) substituted "an active member of the system" for "a system member"; in (1)(a)(i) at beginning inserted "for amounts contributed prior to July 1, 2002" and at end inserted "from the month that the contributions were received"; inserted (1)(a)(ii) relating to amounts contributed on or after July 1, 2002, and the amount that the board shall transfer from the defined benefit plan to the member's retirement account; in (2) near middle substituted "allocated" for "credited" and at end inserted "from the month that the contributions were received"; inserted (3) relating to an employee who was an inactive member of the defined benefit plan on the date that the plan became effective and who after that date became an active member and elected to transfer to the defined contribution plan and what the board shall transfer from the defined benefit plan to the member's retirement account; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1)(b) in two places before "service" inserted "membership". Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1)(a) near end after "on the total of the" inserted "transferred"; and in (2) at end after "the employee's hire date" substituted "plus 8% compounded annual interest" for "plus interest credited at the actuarially assumed rate of return on the defined benefit plan assets as of the plan's latest actuarial valuation". Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The

contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1004 Defined contribution retirement plan default investment fund.

ARM 2.43.1030 Transfer of defined benefit retirement plan funds to defined contribution retirement plan.

ARM 2.43.1031 Timing of transfers to defined contribution retirement plan.

19-3-2115. Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting.

Compiler's Comments

2003 Amendment: Chapter 429 in (1)(a) near end substituted "eligible retirement plan" for "qualified plan" and at end inserted "as allowed under applicable federal law"; in (2)(b) in two places after "service" inserted "credit"; and substituted (2) concerning direct rollover of eligible distributions for former text that read: "(2) (a) After-tax money may not be transferred or rolled over to a retirement account unless the money was contributed to the system's defined benefit plan on an after-tax basis.

(b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a member may not transfer or rollover to a retirement account contributions made under sections 403(b) and 457 of the Internal Revenue Code." Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1)(a) near middle after "the board shall accept" substituted "the rollover of contributions and the income on those contributions" for "the transfer or rollover of assets" and at end substituted "vested account" for "retirement account" and deleted former last sentence that read: "If a member is transferring assets from another plan provided for in this title, the member must, for the purposes of becoming vested pursuant to 19-3-2116, receive credit for the employee's prior membership service under that plan"; inserted (1)(b) regarding transfer of service from another retirement system; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.425 Incomplete payments.

ARM 2.43.441 Purchase of service through direct trustee-to-trustee transfer of funds.

ARM 2.43.1004 Defined contribution retirement plan default investment fund.

ARM 2.43.1012 Election eligibility and confirmation.

ARM 2.43.1015 Purchase of service not permitted by participant in defined contribution retirement plan.

19-3-2116. Vesting — mandatory termination of membership — forfeitures.

Compiler's Comments

2005 Amendment: Chapter 329 in (4) and (5) substituted "service" for "covered employment"; and in (6) substituted "plan membership, as provided in 19-3-2123" for "covered employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1) at beginning substituted "A member's contribution account includes" for "A member is fully vested with", near middle after "contributions" inserted "and is vested", and at end deleted "but is not considered a vested member unless the member meets the criteria under subsection (2)"; in (2) at beginning substituted "A member's employer contribution account includes" for "A member is not vested with" and near middle substituted "is vested only when" for "does not attain the status of a vested member until"; inserted (3) concerning rollovers of contributions; inserted (4) concerning termination of covered

employment; in (5) near end after "membership" deleted "by removing from the plan the member's entire vested account balance" and at end inserted "and subject to 19-3-2126" and deleted former second sentence that read: "The employer contributions and income on the employer's contributions in the member's retirement account are forfeited and must be allocated as provided in 19-3-2117"; inserted (6) concerning allocation of nonvested accounts; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1) near end after "a vested member" deleted "as defined in 19-2-303"; in (3) in first sentence near middle after "the member's entire" inserted "vested"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2117. Allocation of contributions and forfeitures.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) at beginning deleted "Each plan member's retirement account must be credited with" and at end inserted "and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account"; in (2) after reference to 19-3-2121 deleted "beginning on the plan's effective date" and near end inserted "received on or after July 1, 2002"; in (2)(d) at beginning deleted "Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 114 in (2)(c) substituted "19-3-112(1)(b)" for "19-3-112(1)(c)". Amendment effective October 1, 2003.

Chapter 429 in (1) substituted "member" for "employee". Amendment effective July 1, 2003.

2001 Amendments — Composite Section — Coordination: Pursuant to sec. 14(2)(a), Ch. 423, L. 2001, a coordination instruction, the amendments to this section made by sec. 5, Ch. 423, L. 2001, were replaced as follows: in version effective on occurrence of contingency or July 1, 2002, at end of (2) inserted "an amount equal to"; at beginning of (2)(a) substituted "4.19%" for "4.49%"; inserted (2)(c) requiring allocation of 0.04% of compensation to education fund; inserted (3) requiring allocation of 0.3% of compensation to long-term disability plan trust fund; in (4) at end of second sentence substituted "the plan's administrative expenses, including startup expenses" for "the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (2) in introductory clause at end after "contributions under 19-3-316" inserted "an amount equal to"; inserted (2)(c) regarding allocation to the education fund; in (4) in version effective on occurrence of contingency or July 1, 2002, and in (3) in version effective on occurrence of contingency in second sentence at end after "19-3-2116 to meet" substituted "the plan's administrative expenses, including startup expenses" for "the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter

dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1004 Defined contribution retirement plan default investment fund.

ARM 2.43.1005 Establishment of long-term disability trust fund.

ARM 2.43.1030 through 2.43.1032 Rules regarding transfer of defined benefit retirement plan funds to defined contribution retirement plan.

19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.

Compiler's Comments

2005 Amendment: Chapter 329 in (3) in first sentence near end in two places substituted "compensation paid to all of the members" for "covered payroll of members"; and in (6) in first and second sentences in reference to 19-3-2117 substituted "(2)(d)" for "(3)". Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 423 in version effective on occurrence of contingency or July 1, 2002, in (2)(b) substituted "the defined contribution plan member's appropriate share" for "the defined contribution plan's share"; at end of (5) substituted "19-3-2117(2)(a)" for "19-3-2117(2)(b)"; inserted (7) requiring adjustment of employer contribution to member's account based on funding needs of disability plan; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (1) in first sentence near beginning after "The board shall" substituted "periodically review" for "provide for the periodic review of" and substituted second sentence requiring board to collect and maintain data for former second sentence that read: "The board shall provide that the data necessary to comply with this section is collected and maintained for all system members"; deleted former (2)(b) that read: "(b) as determined under subsection (4), the anticipated reduction in defined contribution plan costs because of forfeitures"; deleted former (4) that read: "(4) The anticipated reduction in defined contribution plan costs as a result of forfeitures under 19-3-2116 must be determined as the amount of forfeitures expected during the next biennium based on actual forfeitures in the preceding biennium, adjusted by taking into account the gains or losses during the preceding biennium resulting from forfeitures of greater or lesser amounts than expected, divided by twice the covered payroll of members of the defined contribution plan"; in (4)(b) in first sentence near middle after "plan choice rate minus" substituted "the amount provided in subsection (2)(a)" for "the sum of the amounts provided in subsections (2)(a) and (2)(b)"; near end of (5) substituted "19-3-2117(2)(a)" for "19-3-2117(2)(b)"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter

dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2122. Investment alternatives — notice of changes — default fund.

Compiler's Comments

2001 Amendment: Chapter 490 in (1) in first sentence near beginning after "The board shall" deleted "contract with a vendor or vendors to" and in second sentence at end after "may be used" inserted "unless exempt from the commission's regulation"; in (3) at beginning deleted "Subject to a competitive bidding process"; in (6) near end after "member's entire account" deleted "balance"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date — Contingent Effective Date: Section 79(2), Ch. 471, L. 1999, provided that subsections (1) through (3) and (7) of this section are effective on passage and approval. Approved April 27, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsections (4) through (6) of this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1002 through 2.43.1004 Rules regarding investment options for defined contribution retirement plan funds.

19-3-2123. Payout of vested account balances when terminating plan membership.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 423 at beginning inserted exception clause; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in introductory clause near beginning after "after termination of" substituted "service" for "covered employment", near middle after "plan membership by" substituted "filing" for "making", and after "removing the member's" inserted "vested"; in (3) after "the member's" inserted "vested"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter

dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1045 Distribution to participant.

19-3-2124. Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 423 near beginning of (1) inserted reference to 19-3-2142; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (1) near middle after "after termination of" substituted "service" for "covered employment" and after "leave the member's" inserted "vested"; in (2) near beginning after "termination of" substituted "service and upon filing a written application with" for "covered employment, upon written application to"; in (3) near middle after "who returns to" substituted "service" for "covered employment"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The

contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1045 Distribution to participant.

ARM 2.43.1046 Distribution upon death of participant.

19-3-2125. Death benefits.

Compiler's Comments

2001 Amendment: Chapter 490 in second sentence at end after "to the member's" substituted "vested account balance subject to this part" for "account balance and all rights established in and subject to this part"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.1046 Distribution upon death of participant.

19-3-2126. Refunds — minimum account balance — adjustment by rule.

Compiler's Comments

2005 Amendment: Chapter 329 in (2) in third sentence and in (3) in second sentence after "feasible" deleted "after the member's termination"; in (4) near beginning substituted "member terminating service" for "terminating member"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 at end of (1) inserted "balance"; in first sentence of (2) and (3) before "member" deleted "nonvested"; in (2) inserted second sentence and in (3) inserted third sentence concerning allocation of nonvested accounts; in (4)(a) in second sentence near middle before "retirement plan" inserted "an eligible" and after "rollover" deleted "and is qualified"; in (4)(b) before "retirement plan" substituted "eligible" for "qualified"; deleted former (4)(c) that read: "(c) Except as provided in 19-3-2142, the amount of the member's vested account balance not eligible for a direct rollover distribution under subsection (4)(a) must be paid to the member in a lump sum"; inserted (5) concerning termination of service with account balance greater than $5,000; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section — Coordination: Pursuant to sec. 14(2)(b), Ch. 423, L. 2001, a coordination instruction, the amendments to this section made by sec. 9, Ch. 423, L. 2001, were replaced as follows: in version effective on occurrence of contingency or July 1, 2002, deleted former (1)(a) and (1)(b) that read: "(a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.

(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance"; inserted (1) prohibiting refund of vested account before termination of service; inserted (2) requiring payment on termination of nonvested member's account balance of less than $200; inserted (3) requiring payment on termination of nonvested member's account balance of $200 to $5,000 in lump sum if a written application is not made; inserted (4) requiring direct rollover distribution according to federal law of terminating member's account of $200 or more and payment in lump sum of balance not eligible for rollover; and made minor changes in style. Amendment effective on contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (1) substituted text prohibiting refund before termination of service for former (1)(a) and (1)(b) that read: "(a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by

removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.

(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance"; inserted (2) through (4) regarding termination of nonvested and vested members; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2133. Employee investment advisory council.

Compiler's Comments

2003 Amendment: Chapter 429 in introductory clause in first sentence after "shall" deleted "by August 1, 1999" and in second sentence substituted "four times a year" for "quarterly"; and in (1) after "concerning the" deleted "establishment and". Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in first sentence after "August 1, 1999" substituted "create" for "appoint". Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 79(3), Ch. 471, L. 1999, provided that this section is effective July 1, 1999.

19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking.

Compiler's Comments

2003 Amendment: Chapter 429 in (1)(a) near end after "service" inserted "credit"; near beginning of (1)(b) substituted "membership service" for "service credit"; at beginning of (2)(b) inserted "if the member's disability occurred when the member was 60 years of age or less" and near end substituted "65" for "60"; inserted (2)(c) concerning disability occurring after age 60; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment — Coordination: Pursuant to sec. 14(1), Ch. 423, L. 2001, a coordination instruction, this section was amended as follows: in (1)(a) inserted exception clause; and inserted (1)(b) concerning eligible member with at least 25 years of service. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter

dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.502 Application process for disability benefits.
ARM 2.43.508 through 2.43.515 Rules regarding disability benefits.
ARM 2.43.1005 Establishment of long-term disability trust fund.
ARM 2.43.1040 Disability benefits for members of defined contribution retirement plan.

19-3-2142. Disability benefit recipients to remain members — access to account prohibited.

Compiler's Comments

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2143. Implementation.

Compiler's Comments

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date: This section is effective April 30, 2001. Section 17(1), Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001]."

CHAPTER 5
JUDGES' RETIREMENT

Chapter Administrative Rules

ARM 2.43.302 Definitions.
ARM 2.43.303 Request for release of information by members.
ARM 2.43.418 Elected officials.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.

Part 1
General Provisions

19-5-101. Definitions.

Compiler's Comments

2003 Amendment: Chapter 429 in definition of highest average compensation at end deleted "in the retirement system"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 substituted highest average compensation for final average salary as defined term; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 287 inserted definition of final average salary; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 455 in definition of compensation substituted "2-16-403" for "2-16-404". Amendment effective April 14, 1995.

1993 Amendment: Chapter 265 inserted definition of compensation; deleted definition of accumulated deductions that read: ""Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means the person whom the contributor nominates by written designation, witnessed and filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of contributor that read: ""Contributor" means any person who has accumulated deductions in the fund standing to his credit"; substituted definition of current salary for former definition of final salary that read: ""Final salary" means the annual current salary for the office retired from"; deleted definition of fund that read: ""Fund" means the Montana judges' retirement system pension trust fund"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the contributor"; in definition of retired judge substituted "retirement benefit" for "retirement allowance"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; and deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state of Montana." Amendment effective July 1, 1993.

1989 Amendment: In definition of beneficiary substituted "witnessed" for "duly acknowledged"; and deleted former (10) that read: "(10) "Penalty retirement age" means 70 years of age." Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1987 Amendment: At end of definition of actuarial equivalent substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

1983 Amendment: In definition of fund changed "agency account" to "pension trust fund".

Passage After Veto: Chapter 218, L. 1969, was passed by the constitutional majority of both houses of the 41st Legislative Assembly over the veto of the Governor.

19-5-102. Judges' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "retirement plan" for "retirement system". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 before "judges' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

19-5-103. Call of retired judges and justices and inactive vested members for duty.

Compiler's Comments

2005 Amendment: Chapter 329 in (3) in first sentence near beginning substituted "discontinued service" for "terminated service". Amendment effective July 1, 2005.

2001 Amendment: Chapter 48 in (1)(a) after "voluntarily retired after" inserted "at least", after "call for duty by the" deleted "supreme court or the", after "aid and assist" deleted "the supreme court", after "under directions that the" substituted "chief justice" for "supreme court",

and at end substituted "or to serve as water judge" for "including"; in (1)(b) at beginning of first sentence inserted "When called, a retired judge's or justice's duties include" and at end substituted "on behalf of the court to which the judge or justice is called to serve" for "on behalf of the supreme court, district court, or water court or to serve as water judge"; inserted (3) allowing certain judges or justices to be called for duty and requiring a judge or justice called for duty to be reimbursed and compensated; and made minor changes in style. Amendment effective March 16, 2001.

1999 Amendment: Chapter 233 in second sentence in (2) after "addition" deleted "for each day of duty"; in (2)(a) at beginning substituted "the daily salary" for "one-twentieth of the monthly salary", after "is rendered" deleted "minus an amount equal to one-twentieth of the monthly retirement benefit that the retired justice or judge is receiving, if any", and at end inserted "up to a total of 180 days in a calendar year"; inserted (2)(b) regarding amount of compensation for each day of duty after 180 days in calendar year; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 370 in (1), in first sentence after "call", inserted "for duty" and in third sentence, after "perform any", deleted "and all"; in (2), in four places, substituted "duty" for "service"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (2), near beginning of first sentence after "service", deleted "as herein provided" and near end of second sentence substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendments: Chapter 256 deleted "temporary" before "service" in two places in (2).

Chapter 425 substituted, at beginning of (1), "Every judge or justice who has voluntarily retired after 8 years of service shall" for "Every judge or justice receiving retirement pay under the provisions of this chapter shall,"; near end of (2) inserted ", if any," after "the monthly retirement allowance the retired judge or justice is receiving".

1981 Amendment: Inserted "or any water court" in the first sentence; added "supreme court, district court, or water court, or to serve as water judge" at end of the first sentence.

Case Notes

Authority of Retired Judge to Decide Summary Judgment Motion When Ordered to Finish Preretirement Business: A retired District Court Judge was ordered by the Chief Justice of the Supreme Court, pursuant to this section, to be reactivated for the purpose of completing matters unfinished at the time of retirement, including the disposition of the present case. Based on that statutory authority and the Supreme Court order, the judge had authority to decide defendant's motion for summary judgment, to issue a related memorandum and order, and to enter final judgment. Walch v. Univ. of Mont., 260 M 496, 861 P2d 179, 50 St. Rep. 1186 (1993).

Appointment of Defeated District Judge: Judge Sykes, a retired judge who was defeated for reelection, was appointed by the Chief Justice to hear several cases. A party to one of the cases appealed the appointment of a defeated judge. The court held that Judge Sykes is a member of the "pool" of retired judges and can be called in by the Chief Justice to preside under the provisions of Art. VII, sec. 6, Mont. Const. Section 3-5-201, which requires District Judges to be

elected, does not overcome the constitutional power given to the Chief Justice. Judge Sykes was not appointed pursuant to this section, and it is therefore not applicable. State ex rel. Welch v. District Court, 209 M 397, 680 P2d 327, 41 St. Rep. 783 (1984).

Judge's Reappointment to Finish Case Started Before Retirement: That trial Judge retired prior to his issuance of orders in the case at issue did not make the orders void. Under the decision in State ex rel. Wilcox & Bradley v. District Court, 678 P2d 209, 41 St. Rep. 397 (1984), the trial Judge had authority to perform all functions of an active District Judge, including the issuance of final orders and judgments. In re Pegg's Estate, 209 M 71, 680 P2d 316, 41 St. Rep. 558 (1984).

District Judge to Approve and Adopt Work of Retired Judge: In a case involving the question of whether or not retired judges may be called into service pursuant to Art. VII, sec. 6, Mont. Const., by the Chief Justice of the Supreme Court, those opposing the use of retired judges argued that under this section retired judges are not empowered to enter final judgment in a case. The Supreme Court noted that this section is a legislative grant of power and must yield to the constitutional grant of power. However, the court then found that this section and the constitutional provision address two situations, are mutually exclusive, and are not inconsistent. The court held that this section addresses the situation in which a District Judge needs help in legal research, the preparation of opinions, and preliminary matters. State ex rel. Wilcox v. District Court, 208 M 351, 678 P2d 209, 41 St. Rep. 397 (1984), followed in St. v. Holmes, 212 M 526, 687 P2d 662, 41 St. Rep. 1535 (1984).

19-5-105. Short title.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.405 Membership.
ARM 2.43.406 Basic period of service.
ARM 2.43.418 Elected officials.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.

19-5-301. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2003 Amendment: Chapter 429 in (3) near end after "service" inserted "credit". Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 in (1) substituted present text regarding election to remain under public employees' retirement system for former (1) and (2) that read: "(1) A judge or justice who was a member of the PERS prior to December 31, 1984, may elect to remain under that system by notifying the public employees' retirement board in writing of the election on or before October 1, 1985.

(2) Every other judge of a district court, justice of the supreme court, and the chief water judge provided for in 3-7-221 must be a member of the Montana judges' retirement system"; inserted (2) regarding judge pro tempore; inserted (3) regarding inactive vested member; and inserted (4) regarding inactive nonvested member. Amendment effective July 1, 1993.

1991 Amendment: In (2) inserted reference to Chief Water Judge; and made minor change in style. Amendment effective July 1, 1991.

1985 Amendment: Near beginning of (1) substituted "December 31, 1984" for "March 2, 1967", and at end of (1) substituted "October 1, 1985" for "October 1, 1967".

Administrative Rules

ARM 2.43.402 Membership cards.
ARM 2.43.440 Service purchases by inactive vested members.

Part 4
Contributions and Refunds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-5-401. Payments into pension trust fund.

Compiler's Comments

1999 Amendment: Chapter 562 in two places substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in first sentence substituted "pension trust fund" for "fund" and substituted "division" for "public employees' retirement division of the department of administration"; in second sentence, after "commingled with", inserted "other pension trust", substituted "division" for "PERS", and before "judges' retirement system" deleted "Montana"; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-5-402. Member's contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "member's contribution is" for "member shall contribute into the fund a sum equal to" and substituted "member's compensation" for "member's monthly compensation beginning on the first day of the member's term". Amendment effective July 1, 2005.

1993 Amendment: Chapter 265 substituted (1) regarding member's contribution rate for former subsection that read: "(1) Every member shall be required to contribute into the fund a sum equal to 6% of his monthly salary, except that a member elected or appointed to office after July 1, 1983, shall be required to contribute into the fund a sum equal to 7% of his monthly salary beginning on the first day of his term. This sum shall be deducted from his salary and credited to his account in the fund." Amendment effective July 1, 1993.

1991 Amendment: Inserted (2) requiring employer to pick up and pay a member's contributions for service rendered after June 30, 1991; inserted (3) providing that those contributions become part of the member's contributions except for tax purposes and requiring a separate accounting; and inserted (4) regarding payment, deduction, and remission of contributions. Amendment effective July 1, 1991.

1983 Amendment: Near middle of section after "salary" inserted "except that a member ... first day of his term"; and before "sum" substituted "This" for "which".

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

19-5-403. Refunds in case of resignation or discharge.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "retirement benefit" for "retirement allowance", and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning, after "contributor", inserted "willingly", after "resigns" deleted "of his own volition", near middle, before "deductions", inserted "accumulated", and at end inserted "upon the board's receipt of his written application for a refund"; and made minor changes in style. Amendment effective July 1, 1991.

Administrative Rules

ARM 2.43.603 Refunds.

Attorney General's Opinions

Effect When Judge or Justice Seeks New Position — Retirement Fund: A District Court Judge or Supreme Court Justice who runs for an elective public office other than a judicial position is not entitled to receive an involuntary retirement allowance under 19-5-503. A District Court Judge or Supreme Court Justice who runs for another judicial position that would entitle him to membership in the Montana Judges' Retirement System and loses the election is entitled to receive an involuntary retirement allowance under 19-5-503. 39 A.G. Op. 24 (1981).

19-5-404. State employer contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "pay as employer contributions" for "contribute monthly to the pension trust fund a sum equal to" and substituted "paid to all of the employer's employees, except those properly excluded from membership" for "of each member"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendments: Chapter 287 at beginning of (1) inserted exception clause, after "fund" substituted "a sum equal to 25.81%" for "a sum equal to 6%", and deleted second and third sentences that read: "In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6) to the state, which shall first deposit in the pension trust fund an amount equal to 34.71% of the total compensation paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the division to be credited to the pension trust fund"; in (2), after "amount", substituted "equal to 25.81%" for "equal to 34.71%"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (2) inserted second sentence requiring a judicial funding request to implement this section. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), in three places before "fund", inserted "pension trust", near end of first sentence, after "6% of the", substituted "compensation" for "salary", in second sentence, after "34.71% of the", substituted "total compensation" for "salaries", in third sentence substituted "division" for "public employees' retirement division of the department of administration", and deleted last sentence that read: "The money from court fees collected pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the supreme court for deposit in the judges' retirement fund"; and in (2) substituted "judges' pension trust fund" for "judges' retirement fund" and after "34.71% of the" substituted "compensation" for "salary". Amendment effective July 1, 1993.

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, Laws 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, Laws 1993.

1991 Amendments: Chapter 344 in (1) inserted last sentence concerning appropriation of court fees to judges' retirement fund. Amendment effective April 4, 1991.

Chapter 364 inserted (2) relating to funding of retirement for Chief Water Judge.

Effective Date: Section 3, Ch. 364, L. 1991, provided: "[This act] [enacting subsection (2) of this section] is effective July 1, 1991."

1989 Amendment: (Temporary) Near middle of second sentence, after "25-1-201", inserted "(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6)". Amendment effective July 1, 1989, and terminates July 1, 1991.

(Effective July 1, 1991) Near middle of second sentence, after "25-1-201", inserted "(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6)" and substituted "34.71%" for "31%". Amendment effective July 1, 1991.

Review of Actuarial Valuation: Section 5, Ch. 664, L. 1989, provided: "The public employees retirement board shall provide to the 52nd legislature, by January 10, 1991, a copy of the most current actuarial valuation of the judges' retirement system. The legislature shall review the actuarial soundness of the judges' retirement system, and the 52nd legislature may eliminate or modify the effect of [this act]."

1987 Amendments: Chapters 318 and 642 in second sentence, after "68% of", substituted "certain filing fees as required" for "the fees collected".

1983 Amendment: Increased percentage of district court fees transmitted to state from 60% to 68%; and increased percentage deposited in retirement fund from 20% to 31%.

19-5-409. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 near middle of (3) and beginning of (4) after references to service inserted "credit"; and near end of (4) before "service retirement" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 near beginning of (1) after "member may" substituted "file a written application" for "make a written election" and near end after "member has" substituted "in" for "qualified under"; and in (3) at beginning substituted "A member may not purchase" for "A member may elect to qualify no". Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.425 Incomplete payments.

ARM 2.43.432 "1-for-5" additional service.

19-5-410. Application to purchase military service credit.

Compiler's Comments

2005 Amendment: Chapter 329 in (1)(a) near end inserted "service credit and membership service for" and at end deleted "for the purpose of calculating retirement benefits"; deleted former (2) that read: "(2) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation"; in (1)(b) inserted "active" and substituted "service credit and membership service under subsection (1)(a)" for "service under this section"; inserted (2) allowing a member with at least 5 years of membership service to file an application to purchase service credit and membership service for up to 5 years of military service; inserted (3) requiring a member purchasing service under this section to pay the actuarial cost of the service credit; and made minor changes in style. Amendment effective July 1, 2005.

Effective Date: Section 11, Ch. 26, L. 2003, and sec. 11, Ch. 289, L. 2003, provided that [this act] is effective July 1, 2003.

Administrative Rules

ARM 2.43.437 Military service.

19-5-411. Service purchase limitation.

Compiler's Comments

Effective Date: Section 11, Ch. 26, L. 2003, and sec. 11, Ch. 289, L. 2003, provided that [this act] is effective July 1, 2003.

Part 5
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-5-501. Eligibility for service retirement.

Compiler's Comments

2003 Amendment: Chapter 429 near end of (1) before "retirement benefits" inserted "service". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (1) after "age of 65" inserted "has attained normal retirement age and" and after "receive the" deleted "proportional"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 176 in (1) near middle reduced age from 65 to 60; and made minor changes in style. Amendment effective March 30, 2001.

1993 Amendment: Chapter 265 in three places substituted references to retirement benefits or benefits for references to retirement allowances or allowances; near beginning of (1) substituted "has at least 5 years of membership service" for "has completed at least 5 years or more service"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (2) inserted second sentence concerning judge pro tempore.

Applicability: Sections 2 and 3, Ch. 12, L. 1987, provided that the repeal of the mandatory retirement age from the judges' retirement system was effective on passage and approval (approved February 13, 1987) and applies retroactively, within the meaning of 1-2-109, to membership in the judges' retirement system on or after January 1, 1987.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

19-5-502. Service retirement benefit.

Compiler's Comments

2003 Amendment: Chapter 429 in introductory clause at beginning substituted "After termination" for "Upon retirement" and after "service" inserted "and upon application for service retirement"; and in (1) in two places substituted "service credit" for "credited service". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at end of (2) substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 287 in introductory clause substituted "the service retirement benefit must be as follows" for "a member must receive a service retirement benefit equal to"; at beginning of (1) inserted "for members not covered by 19-5-901"; inserted (2) requiring benefit for members covered by 19-5-901 to be calculated using final average salary; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "Upon retirement from service, a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement. The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of 3 ⅓% per year of his final salary for the first 15 years' service and 1.785% per year for each year's service after 15 years." Amendment effective July 1, 1993.

1989 Amendment: Near end substituted "1.785%" for "1%"; and at end substituted "after 15 years" for "thereafter". Amendment effective July 1, 1991.

Review of Actuarial Valuation: Section 5, Ch. 664, L. 1989, provided: "The public employees retirement board shall provide to the 52nd legislature, by January 10, 1991, a copy of the most current actuarial valuation of the judges' retirement system. The legislature shall review the actuarial soundness of the judges' retirement system, and the 52nd legislature may eliminate or modify the effect of [this act]."

Administrative Rules

ARM 2.43.406 Basic period of service.

Case Notes

1989 Retirement Benefit Increase Not Applicable to Judge Who Retired After Date of Enactment but Before Effective Date of Legislation: Gulbrandson was an active member of the judges' retirement system at the time of enactment of Ch. 664, L. 1989, which provided an increase in state funding to the system and an increase in retirement benefits for those years served by a judge after the 15th year. Implementation of the increase under this section was delayed until July 1, 1991. Gulbrandson voluntarily retired prior to the delayed effective date. The Supreme Court held that based on the plain meaning of the statute, Gulbrandson was not entitled to the increased retirement benefit upon his retirement prior to July 1, 1991. Denial of the benefit did not impair Gulbrandson's contract with the system in violation of Art. II, sec. 31, Mont. Const., because the statute affecting his contract at the time of retirement did not include the benefit increase. Moreover, denial of the benefit does not violate equal protection provisions of Art. II, sec. 4, Mont. Const., because although Ch. 664 effectively created two classes of retired judges, it operates equally upon those within each class. Nearly all such legislation creates classifications regarding applicability, benefits, and recipients of retirement benefits. The fact that some of the classifications are imperfect does not necessarily mandate a conclusion that they violate equal protection. Under the rational basis test, which is the proper test in this case, the legitimate government interest of encouraging judges with significant years of service to remain in service longer was met. Thus, the 1989 amendment to this section was not unreasonable or arbitrary or devoid of rational basis. Gulbrandson v. Carey, 272 M 494, 901 P2d 573, 52 St. Rep. 843 (1995), following Hughes v. Judges Retirement Bd., 282 NW 2d 160 (Mich. 1979), and distinguishing Leonard v. Seattle, 503 P2d 741 (Wash. 1972).

Attorney General's Opinions

Increased Retirement Allowance Prospective Only: The 1989 amendment to this section increasing the benefit allowance from 1% to 1.785%, which became effective July 1, 1991, was intended to encourage judges to remain on the bench rather than to benefit judges who had already retired. Therefore, absent a legislative implication of retroactivity, the increase did not apply retroactively to judges who retired prior to July 1, 1991, regardless of whether they retired before or after the date the amendment was enacted in 1989. 44 A.G. Op. 44 (1992).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

19-5-503. Involuntary retirement benefit.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near middle before "retirement age" inserted "normal" and after "filing" inserted "with the board"; in (2) near middle after "reaching" substituted "normal retirement age" for "service retirement age"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 deleted former (2) that read: "(2) If a member elected or appointed to office prior to July 1, 1983, is involuntarily discontinued from service after having earned at least 12 years of service credit but before reaching service retirement age, the member must, upon filing an application in the manner prescribed by the board, be paid the service retirement benefit provided for in 19-5-502"; and in (2) near beginning before "discontinued" deleted "involuntarily" and substituted "receive a retirement benefit" for "receive an involuntary retirement benefit". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1), near beginning, substituted "member" for "contributor", substituted "membership service" for "total service", and at end, after "be paid", substituted remainder of subsection regarding involuntary retirement benefit for former text that read: "whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus an annuity which is the actuarial equivalent of the present value of the state annuity then standing to his credit"; in (2), near beginning, substituted "member" for "contributor", substituted "having earned at least 12 years of service credit" for "having completed 12 years of total service", before "retirement age" inserted "service", and at end, after "be paid", substituted remainder of

subsection regarding service retirement benefit for former text that read: "whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus a state annuity in an amount which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502"; in (3), near beginning, substituted "member" for "contributor", substituted "having earned at least 12 years of service credit" for "having completed 12 years of total service", before "retirement age" inserted "service", near end, after "receive", inserted "an involuntary retirement benefit that is the actuarial equivalent of", and after "benefits" deleted "under this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Near beginning of (2), after "contributor" inserted "elected or appointed to office prior to July 1, 1983"; and inserted (3) allowing benefits in certain cases for contributors involuntarily discontinued from service.

Administrative Rules

ARM 2.43.505 Involuntary retirement.

Attorney General's Opinions

Effect When Judge or Justice Seeks New Position — Retirement Fund: A District Court Judge or Supreme Court Justice who runs for an elective public office other than a judicial position is not entitled to receive an involuntary retirement allowance under 19-5-503. A District Court Judge or Supreme Court Justice who runs for another judicial position that would entitle him to membership in the Montana Judges' Retirement System and loses the election is entitled to receive an involuntary retirement allowance under 19-5-503. 39 A.G. Op. 24 (1981).

Part 6
Disability Retirement Benefits

Part Administrative Rules

ARM 2.43.607 Payment to an estate.

Part Collateral References

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-5-601. Disability retirement benefit.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) after "member's" deleted "final"; in (2) after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

Coordination Instruction — Amendment Voided: Section 41(3), Ch. 370, L. 1997, voided the amendments to 19-5-601 made by sec. 16, Ch. 287, L. 1997, and amended the section as follows: in second sentence in introduction, after "service", substituted "or duty for the Montana judiciary, the member's disability retirement benefit must be" for "to the Montana judiciary in the line of duty, the member must receive a benefit equal to"; at beginning of (1) inserted "the greater of" and after "salary" substituted "or the contingent annuitant's benefit, if applicable, for a person not covered under 19-5-901" for "or the benefit provided in 19-5-502, whichever is greater"; and inserted (2) outlining retirement benefit for person covered under 19-5-901. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present text regarding disability retirement benefit for former section that read: "In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half of his final salary or the allowance provided in 19-5-502, whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of 60 years, the maximum monthly payment shall be the retirement allowance as provided in 19-5-502." Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

Relationship between performance of official duties and subsequent disability or death for purpose of pension or survivorship benefits. 85 ALR 2d 1048.

19-5-612. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29, Ch. 412, L. 1995, provided that this section applies retroactively to any service performed by an individual for a County Sheriff's Department and to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in four places substituted references to disability retirement benefit for references to disability retirement allowance, retirement allowance, or disability allowance; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.508 through 2.43.515 Periodic medical review of disability retirees.

Part 7
Optional Benefit Payments

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

19-5-701. Optional forms of benefits — designation of contingent annuitant.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in second sentence near end inserted "depending on the option selected"; in (1)(a) and (1)(b) substituted "optional retirement benefit" for "reduced amount"; in (1)(c) substituted "a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows" for "upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board"; inserted (1)(c)(i) relating to a period certain commencing at the time that the initial payee first begins receiving the benefit and available as a 10- or 20-year period, depending on whether the member retired at 75 or 65 years of age or younger; inserted (1)(c)(ii) relating to when there is more than one surviving contingent annuitant and what each must receive; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a)(ii) in two places before "family law order" deleted "dissolution settlement or" and near middle after "family law order" inserted "as defined in 19-2-907"; in (7)(a)(ii) at end substituted "family law order" for "divorce settlement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) near end of second sentence after "benefit" deleted "payable" and after "annuitant" deleted "that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant on the application; in (4) after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 217 inserted (5) allowing optional retirement benefits to revert back to regular retirement benefits in cases of death of contingent annuitant or dissolution of marriage; and inserted (6) requiring written applications for changes regarding optional retirement benefits to be made within 18 months of qualifying event. Amendment effective October 1, 1999.

Chapter 562 inserted (7) allowing retiree receiving optional benefit to change contingent annuitant or option or to convert to regular benefit under certain conditions. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1) substituted present text regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 4—such other benefits will be paid, either to his beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2) regarding written application; inserted (3) regarding cancellation of election; and inserted (4) regarding death of member after retirement and within 30 days from election or changed election. Amendment effective July 1, 1993.

1987 Amendment: In (2)(a) substituted "Option 2" for "Option 1"; in (2)(b) substituted "Option 3" for "Option 2"; and in (2)(c) substituted "Option 4" for "Option 3".

Administrative Rules

ARM 2.43.606 Conversion of optional retirement.

Part 8
Survivorship Benefits and Death Payments

19-5-801. Payments upon employment-related death.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) at end of introductory clause inserted "following"; in (2)(a) substituted "the equivalent of the contingent annuitant's benefit, if applicable" for "actuarial equivalent of"; in (2)(b) at end after "death" deleted "or of the contingent annuitant's benefit, if applicable"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 near middle of first sentence, after "service", inserted "or duty" and in second sentence, before "actuarial", inserted "greater of the", after "member's" inserted "service", and after "benefit" substituted "standing to the member's credit on the date of death or of the contingent annuitant's benefit, if applicable" for "provided for in 19-5-502". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "service" for "employment", substituted "survivorship benefit" for "retirement allowance", before "beneficiary" inserted "designated", and substituted second sentence regarding survivorship benefit for former second sentence that read: "Such retirement allowance shall consist of:

(1) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(2) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Relationship between performance of official duties and subsequent disability or death for purpose of disability or survivorship benefits. 85 ALR 2d 1048.

19-5-802. Payments in case of death from other causes.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) and (2) substituted "19-5-701(2)" for "19-5-701"; and in (3) near beginning after "reaching" inserted "normal" and near end after "retirement" substituted "benefit" for "options". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (1) in first sentence substituted text relating to calculation of postretirement death payment for member not covered by 19-5-901 for former text that read: "If a retired member who is not covered under 19-5-901 and who did not choose an option 2, 3, or 4 form of retirement benefit payment under 19-5-701 dies before receiving payments equal to the present value of the member's retirement benefit as it was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump sum"; and in (2) substituted text relating to calculation of postretirement death payment for member covered by 19-5-901 for former text that read: "Upon the death of a retiree who did not choose an option 2, 3, or 4 form of retirement benefit payment under 19-5-701 and who is covered under 19-5-901, the member's designated beneficiary must be paid the unpaid balance of the retiree's benefit. The benefit must be calculated by subtracting the total benefits paid to the member during the member's lifetime from the member's total amount of contributions and interest on account as that amount was on the day that the member retired." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 in first sentence in (1), after "member", substituted "who is not covered under 19-5-901 and who did not choose an option 2, 3, or 4 form of retirement benefit payment under 19-5-701" for "who chose a regular retirement benefit"; inserted (2) requiring payment to beneficiary of unpaid benefits upon death of covered retiree; in (3), before "options", inserted "involuntary retirement"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), near beginning of first sentence, substituted "member who chose a regular retirement benefit" for "judge or justice", substituted "payments equal to" for "in payments", substituted "member's retirement benefit" for "member's annuity and the state annuity", near end, before "beneficiary", inserted "designated", and after "beneficiary" inserted "in a lump sum" and inserted second sentence regarding actuarially equivalent annuity; in (2), before "beneficiary", inserted "designated" and after "entitled to" inserted "a monthly

survivorship benefit that is"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Part 9
Postretirement Benefits and Benefit Increases

19-5-901. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-5-902. Election — guaranteed annual benefit adjustment.

Compiler's Comments

2005 Amendment: Chapter 329 in (3)(b)(ii) substituted "2005" for "2001"; deleted former (3)(b)(ii)(B) that read "(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward"; in (4) substituted "may" for "shall"; in (5) in two places inserted "previously" and in two places inserted "or this section"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 114 in (3)(a) substituted "12 months" for "36 months". Amendment effective October 1, 2003.

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

CHAPTER 6
HIGHWAY PATROL OFFICERS' RETIREMENT

Chapter Compiler's Comments

Section Not Codified: Section 31-231, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 6, Ch. 361, L. 1974, as amended by sec. 1, Ch. 349, L. 1975.

Severability: Section 31-231, R.C.M. 1947, was a severability clause.

Chapter Administrative Rules

ARM 2.43.302 Definitions.
ARM 2.43.303 Request for release of information by members.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.

Part 1
General Provisions

Part Collateral References

Validity of repeal or modification of pension statute provisions. 52 ALR 2d 437.

19-6-101. Definitions.

Compiler's Comments

2003 Amendment: Chapter 429 substituted definition of compensation for former definition that read: ""Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made"; in definition of highest average compensation in first sentence after "monthly compensation" substituted "during any 36 consecutive months of membership service" for "received by a member for any 3 years of continuous service upon which contributions have been made" and after "served" substituted "at least 36 months" for "3 years" and in second sentence after "paid to" substituted "the member upon termination of employment" for "an employee upon termination of service"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary near beginning of second sentence after "severance pay" inserted "including payment for compensatory leave". Amendment effective March 29, 2001.

1999 Amendment: Chapter 58 in (1) substituted "any pretax deduction allowed by the Internal Revenue Code" for "any deductions". Amendment effective July 1, 1999.

1993 Amendments: Chapter 265 inserted definitions of compensation and survivor; deleted definition of account that read: ""Account" means the Montana highway patrol officers' retirement pension trust fund"; deleted definition of accumulated deductions that read: ""Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a surviving spouse or dependent child or, if there is no surviving spouse or dependent child, a person nominated to receive benefits under 19-6-602"; deleted definition of Board that read: ""Board" means the public employees' retirement board provided for in 2-15-1009"; deleted definition of Department

that read: ""Department" means the public employees' retirement division of the department of administration"; in introductory clause of definition of dependent child substituted "member" for "patrol officer"; substituted definition of final average salary for definition of final salary and in first sentence substituted "monthly compensation" for "annual compensation", after "compensation received by a member" deleted "before any deductions have been made and exclusive of maintenance, allowances, and expenses", and at end substituted "months served" for "years served" and in second sentence substituted "termination of service" for "termination of employment", substituted "retirement benefit" for "retirement allowance", and at end substituted "final average salary" for "final salary"; deleted definition of member that read: ""Member" means a person who has accumulated deductions in the account standing to his credit"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the member"; deleted definition of retired patrol officer that read: ""Retired patrol officer" means a person in receipt of a retirement allowance under this chapter"; deleted definition of retirement age that read: ""Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state of Montana"; in definition of surviving spouse, in two places, substituted references to retired member for references to retired patrol officer; and made minor changes in style. Amendment effective July 1, 1993.

Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

1989 Amendment: In (1) changed "patrolmen's" to "patrol officers'"; in (7), (11), and (15) changed "patrolman" to "patrol officer"; and in (15) changed "patrolman's" to "patrol officer's".

1987 Amendment: At end of definition of actuarial equivalent substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

1985 Amendments: Chapter 86 deleted former (6) that read: ""Compulsory retirement age" means 60 years of age"; and at end of (12) deleted "or 60 years of age, whichever occurs first".

Chapter 278 near beginning of (4), after "means", inserted "a surviving spouse or dependent child or, if there is no surviving spouse or dependent child" and at end of (4) substituted "under 19-6-602 [now repealed]" for "under this chapter by a member's written designation, duly acknowledged and filed with the department"; and inserted definitions of dependent child and surviving spouse.

1983 Amendment: In (1), substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Deleted former subsection (9), defining "involuntary retirement", and former subsection (12), defining "optional retirement age"; added "or 60 years of age, whichever occurs first" at the end of (12).

Administrative Rules

ARM 2.43.408 Calculation of service credit on termination of employment.

19-6-102. Highway patrol officers' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "retirement plan" for "retirement system". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 before "highway patrol officers' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

1989 Amendment: Changed "patrolmen's" to "patrol officers'".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1603, 1606, 1630.

19-6-106. Short title.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.405 Membership.
ARM 2.43.406 Basic period of service.
ARM 2.43.408 Calculation of service credit on termination of employment.
ARM 2.43.410 Proof of service.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.

19-6-301. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2005 Amendment: Chapter 329 in (2)(a) at beginning substituted "An inactive" for "A" and near middle after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (2)(b) providing what a lump-sum payment consists of; in (3)(a) at beginning substituted "An inactive" for "A" and near middle after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendment: Chapter 265 inserted (2) regarding inactive vested member; and inserted (3) regarding inactive nonvested member. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.402 Membership cards.
ARM 2.43.440 Service purchases by inactive vested members.

Part 4
Contributions and Refunds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension or profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-6-401. Payments into pension trust fund.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 428 near end after "licenses and" substituted "replacement" for "duplicate". Amendment effective October 1, 2005. This amendment was rendered void by the amendment made by Ch. 464.

Chapter 464 inserted first sentence stating that there is a pension trust fund and in second sentence near middle after "on and" substituted "earnings from the investment of" for "increase of the investments and" and after first "fund" deleted "all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion of the fees from the driver's licenses and duplicate driver's licenses as provided in 61-5-121"; and made minor changes in style. Amendment effective July 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendment: Chapter 429 near middle after "trust fund" inserted "all fees or portions of fees that are required by law to be paid to the retirement system or trust fund" and near end after "must be" substituted "deposited in" for "paid to". Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 near beginning, after "members", deleted "of the Montana highway patrol" and in two places substituted "pension trust fund" for "account". Amendment effective July 1, 1993.

1991 Amendment: Made minor changes in style. Amendment effective July 1, 1991.

1989 Amendments: Chapter 62 at end substituted "account" for "state treasurer, who shall credit the payments to the Montana highway patrolmen's retirement pension trust fund"; and made minor change in grammar. Amendment effective March 10, 1989.

Chapter 217 at end of section changed "patrolmen's" to "patrol officers'". (Deleted by Ch. 62, L. 1989.)

1985 Amendment: Near middle of section, after "this account", inserted "and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121".

1983 Amendment: At end of section, substituted "pension trust fund" for "account in the agency fund".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-6-402. Member's contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in (1)(a) after "contribute" deleted "into the pension trust fund" and after "member's" deleted "monthly"; and in (1)(b) after "contribute" deleted "to the pension trust fund" and after "member's" deleted "monthly". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (4) near end of first sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 287 at beginning of (1)(a) substituted "A member not covered under 19-6-710" for "Each member", after "fund" deleted "a sum equal to", and after "compensation" deleted "which must be deposited to the member's credit in the pension trust fund"; inserted (1)(b) requiring covered member to contribute 9.05% of monthly compensation to trust fund; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1) increased percentage of monthly salary contributed by member from 7.59% to 9%. Amendment effective July 1, 1991.

1985 Amendments — Increases Cumulative: Chapter 278 in (1) increased contribution rate from 6 ½% to 6.59%.

Chapter 294 in (1) increased contribution rate from 6 ½% to 7 ½%.

Section 5 of Ch. 294 provided that the percentage amount must reflect the sum of the increases in the member's contribution provided in both Ch. 278 and Ch. 294, 7.59%.

Chapter 464 in (1) near end, after "shall be", deleted "deducted from his salary and"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

What constitutes "salary", "wages", "pay", or the like, within pension law basing benefits thereon. 14 ALR 2d 634, superseded by 91 ALR 5th 225.

19-6-403. Refund of member's contribution.

Compiler's Comments

2001 Amendment: Chapter 99 at end after "member's" substituted "filing of a written application with the board" for "written application to the board". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 substituted "retirement benefit" for "retirement allowance" and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning, after "member", inserted "willingly resigns or", near middle, before "deductions", inserted "accumulated", and at end inserted "upon his written application to the board"; deleted former (2) that read: "(2) If a member resigns of his own volition

before becoming entitled to a retirement allowance, his accumulated deductions shall be paid to him"; and made minor change in style. Amendment effective July 1, 1991.

1985 Amendment: At beginning of (1) substituted "If a member is discharged" for "Where a member resigns of his own volition or is discharged"; and inserted (2) providing for refund of accumulated deductions for members who resign voluntarily.

Administrative Rules

ARM 2.43.603 Refunds.

Collateral References

Misconduct as affecting right to pension or retention in retirement system. 76 ALR 2d 566.

19-6-404. State employer contribution — statutory appropriation.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 329 in introductory clause substituted "pay as employer contributions" for "annually contribute to the pension trust fund an amount equal to", after "36.33% of" deleted "the total", and substituted "all of the employer's employees, except those properly excluded from membership" for "the members"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 428 in (2) near end after "licenses and" substituted "replacement" for "duplicate". Amendment effective October 1, 2005. This amendment was rendered void by the amendment made by Ch. 464.

Chapter 464 in introductory clause near beginning after "shall" deleted "annually"; in (1) after "payable" inserted "as appropriated by the legislature"; in (2) at end after "is" substituted "statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund" for "payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121"; and made minor changes in style. Amendment effective July 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

1997 Amendment: Chapter 287 in introductory clause increased contribution rate from "36.28%" to "36.33%"; and in (1) increased rate from "26.10%" to "26.15%". Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in introduction substituted "pension trust fund" for "account" and substituted "total compensation paid to the members" for "salaries paid to the highway patrol officers who are covered by this account"; and in (1) and (2) substituted "the total compensation of the members" for "salaries". Amendment effective July 1, 1993.

1991 Amendment: In introductory clause increased state contribution from 26.75% to 36.28%; and in (1) increased percentage from 16.57% to 26.10%. Amendment effective July 1, 1991.

Credit: Section 6, Ch. 816, L. 1991, a coordination instruction, provided: "If Senate Bill No. 192 is passed and approved, the amount allocated to the Montana highway patrol officers' retirement system in Senate Bill No. 192 must be used as a credit against the state retirement contribution as provided in 19-6-404(1)." Senate Bill No. 192 was enacted as Ch. 735, L. 1991.

1989 Amendments: Chapter 62 at end of introductory clause substituted "following sources" for "general fund. In addition, the state shall contribute to the account"; inserted (1) establishing the 16.57% contribution amount; inserted beginning of (2) establishing the 10.18% contribution amount; and deleted former (2) that read: "(2) The department shall credit all fees deposited as provided in 61-5-121 as part of the state's contribution required in subsection (1)." Amendment effective March 10, 1989.

Chapter 217 in (1) changed "patrolmen" to "patrol officers".

1985 Amendments — Increases Cumulative: Chapter 277 in (1) inserted second sentence referring to fees from driver's licenses and duplicate driver's licenses; and inserted (2) providing that certain fees must be credited as part of state's contribution.

Chapter 278 increased contribution rate from 16.57% to 18.58%.

Chapter 294 increased contribution rate from 16.57% to 24.74%.

Section 5 of Ch. 294 provided that the percentage amount must reflect the sum of the increases in the state's contribution provided in both Ch. 278 and Ch. 294, 26.75%.

1981 Amendment: Changed state's contribution from 16% to 16.57%.

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-6-410. State contribution for supplemental benefits — statutory appropriation.

Compiler's Comments

Effective Date: Section 13, Ch. 464, L. 2005, provided that this section is effective July 1, 2005.

Part 5
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-6-501. Eligibility for service retirement benefit.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 99 in (1) and (2) after "1985" inserted "has attained normal retirement age and". The amendment in (2) was rendered void by Ch. 193. Amendment effective March 21, 2001.

Chapter 193 near beginning after "A member" deleted "first employed by the Montana highway patrol on or before July 1, 1985"; deleted former (2) that read: "(2) A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement benefit when the member has reached age 50, completed 20 years or more of membership service, and terminated service"; and made minor changes in style. Amendment effective April 3, 2001.

1997 Amendment: Chapter 370 deleted former (2) and (3) that read: "(2) A member eligible to receive a retirement benefit, as provided in subsection (1), shall apply in writing to the division.

(3) (a) Except as provided in subsection (3)(b), the retirement benefit may commence on the first day of the month following the member's last day of covered service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible member who has terminated service must commence no later than the first day of the month following the member's 60th birthday"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 throughout section substituted references to service retirement benefit or retirement benefit for references to service retirement allowance or retirement allowance; at end of (1)(a) substituted "membership service and terminating service" for "creditable service and terminating covered employment"; at end of (1)(b) substituted

"membership service, and terminated service" for "creditable service, and terminated covered employment"; in (2), at end, substituted "division" for "department"; in (3)(a) substituted "covered service" for "covered employment" and substituted "inactive member" for "terminated member"; in (3)(b) substituted "member who has terminated service" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: At end of (1)(a) and (1)(b) inserted clause referring to termination of covered employment; at end of (2), after "department", deleted "setting forth at what time he desires to be retired, which may not be less than 30 days or more than 90 days subsequent to the filing thereof"; at beginning of (3)(a) inserted exception clause, after "allowance" substituted "may" for "must", and near middle, after "employment", inserted "or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application"; inserted (3)(b) that read: "(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 60th birthday"; and made minor changes in phraseology and punctuation. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: Substituted language of (1) and (2) (see 1985 Session Law for text) for former (1) that read: "A member in service who has completed at least 20 years of creditable service may retire on a service retirement allowance upon written application to the department setting forth at what time he desires to be retired, not less than 30 days or more than 90 days subsequent to the filing thereof."

1983 Amendment: Inserted (2) specifying date of commencement of retirement allowance.

1981 Amendment: In (1), reduced the minimum creditable service requirement for retirement on a service retirement allowance from 25 years to 20 years.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

19-6-502. Service retirement benefit.

Compiler's Comments

2003 Amendment: Chapter 429 at beginning substituted "After termination" for "Upon retirement" and after "service" inserted "and upon application for service retirement". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 near end after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "(1) Upon retirement from service, a member shall receive a service retirement allowance consisting of the state annuity plus the member's annuity.

(2) The amount of the service retirement allowance must equal 2.5% of his final salary for each year of creditable service." Amendment effective July 1, 1993.

1991 Amendment: In (2) increased allowance from 2% of final salary to 2.5% of final salary; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: In (2) substituted language establishing amount of service retirement allowance for former language that read: "(2) The service retirement allowance shall be computed as follows:

(a) 20 through 25 years, 2% of his final salary for each year of service;

(b) over 25 years, 2% of his final salary for each year of service through the 25th plus 1% of his final salary for each year of service past 25."

Administrative Rules

ARM 2.43.406 Basic period of service.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

19-6-503. Early retirement benefit for member discontinued from service other than for cause.

Compiler's Comments

2003 Amendment: Chapter 429 near middle before "retirement age" inserted "normal" and near end after "early" inserted "service". Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted "5 years of membership service" for "5 years of total service", substituted "division" for "department", and after "be paid" substituted remainder of section regarding early retirement benefit for former text that read: "whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity based on a retirement age of 60"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: Near beginning, after "If a member is" substituted "discontinued from service other than for cause after having completed 5 years" for "involuntarily discontinued from service after having completed 10 years".

1981 Amendment: Added "based on a retirement age of 60" at the end of (2).

Attorney General's Opinions

Involuntary Retirement: This section, prior to the 1985 amendments, had to be interpreted to the effect that a patrolman who was discontinued from service, not voluntarily, after having completed 10 years of service but before reaching age 60, could elect to take either of the following as his retirement allowance: (a) the full amount of accumulated deductions standing to his credit; or (b) the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age 60, pursuant to the following section, had he not discontinued service. Retirement allowances heretofore granted under an erroneous interpretation must stand unchanged by this subsequent reinterpretation. 36 A.G. Op. 24 (1975).

19-6-505. Payment of retirement benefits.

Compiler's Comments

2005 Amendment: Chapter 329 in (3)(c) substituted "pursuant to 19-2-803" for "to the child's appointed guardian for the child's use". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (4) near middle after "dependent child" deleted "and if the member had designated a beneficiary as provided in 19-2-801"; deleted former (5) that read: "(5) If the retired member did not designate a beneficiary or if the beneficiary predeceased the retired patrol officer, the amount provided in subsection (4) must be paid to the member's estate"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (4) at beginning substituted "If a retired member dies without a" for "If upon the retired member's death there is no", after "paid" substituted "the amount, if any, of" for "an amount equal to", and substituted "accumulated contributions minus the total of any retirement benefits already paid from the member's account" for "accumulated contributions less any retirement benefits paid to the member before the member's death". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section substituted references to retired member or member for references to retired patrol officer or patrol officer; in (1), at beginning, substituted "The service retirement benefit must be paid" for "The department shall pay the service retirement allowance provided for in 19-6-502"; in (2) and (3)(a) substituted "the retirement benefit must be paid" for "the department shall pay the retirement allowance"; at end of (3)(a) substituted "remains a dependent child" for "remains dependent as defined in 19-6-101"; in (3)(b), in first sentence, substituted "retirement benefit" for "retirement allowance" and in second sentence substituted "when a child is no longer a dependent child" for "when a child no longer qualifies as dependent as defined in 19-6-101"; in (4) substituted reference to 19-2-801 for reference to 19-6-602, substituted "designated beneficiary must be paid" for "department shall pay to the designated beneficiary", and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendments: Chapter 63 at end of (2) deleted "for as long as the spouse remains unmarried"; and near beginning of (3)(a), after "spouse", deleted "remarries or". Amendment effective July 1, 1989.

Chapter 217 in three places changed "patrolman" to "patrol officer"; and in seven places changed "patrolman's" to "patrol officer's".

Retroactive Applicability: Section 8, Ch. 63, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989."

Case Notes

Writ of Mandamus Ordering State Agency to Pay Highway Patrol Benefits to Ex-Wife Improper: The petitioner obtained a writ of mandamus from the lower court directing the Department of Administration to pay one-half of her ex-husband's highway patrol retirement benefits to her as required by the couple's divorce decree. The Supreme Court reversed, holding that the agency had no legal duty to pay the benefits to the petitioner because she was not a beneficiary under the applicable law. State ex rel. Neuhausen v. Nachtsheim, 253 M 296, 833 P2d 201, 49 St. Rep. 559 (1992).

Part 6
Disability Retirement Benefits

Part Administrative Rules

ARM 2.43.607 Payment to an estate.

Part Collateral References

Determination whether peace officer's disability is service-connected for disability pension purposes. 12 ALR 4th 1158.

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-6-601. Disability retirement benefit.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) after "service" deleted "to the Montana highway patrol" and after "duty" deleted "then the member who is disabled must be retired on a disability retirement benefit of one-half the member's highest average compensation regardless of the member's length of service"; inserted (2)(a) concerning benefit before 20 years of service; inserted (2)(b) concerning benefit after 20 years of service; in (3) before "member" deleted "retired", near middle substituted "under this section" for "as provided in subsection (1)", and at end deleted references to subsections (2) and (3) of 19-6-505; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) near end of second sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in two places substituted reference to member for reference to patrol officer; in three places substituted reference to disability retirement benefit or benefit for reference to disability retirement allowance or allowance; in (1), near beginning of first sentence before "disability", deleted "total", after first "member" deleted "permanent in character, regardless of the length of service of the member", before "the actuarial equivalent" substituted "that is" for "in an amount calculated on", and substituted "service retirement benefit under 19-6-502" for "member's annuity and the state annuity" and in second sentence substituted "who is disabled must be retired on a disability retirement benefit" for "who is totally and permanently disabled shall be retired on total retirement allowance" and near end substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1) and (2) changed "patrolman" to "patrol officer".

1985 Amendment: Inserted (2) referring to death of a retired patrolman.

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Case Notes

Evidence of Disability: State highway patrolman was not entitled to disability retirement allowance for total and permanent disability in light of evidence that claimant's condition did not prevent him from hunting, swimming, and bowling and evidence of four medical doctors that patrolman was not permanently disabled, notwithstanding evidence of osteopath that patrolman was totally and permanently disabled insofar as being highway patrolman. State ex rel. Spear v. St. Highway Patrol Retirement Bd., 149 M 7, 422 P2d 348 (1967).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Determination whether peace officer's disability is service-connected for disability pension purposes. 12 ALR 4th 1158.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

Causal connection between policeman's performance of official duties and his disability, for purpose of recovering disability benefits. 27 ALR 2d 974.

19-6-612. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) near middle of third sentence after "recipient may" substituted "file a written application with the board requesting that the board" for "submit a written application to the board to request the board to" and in fourth sentence after "must be" substituted "filed" for "made in writing". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2) in third sentence after "may" inserted "submit a written application to the board to". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in (1), at end of third sentence, inserted "or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability"; in (3)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (3)(b) regarding applicability of standards necessary for reinstatement; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; in (1), near beginning of first sentence after "board", deleted "in its discretion", in third sentence, after "determine", deleted "by reason of physical or mental capacity", and in fifth sentence, at end after "canceled", deleted "when he is notified of the determination of the board"; in (2), at end of first sentence, substituted "monthly benefit" for "monthly allowance"; in (4), in second sentence after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (2) relating to procedure when the Board determines a recipient should no longer be subject to medical review; at beginning of (3) substituted "recipient" for "person" and after "because" inserted "the board has determined that"; in first sentence of (4)

substituted "recipient" for "member"; corrected internal reference; and made minor changes in phraseology. Amendment effective March 18, 1989.

Administrative Rules

ARM 2.43.508 through 2.43.515 Periodic medical review of disability retirees.

Part 7
Postretirement Benefits and Benefit Increases

19-6-707. Minimum monthly benefit.

Compiler's Comments

1997 Amendment: Chapter 287 in (1), after "survivors", inserted "who are not covered by 19-6-710"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 throughout section substituted references to members for references to highway patrol officers or patrol officers; in four places substituted references to survivors or survivor for references to beneficiaries or beneficiary; in (1), after "monthly benefit", deleted "allowance", substituted "service credits" for "creditable years of service", and substituted "base compensation" for "base salary"; at end of (1)(a) substituted "service retirement benefit" for "service retirement allowance"; in (1)(b) substituted "disability retirement benefit" for "disability retirement allowance"; in (1)(c) substituted "recipient of a survivorship benefit" for "beneficiary receiving a survivorship allowance"; in (2)(a), after "monthly benefit", deleted "allowance" and substituted "base compensation" for "base salary"; in (2)(b), in two places after "monthly benefit", deleted "allowance"; in (3), after "Title 19", deleted "chapters 3 through 13", after "monthly benefit" deleted "allowance", and substituted "service" for "employment"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In six places changed "patrolman" to "patrol officer"; and in (1) changed "patrolmen" to "patrol officers" and "patrolman's" to "patrol officer's".

19-6-709. Supplemental benefits for certain retirees.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 329 in (3) at end substituted "until the fiscal year following the member's termination from service in the covered position" for "until the member's service in the covered position is terminated. Upon termination of the member's service, the retired member becomes eligible in the next fiscal year succeeding the member's termination". Amendment effective July 1, 2005.

Chapter 464 in (4) near beginning after "amount" substituted "statutorily appropriated under 19-6-410" for "of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4), and 61-3-562(1)(b)". Amendment effective July 1, 2005, and terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709.

Chapter 596 in (4) near middle substituted "61-3-527(3)" for "61-3-527(4)". Amendment effective January 1, 2006. This amendment was rendered void by the amendment made by Ch. 464.

The amendment to this section made by sec. 2, Ch. 500, L. 2005, was rendered void by sec. 8, Ch. 500, L. 2005, a coordination section.

2003 Amendment: Chapter 429 in (3) in second sentence before "service" deleted "covered"; in (4) substituted "amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4)(b), and 61-3-562(1)(b)" for "lump-sum payment" and after "proportionally" substituted "as a lump-sum benefit payment to each eligible recipient" for "to all eligible recipients"; in (4)(a) after "service" inserted "credit"; and in (4)(b) before "retirement benefit" deleted "service". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (2)(c) after "disability" inserted "benefit under 19-6-601" and after "survivorship benefit under" deleted "19-6-601 or"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 191 in (4)(a) in first sentence at beginning substituted "The amount of" for "An amount equal to 25 cents of" and near middle substituted "referred to in 61-3-321(5)(b) and (5)(c) and the fees collected under 61-3-527(4)(b) and 61-3-562(1)(b)" for "provided for in 61-3-321(5)"; in (5) near beginning after "the board shall review" substituted "the amount paid" for "the size of the additional fee collected under 61-3-321(5) and paid"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 574 deleted former (4)(a) that read: "(a) An amount equal to 25 cents of each motor vehicle registration fee provided for in 61-3-321(5) must be paid from the general fund to the pension trust fund at the end of each fiscal year. The payment is statutorily appropriated, as provided in 17-7-502, to the pension fund for payment of benefits to eligible recipients. The total funds must be distributed by the board in lump-sum payments to eligible recipients along with their normal retirement benefit payment"; deleted former (4)(c) that read: "(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system"; deleted former (5) that read: "(5) Every 10 years following July 1, 1991, the board shall review the size of the additional fee collected under 61-3-321(5) and paid to the pension trust fund in accordance with subsection (4)(a) and recommend to each legislature following the board's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

1999 Amendment: Chapter 562 throughout section substituted references to board for references to division. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments: Chapter 287 in (2), after "1991", inserted "may not be covered by 19-6-710"; and in (4)(b)(iii), after "section", deleted "after August 31, 1993". Amendment effective July 1, 1997.

Chapter 532 in (4)(a), in first sentence after "61-3-321", inserted "(5)" and after "must be" substituted "paid from the general fund to" for "deposited in" and at beginning of second sentence, after "The", substituted "payment" for "fee" and after "17-7-502" inserted "to the pension fund"; in (5), after "61-3-321(5) and", substituted "paid to the pension trust fund" for "deposited in the account"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 throughout section substituted references to member or retired member for references to patrol officer or officer; in (1), near beginning, substituted "retirement benefit" for "retirement allowance", substituted "survivor" for "beneficiary", and after "lump-sum" inserted "benefit"; in (2)(a) substituted "service retirement benefit" for "service allowance"; in (2)(b) substituted "survivor" for "beneficiary"; in (2)(c), after "survivorship", substituted "benefit" for "allowance"; in (3), in first sentence after "Title 19", deleted "chapters 3 through 13", after "lump-sum" inserted "benefit", and near end substituted "service" for "employment" and in second sentence substituted "covered service" for "covered employment"; in (4)(a), in first sentence, substituted "pension trust fund" for "highway patrol fund" and in third sentence substituted "division" for "department" and at end, after "normal", substituted "retirement benefit payment" for "retirement allowance payment"; in (4)(b), after "based on", substituted "service credit" for "years of service"; in (4)(b)(ii) substituted "service retirement benefit" for "service retirement allowance", substituted "monthly benefit" for "monthly allowance", and substituted "service credit reduced" for "years of service reduced"; in (4)(b)(iii), near beginning, substituted "maximum annual increase in the amount of supplemental benefits paid to each individual" for "maximum amount available for payment of supplemental benefits", after "is" deleted "limited to an amount that will provide a percentage increase in the average supplemental benefit of all eligible members that is equal to", and deleted last sentence that read: "The intent of this subsection is to limit each annual individual supplemental benefit payment to no more than the increase in the consumer price index for the previous calendar year"; in (4)(c), after "deposited in the", deleted "account, meaning the highway patrol officers' retirement" and at end substituted "retirement system" for "account"; in (5), in two places, substituted references to Division for references to Department; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date: Section 6, Ch. 567, L. 1991, provided that this section is effective July 1, 1991.

19-6-710. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-6-711. Election — guaranteed annual benefit adjustment.

Compiler's Comments

2003 Amendment: Chapter 114 in (3)(a) substituted "12 months" for "36 months". Amendment effective October 1, 2003.

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

Part 8
Service Credit

Part Administrative Rules

ARM 2.43.425 Incomplete payments.

19-6-801. Application to purchase military service.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 26 and 289 in (1) near beginning after "19-6-805" substituted "an eligible member" for "a member with at least 15 years of service credit"; in (2)(a) at beginning after "member" inserted "with at least 15 years of service credit and" (amendment rendered void by Ch. 429 amendment); and in (2)(b) at beginning after "member" inserted "with at least 5 years of membership service" (amendment rendered void by Ch. 429 amendment). Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", near middle substituted "eligible member" for "member with at least 15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the

purpose of calculating retirement benefits"; deleted former (2) that read: "(2) To purchase this military service:

(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.

(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation"; in (1)(b) substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning application to purchase reserve military service; inserted (3) concerning purchase of service credit and membership service; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(2), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 66, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1) inserted exception clause, near beginning after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit with the Montana highway patrol", near middle after "prior to retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707"; in (2) in introductory clause substituted "purchase this military service" for "qualify this service"; in (2)(a) near beginning of first sentence after "contribute" deleted "to the account", near middle after "16th year" substituted "for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest" for "and as many succeeding years as are required to qualify this service, with interest", and at end substituted "purchase is complete" for "member contributes" and in second sentence after "member may not" substituted "purchase more military service under this subsection (2)(a)" for "qualify more of this service" and after "member has service" substituted "credit" for "with the Montana highway patrol"; in (2)(b) after "shall" substituted "pay the actuarial cost of the member's military service" for "contribute the actuarial cost of the service credit"; inserted (3) outlining conditions that preclude a member from purchasing military service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 at end of (1) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Chapter 562 in two places substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 at beginning of (2)(a), after "member", inserted "not covered by 19-6-710"; inserted (2)(b) requiring covered member to contribute actuarial cost of service credit to qualify for credit; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), near beginning after "service", inserted "credit", substituted "division" for "department", near end, before "credit", inserted "service", and at end substituted reference to 19-2-705 for reference to 19-6-303; in (2), in first sentence, substituted "determined by the division to be due" for "determined by the department due" and substituted "regular contribution rate" for "normal contribution rate"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.433 Purchase of full-time service by part-time members.
ARM 2.43.437 Military service.

Attorney General's Opinions

Purchasing of Military Service: Military service may be purchased under this section and used for the computation of the eligibility or length of service period required under 19-6-502, provided the member has met the minimum criteria for vesting in interest under 19-6-503. 36 A.G. Op. 25 (1975).

19-6-803. Application to purchase law enforcement service performed in another state.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) near beginning substituted "membership service" for "service credit"; in (2) in two places, in (2)(b), in (3) in two places, and in (4) in three places after references to service inserted "credit"; and in (2)(a) substituted "purchase the service credit" for "cover the service". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at beginning substituted "Subject to 19-6-805, a member with at least 5 years of service credit may, at any time before retirement, file a written application with the board to purchase" for "Except as provided in subsections (3) through (5), a member with 5 years or more of membership service in the retirement system may qualify", near middle after "service credit" substituted "unless the member is eligible" for "under the retirement system, up to a maximum of 5 years, provided that the member is not eligible", and after "retirement benefit" substituted "in another system or plan for that same service" for "for that out-of-state law enforcement employment"; in introductory clause of (2) substituted "To purchase" for "To qualify" and after "member shall" substituted "pay the actuarial cost of the service" for "(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service"; at beginning of (3) and (4) substituted "Service purchased" for "Service qualified"; at beginning of second sentence of (4) substituted "If, upon retirement, a member's purchased service" for "If a member's qualified service" and at end after "the member" substituted "must receive a refund of the amount paid by the member to purchase the service, plus regular interest on that amount" for "may choose to receive a refund of the contributions made to qualify the service"; deleted former (5) that read: "(5) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former (3) that read: "(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 562 in (2)(b)(ii) substituted "actuarial rate" for "total contribution rate"; deleted former (4)(a) that read: "(a) credited in any other retirement system under Title 19"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in five places, before "retirement system", deleted "highway patrol officers'"; in (1) substituted "5 years or more of membership service" for "5 years or more of creditable service" and substituted "service credit" for "creditable service"; in (2)(b) substituted "pension trust fund" for "retirement fund"; in (5), in two places, substituted "retirement benefit" for "retirement allowance" and substituted "service credit" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.430 Out-of-state or federal public service.

19-6-804. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) in two places and in (3) after references to service inserted "credit"; and near end of (3) after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-6-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make

a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and near end substituted "in" for "qualified under"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-6-801, 19-6-803, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.432 "1-for-5" additional service.

19-6-805. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-6-810. Absence because of illness or injury.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near beginning of second sentence after "member may not" substituted "purchase service credit" for "earn service credits" and near end after "both" substituted "service credit" for "service credits"; and in (3)(a) near beginning after "eligible to" substituted "purchase service credit" for "earn service credits". Amendment effective March 21, 2001.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 101, Ch. 562, L. 1999, provided that this section is effective July 1, 1999.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

Part 9
Survivorship Benefits and Death Payments

19-6-901. Survivorship benefits — employment-related death.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) after "50% of the" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in (1) substituted "service, a survivorship benefit" for "employment, a retirement allowance" and after "dependent child" deleted "or designated beneficiary"; substituted (2) regarding amount of survivorship benefit for former subsection that read: "(2) Such retirement allowance shall consist of:

(a) a member's annuity, which shall be the actuarial equivalent of the member's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the member, less the amount which is paid to a surviving spouse, dependent child, or designated beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: At end of (1), after "shall be paid to his", substituted "surviving spouse, dependent child, or designated beneficiary in the same manner as provided for in subsections (2) through (4) of 19-6-505" for "beneficiary"; and in (2)(b), before "beneficiary", substituted "a surviving spouse, dependent child, or designated" for "any such".

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Relationship between policeman's performance of official duties and his death, for purpose of recovery of benefits by survivors. 27 ALR 2d 1004.

19-6-902. Survivorship benefits — death from other causes.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If an active or inactive member" for "If a member" and at end substituted "19-6-505(2) through (4)" for "19-6-505". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 substituted present text regarding survivorship benefits for former section that read: "If a member dies before reaching retirement age, the department shall pay to his surviving spouse, dependent child, or designated beneficiary in the same manner as provided for in subsections (2) through (4) of 19-6-505 the actuarial equivalent of the options as provided in 19-6-503." Amendment effective July 1, 1993.

1985 Amendment: Deleted former (1) that read: "If the retired patrolman dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary"; and after "retirement age", substituted "the department shall pay to his surviving spouse, dependent child, or designated beneficiary in the same manner as provided for in subsections (2) through (4) of 19-6-505" for "his beneficiary shall be entitled to".

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Attorney General's Opinions

Payments in Case of Patrolman's Death From Natural Causes: The beneficiary of a deceased patrolman who dies of natural causes before attaining age 60, regardless of his length of service, had a choice under this section (as it read prior to the 1985 amendment) of either: (a) taking the full amount of the accumulated deductions standing to the decedent's credit; or (b) taking an annuity which would be the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to the decedent commencing at age 60 had death not discontinued his service. 36 A.G. Op. 24 (1975).

19-6-903. Death payments in absence of survivors.

Compiler's Comments

2001 Amendment: Chapter 99 substituted language regarding payment of contributions to the member's designated beneficiary for former language that read: "If upon the member's death before retirement there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-2-801, the designated beneficiary must be paid an amount equal to the member's accumulated contributions. If there is no designated beneficiary, death payments must be paid to the member's estate." Amendment effective March 21, 2001.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

CHAPTER 7
SHERIFFS' RETIREMENT

Chapter Compiler's Comments

Section Not Codified: Section 68-2622.1, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 145, L. 1977.

Severability: Section 29, Ch. 178, L. 1974, was a severability clause.

Chapter Administrative Rules

ARM 2.43.302 Definitions.
ARM 2.43.303 Request for release of information by members.
ARM 2.43.418 Elected officials.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.433 Purchase of full-time service by part-time members.

Part 1
General Provisions

19-7-101. Definitions.

Compiler's Comments

2005 Amendment: Chapter 259 inserted definition of detention officer; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in definition of compensation after "remuneration paid" substituted remainder of definition concerning source of payment for services or authorized leave for "for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made"; in definition of highest average compensation in first sentence after "compensation" substituted "during any 36 consecutive months of membership service" for "any 3 years of continuous service from which contributions were deducted", after "has not served" substituted "at least 36 months" for "3 years", and at end substituted "of service" for "served" and in second sentence near middle after "paid to" substituted "the member" for "an employee"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary"; and at end of definition of sheriff inserted "with the requisite professional certification and licensing" and deleted former second sentence that read: "The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system." Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary near beginning of second sentence after "payments for" inserted "severance pay, including payment for compensatory leave"; and made minor changes in style. Amendment effective March 29, 2001.

1999 Amendment: Chapter 58 in definition of compensation substituted "any pretax deductions allowed by the Internal Revenue Code" for "any deductions". Amendment effective July 1, 1999.

1995 Amendment: Chapter 412 in definition of Sheriff, after "undersheriff or", deleted "regularly" and after "appointed" inserted "lawfully trained, appropriately salaried, and regularly"; and inserted second sentence concerning rules adoption requirement. Amendment effective April 13, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 412, L. 1995, provided in part: "A statement of intent is required for this bill because 19-7-101 gives the public employees' retirement board authority to adopt rules that clarify the training and salary requirements for persons to be eligible for membership in the sheriffs' retirement system because of their appointment as deputy sheriffs.

It is the intent of the legislature that only full-time, professional law enforcement officers be eligible for membership in the sheriffs' retirement system. Because persons without the requisite training and salary required to be paid to deputy sheriffs have been erroneously reported to the sheriffs' retirement system in the past, it is the intent of this bill to require the board to adopt rules that will reflect up-to-date training and salary requirements for appointed deputy sheriffs acting in a professional law enforcement capacity.

The legislature intends that persons employed in the following positions and who are not permanent, full-time law enforcement officers employed by county sheriffs not be eligible for membership in this retirement system: jailers; communications officers; other administrative, clerical, or support personnel; and other persons deputized to act as reserve deputies."

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendments: Chapter 261 inserted definition of investigator; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 inserted definition of compensation; deleted definition of account that read: ""Account" means the Montana sheriffs' retirement pension trust fund administered by the board"; deleted definition of accumulated contributions or accumulated deductions that read: ""Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a person who is nominated by the member in a witnessed document filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of creditable service that read: ""Creditable service" means the aggregate of all of a member's current and prior service"; deleted definition of death benefit that read: ""Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement"; substituted definition of final average salary for definition of final salary and at beginning of first sentence substituted "means the average monthly compensation received by a member" for "means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses" and at end substituted "total compensation earned divided by the number of months served" for "total salary earned divided by the number of years served" and in second sentence substituted "retirement benefit" for "retirement allowance" and substituted "final average salary" for "final salary"; deleted definition of member that read: ""Member" means any person who has accumulated deductions in the account to his credit"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the member while employed"; deleted definition of membership service that read: ""Membership service" means service for which an amount is deducted from the salary of a member and paid into the account"; deleted definition of prior service that read: ""Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana"; deleted definition of retired Sheriff that read: ""Retired sheriff" means a person receiving a retirement allowance under this chapter"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of service that read: ""Service" means employment as a sheriff"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account"; deleted definition of vested retirement that read: ""Vested retirement" means a retirement not for cause and before retirement age"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In definition of beneficiary substituted "a witnessed" for "an acknowledged"; and made minor change in phraseology. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1987 Amendments: Chapter 45 at end of (3) substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

Chapter 370 at end of (1), before "board", deleted "sheriffs' retirement".

1985 Amendment: In definition of Board after "means the", deleted "sheriffs' retirement board. The board shall consist of five persons who shall be the same persons that comprise the"; and inserted definition of death benefit.

1983 Amendment: In definition of account substituted "retirement pension trust fund" for "retirement account".

Administrative Rules

ARM 2.43.408 Calculation of service credit on termination of employment.

19-7-102. Sheriffs' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 in two places substituted "retirement plan" for "retirement system"; in first sentence after "established" substituted "and" for "for Montana members, which is"; and deleted former second sentence that read: "It is an actuarial reserve system for the payment of death, disability, and retirement benefits to members and to the beneficiaries of the members to provide for themselves and their dependents in the case of disability or death and upon retirement from active duty." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 inserted last sentence regarding governing chapters; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1603, 1606, 1630.

19-7-105. Short title.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.405 Membership.
ARM 2.43.406 Basic period of service.
ARM 2.43.408 Calculation of service credit on termination of employment.
ARM 2.43.410 Proof of service.
ARM 2.43.418 Elected officials.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.

19-7-301. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 259 inserted (3) requiring detention officers to join the sheriffs' retirement system but making joining optional for an officer who was a member of the public employees' retirement system on July 1, 2005; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 329 in (6)(a) at beginning substituted "An inactive" for "A" and near middle after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (6)(b) providing what a lump-sum payment consists of; in (7)(a) at beginning substituted "An inactive" for "A" and near middle after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5) near end after "service" inserted "credit"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause; in (1)(b) after "1974" substituted "may remain a public employees' retirement system member or elect to

become" for "in which case the sheriff may at the sheriff's option become" and at end inserted "by filing a written election with the board at any time before retirement"; at beginning of (2)(a) inserted exception clause; in (2)(b) after "1993" substituted "may remain in the public employees' retirement system or elect to become" for "in which case the investigator has the option of becoming" and at end inserted "by filing a written election with the board at any time before retirement"; inserted (3) allowing a member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system to remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system; in (4) near middle after "retirement system" substituted "must be an active member" for "shall remain members" and at end substituted "19-7-1101(2)" for "19-7-1101"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 248 in (4) and (5), near beginning, substituted "5 years" for "15 years"; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendments — Composite Section: Chapter 261 inserted (2) requiring that certain investigators be retirement system members; at beginning of (3), after "sheriffs", inserted "and investigators" and at end substituted "subsection (4)" for "subsection (2)"; in first sentence of (4), after "employed", substituted "in a position covered by the retirement system" for "as a sheriff"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 in (3), at end, substituted reference to 19-7-1101 for reference to subsection (2); substituted (4) regarding inactive vested member for former subsection that read: "A retired sheriff who is employed as a sheriff after retirement for less than 60 working days in a calendar year is excluded from membership. The retirement allowance of a retired sheriff so employed must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year"; inserted (5) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

The codifier codified the reference to 19-7-1101 at the end of (3) instead of the reference to subsection (4) because Ch. 265 deleted former (4).

1987 Amendment: In (1), at end of second sentence, inserted exception clause; and inserted (2) excluding retired Sheriff who is temporarily employed as a Sheriff.

Section Not Codified: Section 68-2607(part) was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 7, Ch. 178, L. 1974, as amended by sec. 3, Ch. 59, L. 1977.

Administrative Rules

ARM 2.43.403 Optional membership.
ARM 2.43.418 Elected officials.
ARM 2.43.440 Service purchases by inactive vested members.
ARM 2.43.506 Return to covered employment by retiree.

19-7-302. Ineligibility for membership in public employees' retirement system.

Compiler's Comments

2005 Amendment: Chapter 259 inserted (3) providing that after July 1, 2005, a detention officer is not eligible to join the public employees' retirement system and that the system's laws do not apply to the detention officers, except as provided in 19-7-301; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendments — Composite Section: Chapter 261 inserted (2) restricting investigator membership in the Public Employees' Retirement System; in (3), after "sheriff", inserted "or investigator" and at end substituted "membership in this retirement system" for "July 1, 1974"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 at end of (1), after "sheriffs", deleted "except as provided in 19-7-301"; and made minor changes in style. Amendment effective July 1, 1993.

Style changes in (1) and (3) were slightly different in the two chapters. In each case, the codifier chose the more appropriate of the two.

19-7-312. Transfer of membership — purchase of previous service.

Compiler's Comments

2003 Amendment: Chapter 429 after "member's" substituted "service credit" for "creditable service" and at end substituted "19-2-715" for "19-7-802". Amendment effective July 1, 2003.

Effective Date: Section 7, Ch. 261, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 4
Contributions and Refunds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-7-402. Sources of money in fund.

Compiler's Comments

1999 Amendment: Chapter 562 in first sentence substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in introduction substituted "division" for "board", substituted "pension trust fund" for "sheriffs' retirement system account", and after "fund" deleted former (1) and (2) that read: "(1) all accumulated deductions paid into the public employees' retirement system by any sheriff during any period of prior service, as defined in this chapter; plus

(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city"; in (2) substituted "contributions by members as required by this chapter" for "contributions by sheriffs as defined in this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-403. Member's contributions deducted.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "member's contribution is" for "member shall contribute into the pension trust fund", before "compensation" deleted "monthly", and at end deleted "which must be deposited to the member's credit in the pension trust fund". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (4) near end of first sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1997 Amendment: Chapter 248 in (1), near middle, substituted "9.245%" for "7.865%"; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in (1) increased percentage from 7% to 7.865%. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: In (1) near end, after "shall be", deleted "deducted from his salary and"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

19-7-404. Employer contributions.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "pay 9.535% of the compensation paid to all of the employer's employees, except those properly excluded from membership" for "pay monthly 9.535% of each member's gross compensation into the pension trust fund created by this chapter". Amendment effective July 1, 2005.

2001 Amendment: Chapter 574 in (2) near middle after "may" inserted "subject to 15-10-420" and substituted "tax on the taxable value of all taxable property" for "special tax on the

assessable property" and deleted former second sentence that read: "This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county." Amendment effective July 1, 2001.

1997 Amendment: Chapter 248 in (1) substituted "9.535%" for "8.535%". Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in (1) increased percentage from 7.67% to 8.535%. Amendment effective July 1, 1995.

1993 Amendments: Chapter 261 at beginning of (1) substituted "employer" for "various counties of Montana"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 in (1) substituted "gross compensation" for "gross salary" and substituted "pension trust fund" for "retirement account". Amendment effective July 1, 1993.

1985 Amendment: In (1) increased county contribution from 7.62% to 7.67%.

1981 Amendment: Changed counties' contributions from 7.55% to 7.62%; and added (2) authorizing special county property tax.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Section Not Codified: Section 68-2605(2), R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 5, Ch. 178, L. 1974.

19-7-410. Contributions based on total compensation when member receives disability compensation.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Part 5
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-7-501. Eligibility for service retirement.

Compiler's Comments

2001 Amendment: Chapter 99 near middle after "membership service" inserted "has attained normal retirement age and". Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 deleted (2) and (3) that read: "(2) A member electing to retire shall apply in writing to the board.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 65th birthday.

(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of the term of office. An official electing this option may not earn service or compensation for purposes of final average salary under the retirement system in that month, and compensation earned in that month is not subject to employer or member contributions"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax

status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 162 in (1), after "A member", deleted "initially elected or appointed before July 1, 1989" and substituted "20 years" for "24 years"; and deleted (1)(b), which allowed a member elected or appointed on or after July 1, 1989, with at least 24 years of service and who was 50 or more years old to retire on a service retirement benefit. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1)(a), before first "service", inserted "membership" and at end substituted "service retirement benefit" for "service retirement allowance"; in (1)(b), before first "service", inserted "membership", substituted "terminated service" for "terminated covered employment", and at end substituted "service retirement benefit" for "service retirement allowance"; in (3)(a) substituted "retirement benefit" for "retirement allowance", before "service" deleted "membership", and substituted "inactive member" for "terminated member"; in (3)(b) substituted "retirement benefit" for "retirement allowance" and substituted "inactive member" for "terminated member"; in (3)(c), in second sentence, substituted "compensation for purposes of final average salary under the retirement system" for "salary credits" and at end substituted "member contributions" for "employee contributions"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendments: Chapter 122 inserted (1)(a) relating to member initially elected or appointed before July 1, 1989, who has completed at least 24 years of service; in (1)(b) substituted "member initially elected or appointed on or after July 1, 1989" for "sheriff in service", decreased years of service to 24 years from 25 years, and decreased age to 50 years from 55 years; and in (2) made minor change in phraseology relating to application in writing. Amendment effective July 1, 1989.

Chapter 196 near middle of (1), after "55 years", inserted "and terminated covered employment" and at end, after "board", deleted "submitted not less than 30 days or more than 90 days from the desired date of retirement"; at beginning of (3)(a) inserted exception clause, after "allowance" substituted "may" for "must", and at end, after "service", inserted "or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application"; inserted (3)(b) that read: "(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 65th birthday"; inserted (3)(c) regarding optional retirement of an elected official; and made minor changes in phraseology and punctuation. Amendment effective March 20, 1989.

Composite: Because this section was amended by Ch. 122 and Ch. 196, L. 1989, the amendments made by Ch. 196 have been renumbered as subsections (3)(a) through (3)(c). The renumbering does not affect the meaning of the amendments.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: Deleted former (2) that read: "Retirement is compulsory for any nonelected sheriff at age 65, except in the case of undersheriffs."

1983 Amendment: In (1), deleted last sentence, which read: "The application must state the date he desires to be retired."; inserted (3) specifying date of commencement of retirement allowance.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647, 1711.

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

19-7-502. Retirement option.

Compiler's Comments

2003 Amendment: Chapter 429 in first sentence near beginning after "5" inserted "but less than 20", after "service" deleted "and who has not met the minimum eligibility requirements for service retirement", and before "retirement benefit" deleted "early"; and in second sentence near beginning before "retirement benefit" deleted "early" and after "member's" inserted "service". Amendment effective July 1, 2003.

1997 Amendment: Chapter 248 near beginning substituted "at least 5 years" for "15 years" and after "service" inserted "and who has not met the minimum eligibility requirements for service retirement". Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in first sentence, after "service", deleted "who has reached age 50" and after "benefit" inserted "commencing no sooner than the first day of the month following the member's 50th birthday"; and in second sentence substituted "20 years" for "24 years". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 substituted present text regarding early retirement option for former section that read: "If a member has served 15 years of creditable service as a sheriff and has reached the age of 50 years, he is granted the option and privilege of retiring, and in such case his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed 24 years of creditable service or reached age 60, whichever is less." Amendment effective July 1, 1993.

1989 Amendment: Near beginning decreased years of creditable service to 15 from 20 and decreased age to 50 years from 55 years and near end decreased base payment years to 24 from 25 and age to 60 years from 65 years. Amendment effective July 1, 1989.

1981 Amendment: Deleted "had he not retired" and added "or reached age 65, whichever is less" at the end of the section.

19-7-503. Service retirement benefit.

Compiler's Comments

2001 Amendment: Chapter 99 near middle of (1) after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2) substituted text relating to calculation of postretirement death payment for member who dies without contingent annuitant for former text that read: "If a member dies after retirement and had not elected an optional retirement benefit provided for in 19-7-1001, the member's designated beneficiary must be paid the excess, if any, of the member's accumulated contributions at the time of retirement less payments made to the retired member." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 248 in (1) substituted "2.5%" for "2.0834%". Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in (1), before "is 2.0834%", deleted "with 24 years or less of membership service" and at end deleted "up to a maximum of 50% of final average salary"; and deleted former (2), which provided that the benefit must be increased for a member who contributes after 24 years of service credit by 1.35% of the member's final average salary for each year of service credit in excess of 24 years, up to a maximum of 60% of the member's final average salary. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1), in two places, substituted "final average salary" for "final salary", near beginning substituted "service retirement benefit" for "service retirement allowance", near middle substituted "membership service" for "creditable service", and near end substituted "year of service credit" for "year of creditable service"; in (2), in two places, substituted "final average salary" for "final salary", near beginning substituted "retirement benefit" for "retirement allowance", after first "service" inserted "credit", and substituted "each year of service credit in excess of 24 years" for "each year of creditable service in excess of 24 years of service"; in (3) substituted "optional retirement benefit" for "optional retirement allowance" and before "beneficiary" inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1) and in two places in (2) decreased from 25 to 24 the number of years of creditable service; and in (1) increased percentage rate from 2% to 2.0834%. Amendment effective July 1, 1991.

Applicability: Section 2, Ch. 78, L. 1991, provided: "[This act] applies to members of the sheriffs' retirement system, as established in 19-7-102, retiring on or after July 1, 1991."

1985 Amendment: In (1) near beginning after "of any", deleted "member's", and after "allowance" inserted "granted to a member with 25 years or less of creditable service"; in (2), after "years of service by", substituted "1.35% of his final salary for each year of creditable service in excess of 25 years of service, up to a maximum of 60% of his final salary" for "an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of 25 years of service"; and inserted (3) providing for refund of excess contributions in certain cases.

Cost-of-Living Increase: Section 1, Ch. 393, L. 1985, provided: "Effective July 1, 1985, a member of the sheriffs' retirement system retired on or before July 1, 1985, or his beneficiary is entitled to receive a 5% increase in his service or disability retirement allowance or survivorship allowance."

Administrative Rules

ARM 2.43.406 Basic period of service.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 52.

Part 6
Disability Retirement Benefits

Part Administrative Rules

ARM 2.43.607 Payment to an estate.

Part Collateral References

Determination of whether peace officer's disability is service-connected for disability pension purposes. 12 ALR 4th 1158.

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-7-601. Disability retirement benefit.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) at beginning substituted "A member who becomes disabled must be granted a disability retirement benefit that is" for "In the case of the disability of a member, regardless of the member's length of service, a disability retirement benefit must be awarded to the member based on" and before "service retirement" deleted "member's"; in (2) after "service" deleted "as a member" and substituted (2)(a) concerning benefit before completing 20 years of service and (2)(b) concerning benefit after completing 20 years of service for "then the member must be awarded a benefit of one-half of the member's highest average compensation"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in first sentence, near beginning before "disability", deleted "permanent total", substituted "disability retirement benefit" for "disability retirement allowance", and substituted "member's service retirement benefit under 19-7-503" for "member's annuity and the state annuity"; at beginning of second sentence, before "disability", deleted "total permanent", substituted "benefit" for "allowance", and at end substituted "final average salary" for "final salary"; deleted (2) that read: "(2) "Total disability" means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

Cost-of-Living Increase: Section 1, Ch. 393, L. 1985, provided: "Effective July 1, 1985, a member of the sheriffs' retirement system retired on or before July 1, 1985, or his beneficiary is

entitled to receive a 5% increase in his service or disability retirement allowance or survivorship allowance."

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Determination whether peace officer's disability is service-connected for disability pension purposes. 12 ALR 4th 1158.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

19-7-612. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

2005 Amendment: Chapter 36 in (3) at end of first sentence substituted "sheriff's office" for "sheriff's department". Amendment effective October 1, 2005.

1997 Amendment: Chapter 370 in (1), at end of fourth sentence, inserted "or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability"; in (2)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (2)(b) regarding applicability of standards necessary for reinstatement; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.508 through 2.43.515 Periodic medical review of disability retirees.

Part 7
Postretirement Benefits and Benefit Increases

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

Part Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

19-7-711. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

Part 8
Service Credit

Part Administrative Rules

ARM 2.43.425 Incomplete payments.

19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 36 in (1) in first sentence in two places substituted "sheriff's office" for "sheriff's department". Amendment effective October 1, 2005.

Chapter 329 in (4) in second sentence near middle after "include the" deleted "appropriate reduction in the retirement benefit for an" and after "retirement benefit" inserted "if any"; in (5)(a) in third sentence substituted "paid pursuant to 19-2-803" for "made to the child's appointed guardian for the child's use"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1) in first sentence after "service" inserted "credit"; and in (4) in two places substituted "service credit" for "service credited". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 inserted (2) allowing a member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation to remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system; in (4) near beginning of third sentence after "final salary or" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 in (3) deleted fifth sentence that read: "The combined benefit may not exceed 60% of the member's final salary or final average salary." Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 throughout section substituted references to member or retired member for references to officer and substituted references to retirement benefit, optional retirement benefit, or service retirement benefit for references to retirement allowance, optional retirement allowance, or service retirement allowance; in (3), in third sentence, substituted "highest compensation" for "highest salary"; in (4) substituted "survivor or contingent annuitant and the continuing benefit" for "beneficiary and the continued benefit"; in (4)(a), near beginning of first sentence, substituted "the surviving spouse must receive a benefit equal" for "the officer's surviving spouse, if there is one, shall, for as long as the spouse remains unmarried, receive from the fund a sum equal" and before "service retirement" deleted "officer's", at beginning of second sentence substituted "If the retired member" for "If the officer leaves one or more dependent children, then upon his death, if he" and after "death" deleted "or remarriage", and in remainder of subsection, in three places, substituted "benefits" for "payments"; in (4)(b), after "benefit", deleted "the officer's beneficiary, designated under 19-7-602, shall receive"; at beginning of (4)(b)(i) substituted "the contingent annuitant must receive a continuing benefit" for "an annuity"; in (4)(b)(ii) substituted "accumulated contributions" for "accumulated deductions" and at end substituted "to the retired member must

be paid to the retired member's designated beneficiary" for "to the officer"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

1985 Amendment: In (2) near beginning, after "Eligibility for", inserted "and calculation of"; in (3) inserted second sentence requiring Sheriffs' retirement system portion to be reduced for optional retirement allowance; and inserted (4) establishing formula for determination of benefit after death of retired officer.

Case Notes

Retirement Under Consolidated Government — Benefits From Last System to Which Contributed: Plaintiff retired as a law enforcement officer from Butte-Silver Bow. Prior to the city-county consolidation, he was a Deputy Sheriff. When he retired and applied for benefits, the State calculated options to be offered him under 19-7-701 (renumbered 19-7-1001), the Sheriffs' Retirement System. Plaintiff contended he was entitled to benefits under 19-9-804 and 19-9-911 (renumbered 19-9-1101) of the Police Officers' Retirement System. All parties agreed that eligibility was determined under 19-7-308(1) (renumbered 19-7-801(1)). The Supreme Court held that the statutory provisions are clear and unambiguous. In such a case, rules of statutory construction have no application, so that the court gave no deference to the agency's interpretation. The dispute centered around 19-7-308(2) (renumbered 19-7-801(2)) and whether it merely determines which laws govern eligibility for death benefits or also which laws govern calculation of death benefits. The court held that under 19-7-308(2) (renumbered 19-7-801(2)) death benefits are calculated according to the provisions of the system to which the officer last made contributions. The codification instruction placing 19-7-308 (renumbered 19-7-801) under the provisions of the Sheriffs' Retirement System was only for ease of reference as between the systems. Death benefits are calculable and payable under the Police Officers' Retirement System. (See 2001 amendment.) Bay v. St., 212 M 258, 688 P2d 1, 41 St. Rep. 1725 (1984).

19-7-803. Application to purchase military service.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "15 years of service credit"; and deleted former (4) that read: "(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit." Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", substituted "5 years of membership service" for "15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (2) that read: "(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation"; at end of (1)(b) substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning purchase of military service credit; inserted (3) concerning method of purchasing service credit; deleted former (4) that read: "(4) Military service credit purchased under this section subsection (1) or (2) is not membership service and may not be used in determining the member's eligibility for a service retirement benefit"; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(3), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 76, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 in (1) at beginning inserted exception clause, after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit", near middle after "prior to retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end deleted "up to a maximum of 5 years, except as provided in subsection (3), if the member is not otherwise eligible to receive credit"; in (2) at beginning substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify military service, the member shall contribute to the account the actuarial cost of granting the service, to be determined by the board" and deleted former second and third sentences that read: "The member may not qualify more of the member's military service than the member has service credits in the sheriffs' retirement system in excess of 15 years. Military

service purchased under this section is not membership service and may not be used in determining eligibility for a service retirement benefit"; in (3) substituted language regarding a member's ineligibility to purchase military service for former language that read: "If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify the member's military service under subsection (1)"; deleted former (3) that read: "(3) The combined total purchase of additional years of service under the provisions of 19-7-804 and this section may not exceed 5 years"; inserted (4) providing that purchased military service is not considered membership service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time." Amendment effective July 1, 1999.

1993 Amendment: Chapter 265 in (1), near beginning of first sentence after "service", inserted "credit", at end of second sentence, after "based on", substituted "the most recent actuarial valuation of the system" for "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, plus accrued interest. Interest accrues from the date on which the member has completed the number of service years in excess of 15 needed to qualify the military service to the date he contributes", in third sentence, after "has service", inserted "credits", and in fourth sentence, after "section", inserted "is not membership service and" and at end, after "service retirement", inserted "benefit"; in (2), in first sentence, substituted "military retirement benefits" for "normal service retirement benefits"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), near end of first sentence, inserted exception clause; and inserted (3) limiting purchase to combined total of 5 years of service. Amendment effective July 1, 1991.

Applicability — Commencement of Increase: Sections 4 and 5, Ch. 31, L. 1987, provided:

"Section 4. Applicability. This act applies retroactively, within the meaning of 1-2-109, to persons retiring after January 1, 1986.

Section 5. Payments for military service made by retired sheriffs — commencement of allowance increase. For a retired sheriff who has retired before the effective date of this act:

(1) payments to qualify military service under section 1 must be made within 60 days of the effective date of this act; and

(2) the increase in the retired sheriff's retirement allowance resulting from qualifying service under section 1 must commence on the first day of the month after the total payment for the service is received by the board."

This act was effective February 20, 1987.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.433 Purchase of full-time service by part-time members.
ARM 2.43.437 Military service.

19-7-804. Application to purchase additional service.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 26 and 289 deleted former (3) that read: "(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 429 in (2) in two places and in (3) after references to service inserted "credit"; deleted former (3) that read: "(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803"; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(4), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 77, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application" for "Except as provided in subsection (5), at any time before retirement, a member may make a written election"; deleted former (2) that read: "(2) Service purchased under this

section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service"; at beginning of (3) substituted "Service purchased" for "Service qualified"; inserted (4) regarding crediting of purchased service; deleted former (5) that read: "(5) The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former (4) that read: "(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 562 deleted former (5)(a) that read: "(a) credited in any other retirement system under Title 19"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1), after first "service", inserted "credit" and at end substituted "membership service" for "creditable service"; and in (3)(b) substituted "pension trust fund" for "retirement fund" and at end, after "based on", substituted "the most recent actuarial valuation of the system" for "(i) the member's compensation for the 12 months immediately preceding the date of his election to cover the service under the sheriffs' retirement system; and

(ii) the total contribution rate in effect at the time the service is purchased." Amendment effective July 1, 1993.

Effective Date: Section 4, Ch. 214, L. 1991, provided: "[This act] is effective July 1, 1991."

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.432 "1-for-5" additional service.

ARM 2.43.433 Purchase of full-time service by part-time members.

19-7-805. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 9
Survivorship Benefits and Death Payments

19-7-901. Payments in case of death before retirement.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of (2) and (3) after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 248 in (2), near beginning, substituted "2.5%" for "2.0834%"; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in (2) substituted "survivorship benefit equal to 2.0834% of the member's final" for "retirement benefit based on 2% of the final", after "service credit" deleted "up to a maximum of 25 years", substituted "actuarially reduced from age 65" for "reduced on an actuarially equivalent basis from age 65", and substituted "20 years" for "25 years"; in (3) substituted "survivorship benefit that is no less than one-half of the member's final" for "retirement benefit based on one-half of final"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in introductory clause, in two places before "beneficiary", inserted "designated"; in (1) substituted "accumulated contributions" for "accumulated deductions"; in (2), in two places, substituted "retirement benefit" for "retirement allowance", near beginning substituted "final average salary" for "final salary", after first "service" inserted "credit", near middle substituted "reduced on an actuarially equivalent basis" for "reduced

actuarially", and substituted "membership service" for "creditable service"; in (3), near beginning, substituted "retirement benefit" for "retirement allowance", substituted "final average salary" for "final salary", and after "salary" deleted "reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation"; deleted former (2) that read: "(2) On or before July 1, 1982, a beneficiary who is receiving a death benefit may elect a different option under subsection (1). Any change in options is subject to actuarial adjustments for benefits received prior to the change as determined by the board"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (1)(b), after "age 65", inserted optional retirement calculation method based on 25 years of service.

Cost-of-Living Increase: Section 1, Ch. 393, L. 1985, provided: "Effective July 1, 1985, a member of the sheriffs' retirement system retired on or before July 1, 1985, or his beneficiary is entitled to receive a 5% increase in his service or disability retirement allowance or survivorship allowance."

1981 Amendment: In (1)(b), combined options for members not eligible to retire and members eligible to retire and substituted "reduced actuarially from age 65" for provisions in retirement allowance calculation relating to eligibility and actuarial equivalents; in (1)(c), combined the option for beneficiary who is other than surviving spouse or minor child and the option for beneficiary who is surviving spouse or minor child; changed "less the amount paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable" to "reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation" in the retirement allowance calculation in (1)(c) that applied to both; deleted option of $100 per month per surviving minor child of the deceased member up to a maximum of $300 per month; deleted subsection (2) that granted that same benefit if beneficiary is not surviving spouse; deleted subsection (3) that established period of benefit (no longer than the time it would have taken the deceased member to reach the age of 65 years or more than 15 years, whichever is greater); and added (2) allowing beneficiaries to elect different option before July 1, 1982.

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Part 10
Optional Forms of Retirement Benefits

19-7-1001. Optional forms of benefits — designation of contingent annuitant.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in second sentence inserted "depending on the option selected"; in (1)(a) and (1)(b) substituted "optional retirement benefit" for "reduced amount"; in (1)(c) substituted "a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows" for "upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board"; inserted (1)(c)(i) relating to period certain determinations; inserted (1)(c)(ii) relating to when there is more than one surviving contingent annuitant; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a)(ii) in two places before "family law order" deleted "dissolution settlement or" and after first "family law order" inserted "as defined in 19-2-907"; in (7)(a)(ii) at end substituted "family law order" for "divorce settlement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) near end of second sentence after "contingent annuitant" deleted "that the member or designated beneficiary nominated by written application, executed and filed with the board with the application for benefits"; in (1)(c) after "equivalent amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant; in (4) near middle after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that

is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 217 inserted (5) allowing optional retirement benefits to revert to regular retirement benefits in cases of death of contingent annuitant or dissolution of marriage; and inserted (6) requiring written applications for changes regarding optional retirement benefits to be made within 18 months of qualifying event. Amendment effective October 1, 1999.

Chapter 562 near end of (1) substituted "written application" for "written designation"; inserted (7) allowing retiree receiving optional benefit to change contingent annuitant or option or to convert to regular benefit under certain conditions; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted (1) regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 3—upon his death, one-half of the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 4—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2) regarding written application; inserted (3) regarding cancellation of election of option; and inserted (4) regarding death after retirement and within 30 days of election or changed election. Amendment effective July 1, 1993.

1987 Amendment: In (2)(a) substituted "Option 2" for "Option 1"; in (2)(b) substituted "Option 3" for "Option 2"; and in (2)(c) substituted "Option 4" for "Option 3".

Administrative Rules

ARM 2.43.606 Conversion of optional retirement.

Case Notes

Retirement Under Consolidated Government — Benefits From Last System to Which Contributed: Plaintiff retired as a law enforcement officer from Butte-Silver Bow. Prior to the city-county consolidation, he was a Deputy Sheriff. When he retired and applied for benefits, the State calculated options to be offered him under 19-7-701 (renumbered 19-7-1001), the Sheriffs' Retirement System. Plaintiff contended he was entitled to benefits under 19-9-804 and 19-9-911 (renumbered 19-9-1101) of the Police Officers' Retirement System. All parties agreed that eligibility was determined under 19-7-308(1) (renumbered 19-7-801(1)). The Supreme Court held that the statutory provisions are clear and unambiguous. In such a case, rules of statutory construction have no application, so that the court gave no deference to the agency's interpretation. The dispute centered around 19-7-308(2) (renumbered 19-7-801(2)) and whether it merely determines which laws govern eligibility for death benefits or also which laws govern calculation of death benefits. The court held that under 19-7-308(2) (renumbered 19-7-801(2)) death benefits are calculated according to the provisions of the system to which the officer last made contributions. The codification instruction placing 19-7-308 (renumbered 19-7-801) under the provisions of the Sheriffs' Retirement System was only for ease of reference as between the systems. Death benefits are calculable and payable under the Police Officers' Retirement System. Bay v. St., 212 M 258, 688 P2d 1, 41 St. Rep. 1725 (1984).

Part 11
Reemployment of Retired Members

19-7-1101. Reemployment of retired member.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of (1) after "service for" substituted "60 or more working days" for "at least 60 working days"; in first sentence of (2) after "calendar year" substituted "may not become an active member" for "is excluded from membership"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.404 Required employer reports.

ARM 2.43.506 Return to covered employment by retiree — report.

CHAPTER 8
GAME WARDENS' AND PEACE OFFICERS' RETIREMENT

Chapter Administrative Rules

ARM 2.43.302 Definitions.

ARM 2.43.303 Request for release of information by members.

ARM 2.43.427 Reinstatement — credit for lost time.

ARM 2.43.428 Acceptable documentation of public service employment.

ARM 2.43.433 Purchase of full-time service by part-time members.

Part 1
General Provisions

19-8-101. Definitions.

Compiler's Comments

2005 Amendment: Chapter 366 in definition of motor carrier officer after "transportation" inserted "designated or" and after "pursuant to" inserted "61-10-154 or". Amendment effective October 1, 2005.

2003 Amendment: Chapter 429 in definition of compensation after "remuneration paid" substituted language concerning payment for services or leave for former language that read: "for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made"; in definition of highest average compensation in first sentence after "compensation" substituted "during any 36 consecutive months of membership service" for "any 3 years of continuous service upon which contributions were made", after "served" substituted "at least 36 months" for "3 years", and at end substituted "of service" for "served" and in second sentence after "paid to" substituted "the member" for "an employee"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary in second sentence near beginning after "severance pay" inserted "including payment for compensatory leave". Amendment effective March 29, 2001.

1999 Amendment: Chapter 58 in definition of compensation substituted "any pretax deductions allowed by the Internal Revenue Code" for "any deductions". Amendment effective July 1, 1999.

1997 Amendment: Chapter 223 inserted definitions of motor carrier officer and peace officer or state peace officer; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendments: Chapter 265 inserted definition of compensation; deleted definition of account that read: ""Account" means the Montana state game wardens' retirement pension trust fund"; deleted definition of accumulated deductions or accumulated contributions that read: ""Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, witnessed and filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of contributor that read: ""Contributor" means any person who has accumulated deductions in the account standing to his credit"; substituted definition of final average salary for definition of final salary and near beginning of first sentence substituted "average monthly compensation received by a member" for "average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses", after "total" deleted "retirement", and at end substituted "number of months served" for "number of years served" and in second sentence substituted "retirement benefit" for "retirement allowance" and at end substituted "final average salary" for "final salary"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the contributor"; deleted definition of retired state game warden that read: ""Retired state game warden" means any person in receipt of a retirement allowance under this chapter"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys"; and made minor changes in style. Amendment effective July 1, 1993.

Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

1989 Amendment: In definition of beneficiary substituted "witnessed" for "duly acknowledged". Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1987 Amendment: At end of definition of actuarial equivalent substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

1983 Amendment: In definition of account substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Added "or "accumulated contributions"" to phrases defined in (2); substituted definition of accumulated deductions or accumulated contributions in (2) for "means the total of the amount deducted from the salary of a contributor, paid into the account, and standing to his credit in the account, together with the regular interest thereon"; deleted former subsection (8) defining "involuntary retirement"; deleted former subsection (10) defining "optional retirement age"; deleted former subsection (12) defining "retirement age".

Administrative Rules

ARM 2.43.408 Calculation of service credit on termination of employment.

Collateral References

Officers *key* 94, 99; Pensions *key* 1, et seq.; States *key* 64.1.

67 C.J.S. Officers and Public Employees §122; 70 C.J.S. Pensions and Retirement Plans and Benefits §1, et seq.; 81A C.J.S. States §§112 through 119.

Validity, construction, and effect of provision forfeiting or suspending benefits in event of competitive employment as part of retirement or pension plan. 18 ALR 3d 1246.

Retroactive change in rate of employee's contribution to public pension fund, validity of. 78 ALR 2d 1197.

Abandonment of public office, acceptance or assertion of right to pension or retirement as. 76 ALR 2d 1312.

What constitutes "salary", "wages", "pay", or the like, within pension law basing benefits thereon. 14 ALR 2d 634, superseded by 91 ALR 5th 225.

Provision referring to "employees" as including public officers. 5 ALR 2d 415.

19-8-102. Game wardens' and peace officers' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "retirement plan" for "retirement system". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 223 inserted reference to peace officers; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 before "state game wardens' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1619, 1631, 1712.

19-8-105. Short title.

Compiler's Comments

1999 Amendment: Chapter 51 near middle after "Wardens'" inserted "and Peace Officers'". Amendment effective March 15, 1999.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.405 Membership.
ARM 2.43.406 Basic period of service.
ARM 2.43.408 Calculation of service credit on termination of employment.
ARM 2.43.410 Proof of service.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.

19-8-301. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2005 Amendment: Chapter 329 in (2)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (2)(b) relating to what a lump-sum payment consists of; in (3)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2) near end after "service" inserted "credit". Amendment effective July 1, 2003.

1999 Amendment: Chapter 491 in (1)(d) substituted "wardens" for "the warden" and substituted "employed by the department of corrections" for "of the state prison system". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment: Chapter 223 in (1), after "19-8-302", inserted phrase requiring listed peace officers to be covered under retirement system as long as employed as peace officers; in (1)(a), after "fish, wildlife, and parks", deleted "shall become a member of the retirement system when first becoming a state game warden. All state game wardens are members of the retirement system so long as they are actively employed in that capacity"; inserted (1)(b) through (1)(i) listing peace officers included in retirement system; in (2) decreased from 10 years to 5 years number of years required for inactive vested membership in retirement system; in (3) decreased from less than 10 years to less than 5 years number of years membership required for inactive nonvested membership status; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), near beginning of first sentence after "state game warden", deleted "including all warden supervisory personnel, whose salary or compensation for services is paid out of the department of fish, wildlife, and parks moneys and" and at beginning of second sentence deleted "Except as provided in 19-8-302"; inserted (2) regarding inactive vested

member; inserted (3) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.402 Membership cards.

ARM 2.43.440 Service purchase by inactive vested members.

19-8-302. Public employees' retirement system — transfer of membership.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) near end before "service" deleted "covered". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 near end of (2) after "system by" substituted "filing a written election with the board" for "submitting a written election of intent to the board" (amendment modified by Ch. 442 amendment); and in (3) and in (4) near end after "written election" deleted "of intent". Amendment effective March 21, 2001.

Chapter 442 in (2) near end after "intent" substituted "that must be received by" for "to" and at end substituted "December 31, 2001" for "December 31, 1997". Amendment effective October 1, 2001.

1997 Amendment: Chapter 223 inserted (1) containing exception for becoming member of retirement system; inserted (2) regarding election by members of PERS; in (3), near beginning before "retirement system", inserted "game wardens' and peace officers'" and near middle substituted "within the same state agency" for "in the department of fish, wildlife, and parks"; in (4), after "position", substituted "covered by the game wardens' and peace officers' retirement system" for "as a state game warden"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 deleted former (1) that read: "(1) After July 1, 1963, no new state employee appointed as a state game warden will be eligible for membership in the public employees' retirement system, and the provisions of The Public Employees' Retirement System Act will not apply to state game wardens"; and in (1) and (2), before "30 days", deleted "August 1, 1977, or no later than" and after "position" deleted "whichever is later". Amendment effective July 1, 1993.

Severability Clause: Section 30, Ch. 130, L. 1963, was a severability clause.

19-8-308. Transfer of service.

Compiler's Comments

2003 Amendment: Chapter 429 near middle after "service" inserted "credit" and at end substituted "19-2-715" for "19-8-902". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 near middle after "member's" deleted "creditable". Amendment effective March 21, 2001.

Effective Date: Section 14, Ch. 223, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 5
Contributions and Refunds

19-8-501. Contributions to pension trust fund.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in two places substituted "pension trust fund" for "account"; near beginning of introductory clause substituted "division" for "board" and after "credited" deleted "by the board"; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-8-502. Member's contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "member's contribution is" for "member is required to contribute into the pension trust fund", before "compensation" deleted "monthly", and at end deleted "which must be deposited to the member's credit in the pension trust fund". Amendment effective July 1, 2005.

2001 Amendments — Composite Section — Coordination: Section 2(2), Chapter 98, L. 2001, a coordination section, provided that if either House Bill No. 294 or Senate Bill No. 284 and Senate Bill No. 89 and [this act] are passed and approved, then 19-8-502 is amended as follows: near middle of (1) substituted "10.56% of the member's monthly compensation" for "8.5% of the member's monthly compensation". House Bill No. 294 was passed and approved as Ch. 149, L. 2001, and Senate Bill No. 89 was passed and approved as Ch. 309, L. 2001. Amendment effective October 1, 2001.

Chapter 99 in (4) near end of first sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 287 in (1) increased contribution rate from "7.9%" to "8.5%"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendments: Chapter 249 increased member's contribution rate from 7% to 7.9%.

Chapter 464 in (1) near end, after "shall be", deleted "deducted from his salary and"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Attorney General's Opinions

Contractual Obligations of Employer to Increase Contributions: Employee contributions to the Montana State Game Wardens' (now Game Wardens' and Peace Officers') Retirement System cannot be increased unless benefits which will accrue to members at retirement are increased; however, the state, through legislation, may increase the employer contributions without any increase in benefits which will accrue to members at retirement. 35 A.G. Op. 4 (1973).

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

Validity of retroactive change in rate of public employee's contribution to public pension fund. 78 ALR 2d 1197.

19-8-504. Employer's contribution.

Compiler's Comments

2005 Amendment: Chapter 329 substituted first sentence providing what an employer must contribute for "Each month, state employers shall pay to the pension trust fund a sum equal to 9% of the total compensation paid to their covered employees." Amendment effective July 1, 2005.

1997 Amendments — Composite Section: Chapter 223 near beginning substituted "state employers" for "state treasurer", after "trust fund" deleted "out of the department of fish, wildlife, and parks funds", and at end substituted "the total compensation paid to their covered employees" for "all members' salaries". Amendment effective July 1, 1997.

Chapter 287 increased required state contribution monthly rate from "8.15%" to "9%". Amendment effective July 1, 1997.

Chapter 532 inserted second sentence requiring a departmental funding request to defray the state's costs of implementing this section. Amendment effective July 1, 1997.

The codifier has chosen to codify the last sentence although it was plainly intended to refer only to game wardens who are employees of the Department of Fish, Wildlife, and Parks.

1995 Amendment: Chapter 509 at beginning deleted "To fund the employer's portion of the normal cost of benefits under this chapter" and substituted "8.15%" for "7.15%"; deleted (1)(b) that read: "(b) out of funds collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or funds distributed under 3-10-601(4), an amount equal to 1% of all members' salaries"; deleted (2) that read: "(2) In addition to the contributions provided in subsection (1), the state treasurer shall pay to the pension trust fund the balance of the funds

distributed to the fish and game account pursuant to 3-10-601 until the unfunded liability in the pension trust fund is fully paid and a verification statement to that effect is given to the state treasurer by the board"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments — Composite Section: Chapter 265 in three places substituted "pension trust fund" for "account", near middle substituted "collections must be paid" for "collections are statutorily appropriated", and near end substituted "is paid" for "is solvent"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 450 at beginning of introductory clause of (1) inserted "To fund the employer's portion of the normal cost of benefits under this chapter" and at end substituted "pension trust fund" for "account"; in (1)(a) and in two places in (1)(b) substituted "funds" for "moneys"; at end of (1)(b) substituted "an amount equal to 1% of all members' salaries" for "all such collections are statutorily appropriated to the account"; at beginning of (2) inserted "In addition to the contributions provided in subsection (1), the state treasurer shall pay to the pension trust fund the balance of the funds distributed to the fish and game account pursuant to 3-10-601" and near middle substituted "fully paid" for "solvent"; and made minor changes in style. Amendment effective July 1, 1993.

The Ch. 265 substitution of "collections must be paid" for "collections are statutorily appropriated" in (1)(b) was rendered meaningless by the Ch. 450 amendment.

1993 Statement of Intent: The statement of intent attached to Ch. 450, L. 1993, provided: "A statement of intent is required for this bill because [section 2] [19-8-1110(4)] gives the public employees' retirement board authority to adopt administrative rules to implement the cost-of-living adjustment provided in the bill.

It is the intent of the legislature to provide a one-time ad hoc cost-of-living adjustment to each member of the game wardens' [now game wardens' and peace officers'] retirement system who has been retired for 5 years or more, to the member's beneficiary, or to the member's contingent annuitant. The cost of the adjustment will be paid by increasing the amortization period of the system's unfunded liabilities.

It is further the intent of the legislature that the proposed statutory retirement committee established in House Bill No. 65 be assigned by the legislative council to develop legislation providing an equitable guaranteed annual benefit adjustment for each of Montana's statewide public retirement systems and that the legislation be presented to the 54th legislature for consideration. It is further the intent of the legislature that the cost of holding hearings and developing the legislation be paid by retirement systems and donations from public employee and retiree associations."

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

1991 Amendment: Near middle inserted reference to subsections (1) through (5) of 87-1-601. Amendment effective March 1, 1992.

Applicability: Section 22, Ch. 609, L. 1991, provided: "On passage and approval of [this act], the board of land commissioners shall commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands [functions transferred to department of natural resources and conservation] and the department of fish, wildlife, and parks shall commence proceedings and arrangements necessary to establish a recreational use license to be effective March 1, 1992." Approved April 24, 1991.

1987 Amendment: Near middle, after "87-1-601", inserted "or moneys distributed under 3-10-601(4)".

1985 Amendment: Near middle of section, after "all such collections", inserted "are statutorily appropriated to the account".

1981 Amendment: Changed state's contribution from 7% to 7.15%.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Attorney General's Opinions

Contractual Obligations of Employer to Increase Contributions: Employee contributions to the Montana State Game Wardens' (now Game Wardens' and Peace Officers') Retirement System cannot be increased unless benefits which will accrue to members at retirement are increased; however, the state, through legislation, may increase the employer contributions without any increase in benefits which will accrue to members at retirement. 35 A.G. Op. 4 (1973).

Part 6
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-8-601. Time of retirement.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning after "A member" deleted "in service", near middle after "50 years" substituted "has attained normal retirement age and" for "and terminated service", and at end after "retirement benefit" substituted "by filing a written application with the board" for "upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 deleted (2) that read: "(2) (a) Except as provided in subsection (2)(b), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 60th birthday"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in three places substituted "retirement benefit" for "retirement allowance"; in (1) substituted "membership service" for "creditable service" and substituted "terminated service" for "terminated covered employment"; in (2)(a) substituted "last day of service" for "last day of covered employment" and substituted "inactive member" for "terminated member"; in (2)(b) substituted "inactive member" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1), after "service", deleted "and who has", after "50 years" inserted "and terminated covered employment", and at end, after "board", deleted "setting forth at what time, not less than 30 days or more than 90 days subsequent to the filing thereof, he desires to be retired"; at beginning of (2)(a) inserted exception clause, after "allowance" substituted "may" for "must", and after "employment" inserted "or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application'; and inserted (2)(b) that read: "(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 60th birthday"; and made minor changes in phraseology and punctuation. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendments: Chapter 249 in (1) changed "55" to "50". Chapters 249 and 86 deleted former (2) that read: "Retirement shall be compulsory at age 60."

1983 Amendment: Inserted (3) specifying date of commencement of retirement allowance.

1981 Amendment: In (1) decreased number of years service needed from 25 years to 20 years.

Applicability: Section 5, Ch. 592, L. 1981, provided: "The amendments made by sections 2, 3, and 4 of this act apply only to persons who join the retirement system following the effective date of this act." Effective October 1, 1981.

Case Notes

Original Action Involving Interpretation of Statute Allowed Without Exhaustion of Administrative Remedies: Game warden mandatorily retired under 19-8-601 lost a complaint proceeding before the Montana Commission for Human Rights, did not pursue further administrative remedies, and brought a District Court action to declare the statute invalid. The exhaustion of administrative remedies doctrine did not preclude redress, because: (1) the court action was an original action and not a judicial review of an administrative action, and (2) the Commission ruling was an interpretation of law that must be made by the judiciary. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983). (See the 1985 amendment note to this section. The amendment deleted the compulsory retirement provision.)

Valid Reason for Mandatory Retirement — Legislative, Not Judicial Task: Since compulsory game warden (now game wardens' and peace officers') retirement statute contained no qualifications or justification, it would be in excess of the authority of a court hearing a warden's suit challenging the statute's validity to hold a factfinding hearing to determine whether there was a basis for the age discrimination grounded in the reasonable demands of the position. Such a determination is a legislative function; the effort would be great; and the Legislature, not the courts, has the resources for such an undertaking. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983). (See the 1985 amendment note to this section. The amendment deleted the compulsory retirement provision.)

Mandatory Game Warden Retirement Without Exception or Justification — Impliedly Repealed: Sections 49-2-303 and 49-3-201, making it unlawful for an employer to refuse employment or discriminate against an employee because of his age when the reasonable demands of the position do not require an age distinction and requiring state officials and personnel to recruit, appoint, treat, and promote personnel without regard to age, being later enacted statutes than the provision of 19-8-601 requiring compulsory retirement of game wardens at age 60, impliedly repealed the retirement provision in order to effectuate the clear intent of the Legislature to prevent all age discrimination in employment unless age is related to job performance. The antidiscrimination statutes are very broad prohibitions with very limited exceptions and indicate legislative intent to abolish all discrimination in employment except under the most limited circumstances. Furthermore, there must be justification for any age discrimination to bring it within the purview of a Title 49 exception to the antidiscrimination prohibitions, and the exceptions will be strictly construed. The game warden (now game wardens' and peace officers') retirement statute contains no justification or qualification. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983), distinguished in Ross v. Great Falls, 1998 MT 276, 291 M 377, 967 P2d 1103, 55 St. Rep. 1127 (1998). (See the 1985 amendment note to this section. The amendment deleted the compulsory retirement provision.)

Compliance With Federal Law — Age Discrimination Act Inapplicable: Validity of this section's provision (as it read prior to 1985 amendment) that "retirement shall be compulsory at age 60" did not depend upon whether the classification of persons over 60 is a reasonable one under the terms of the federal Age Discrimination in Employment Act of 1967, for Congress, in the exercise of its power under the Commerce Clause, may not regulate the working conditions of state employees engaged in purely governmental functions, and the federal act was enacted under the Commerce Clause. Taylor v. Dept. of Fish & Game, 523 F. Supp. 514, 38 St. Rep. 1653 (D.C. Mont. 1981).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 ALR 2d 506.

19-8-603. Service retirement benefit.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 98 after "equal to" substituted "2.5%" for "2%". Amendment effective October 1, 2001.

Chapter 99 near middle after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "(1) Upon retirement from service, the service retirement allowance consists of the state annuity plus the member's annuity.

(2) Except as provided in 19-8-816, the amount of the retirement allowance must equal 2% of the member's final salary for each year of creditable service." Amendment effective July 1, 1993.

1989 Amendment: At beginning of (2) inserted exception clause. Amendment effective July 1, 1989.

1985 Amendment: In (1) deleted second and third sentences that read: "The member's annuity is the actuarial equivalent of his accumulated deductions at the time of his retirement. The state annuity is an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half of his final salary with 25 years of service"; and in (2) substituted "The amount of the retirement allowance must equal 2% of the member's final salary for each year of creditable service" for "The retirement allowance of any member who contributes after 25 years of service shall be increased by an amount which is the actuarial equivalent of an annuity based on the member's contributions and the state contributions made after 25 years of service and standing to the member's credit at the time of his retirement".

Administrative Rules

ARM 2.43.406 Basic period of service.

Attorney General's Opinions

Contractual Obligations of Employer to Increase Contributions: Employee contributions to the Montana State Game Wardens' (now Game Wardens' and Peace Officers') Retirement System cannot be increased unless benefits which will accrue to members at retirement are increased; however, the state, through legislation, may increase the employer contributions without any increase in benefits which will accrue to members at retirement. 35 A.G. Op. 4 (1973).

Collateral References

Pensions *key* 3.

70 C.J.S. Pensions §127.

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

19-8-604. Early retirement benefit.

Compiler's Comments

2003 Amendment: Chapter 429 near middle after "reaching" inserted "normal" and after "paid a" inserted "service". Amendment effective July 1, 2003.

1997 Amendment: Chapter 223 reduced minimum service for early retirement benefit from 10 years to 5 years. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", before "discontinued" deleted "involuntarily", substituted "membership service" for "total service", after "be paid" deleted "in one of the following ways that he elects:

(1) the full amount of his accumulated deductions", and substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: In (2), substituted "19-8-603" for "19-8-602".

1981 Amendment: Substituted (2) referring to a retirement allowance calculated under 19-8-602 for a provision allowing an annuity actuarially based upon accumulated deductions plus the present value of the state annuity (for prior version see sec. 10, Ch. 8, L. 1977).

Applicability: Section 5, Ch. 592, L. 1981, provided: "The amendments made by sections 2, 3, and 4 of this act apply only to persons who join the retirement system following the effective date of this act." Effective October 1, 1981.

Part 7
Disability Retirement Benefits

Part Administrative Rules

ARM 2.43.607 Payment to an estate.

Part Collateral References

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-8-701. Disability retirement benefit.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) near beginning substituted "becomes" for "is determined by the board to be" and after "benefit" inserted "under 19-8-603"; substituted (2) concerning benefit of member with 5 years of service who becomes disabled in line of duty either before or after completing 20 years of membership service for former text that read: "If the disability is a direct result of any service to the state in the line of duty and the member has at least 5 years of membership service, the member who is disabled must be retired on a disability retirement benefit of not less than one-half of the member's highest average compensation"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at end of (2) after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1997 Amendment: Chapter 223 in (2), near beginning, substituted "state" for "department of fish, wildlife, and parks", reduced from 10 years to 5 years number of years of membership service required for disability retirement, and before "one-half" inserted "not less than"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present text regarding disability retirement benefit for former section that read: "(1) If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement, except as provided in 19-8-816.

(2) If the total disability is a direct result of any service to the department of fish, wildlife, and parks in line of duty and the contributor has had over 10 years of service, the state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half of his final salary, except as provided in 19-8-816." Amendment effective July 1, 1993.

1989 Amendment: At end of (2) and (3) inserted exception clause. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

Relationship between performance of official duties and subsequent disability or death, for purpose of pension. 85 ALR 2d 1048.

19-8-712. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) near middle of third sentence after "recipient may" substituted "file a written application with the board requesting that the board reconsider" for "submit a written application to the board to request the board to reconsider" and in fourth sentence after "reconsideration must be" substituted "filed" for "made in writing". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2) in third sentence after "may" inserted "submit a written application to the board to". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments: Chapter 223 in (4), in two places, substituted reference to member's former employer for "department of fish, wildlife, and parks" and at end of first sentence substituted "peace officer" for "game warden". Amendment effective July 1, 1997.

Chapter 370 in (1), at end of fourth sentence, inserted "or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability"; in (3)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (3)(b) regarding applicability of standards necessary for reinstatement; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; in (2), at end of first sentence, substituted "monthly benefit" for "monthly allowance"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (2) relating to procedure when the Board determines a recipient should no longer be subject to medical review; at beginning of (3) substituted "recipient" for "person" and after "because" inserted "the board has determined that"; in first sentence of (4) substituted "recipient" for "member"; corrected internal reference; and made minor changes in phraseology. Amendment effective March 18, 1989.

Administrative Rules

ARM 2.43.508 through 2.43.515 Periodic medical review of disability retirees.

Part 8
Optional Forms of Benefit Payments

Part Compiler's Comments

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend 19-8-802 (now repealed) but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust

excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

Part Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

19-8-801. Optional forms of benefits — designation of contingent annuitant.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in second sentence inserted "depending on the option selected"; in (1)(a) and (1)(b) substituted "optional retirement benefit" for "reduced amount"; in (1)(c) substituted "a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows" for "upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board"; inserted (1)(c)(i) relating to period certain determinations; inserted (1)(c)(ii) relating to when there is more than one surviving contingent annuitant; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a)(ii) in two places before "family law order" deleted "dissolution settlement or" and after first "family law order" inserted "as defined in 19-2-907"; in (7)(a)(ii) at end substituted "a family law order" for "the divorce settlement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at end of second sentence after "contingent annuitant" deleted "that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant; in (4) near middle after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 217 inserted (5) allowing optional retirement benefits to revert to regular retirement benefits in cases of death of contingent annuitant or dissolution of marriage; and inserted (6) requiring written applications for changes regarding optional retirement benefits to be made within 18 months of qualifying event. Amendment effective October 1, 1999.

Chapter 562 inserted (7) allowing retiree receiving optional benefit to change contingent annuitant or option or to convert to regular benefit under certain conditions. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted (1) regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 4—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2)

regarding written application; inserted (3) regarding cancellation of election of option; and inserted (4) regarding death after retirement and within 30 days of election or changed election. Amendment effective July 1, 1993.

1987 Amendment: In (2)(a) substituted "Option 2" for "Option 1"; in (2)(b) substituted "Option 3" for "Option 2"; and in (2)(c) substituted "Option 4" for "Option 3".

Administrative Rules

ARM 2.43.304 Actuarial rates and assumptions.

ARM 2.43.606 Conversion of optional retirement.

Part 9
Service Credit

Part Administrative Rules

ARM 2.43.425 Incomplete payments.

19-8-901. Application to purchase military service.

Compiler's Comments

2003 Amendment: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "15 years of service credit". Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", after "at least" substituted "5 years of membership service" for "15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (1)(b) that read: "(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board"; in (1)(b) after "purchase" substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning purchase of service by member with at least 5 years of membership service; inserted (3) providing method for purchase of service credit; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(5), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 87, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause, after "member with" substituted "at least 15 years of service credit may" for "15 years or more of service credit qualified under this chapter may", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written application with the board to qualify all or any portion", and at end after "benefits" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service"; at beginning of (1)(b) substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service" and deleted former second sentence that read: "The member may not qualify more years of military service than the member has years of service credits in excess of 15 years"; inserted (2) establishing conditions of ineligibility to purchase military service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (1) substituted "written application" for "written election". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 deleted former (1) and (2) that read: "(1) A state game warden inducted into the armed forces of the United States has the option to:

(a) continue his payments into the account; or

(b) allow the board to make his payments for him during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to active state game warden status.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a state game warden"; in (1), near beginning, substituted "service credit" for "state service" and at end, after "service", deleted "pursuant to subsections (1) and (2)"; in (2), in first sentence, substituted "pension trust fund" for "retirement fund", after "granting the service" inserted "based on the most recent actuarial valuation of the system as", and after "determined by the board" deleted "based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he

becomes eligible for this benefit to the date he contributes" and in second sentence, near end, substituted "years of service credits" for "years of creditable state service"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.421 Credit for service in uniformed services.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.433 Purchase of full-time service by part-time members.
ARM 2.43.437 Military service.

19-8-903. Employment in United States government.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) in introductory clause after "1970" substituted "may purchase" for "may qualify"; in (3) in two places substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 223 at end of (2)(b) and (3) substituted "peace officer" for "game warden". Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 throughout section substituted references to member for references to state game warden or warden; in (1) substituted "federal employment" for "federal service" and before "retirement system" deleted "game wardens'"; in (1)(a), at end, substituted "membership service" for "service in the game wardens' retirement system"; in (1)(b), after "full-time service", deleted "covered by the game wardens' retirement system" and substituted "employment" for "service"; in (2)(a), at end, substituted "pension trust fund" for "account"; in (2)(b), at beginning, substituted "pay" for "qualify this service by paying"; in (3), in two places near beginning, substituted "compensation" for "salary", before "retirement system" deleted "game wardens'", after "determination of" substituted "final average salary" for "final salary", after "that the" substituted "final average salary" for "final salary", and near end substituted "highest monthly compensation" for "highest annual salary"; and made minor changes in style. Amendment effective July 1, 1993.

Federal Statute: "Title IV, the Intergovernmental Personnel Act of 1970" referred to in this section may be found at 42 U.S.C. 4701 through 4772.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.430 Out-of-state or federal public service.

19-8-904. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 in two places in (2) and in (3) after references to service inserted "credit"; and in (3) after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-8-906, a member with at least 5 years of membership service, may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-8-901, 19-8-903, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.432 "1-for-5" additional service.

19-8-905. Absence due to injury or illness.

Compiler's Comments

2003 Amendment: Chapter 429 near end of (2)(a) and in (3) before "service" deleted "covered"; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 58 deleted former (4) that read: "(4) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 43, Ch. 370, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 23, 1997.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

19-8-906. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 10
Survivorship Benefits and Death Payments

19-8-1001. Benefits upon employment-related death.

Compiler's Comments

2001 Amendment: Chapter 99 near end of first sentence substituted "highest average compensation" for "final average salary", and inserted second sentence regarding amount of survivorship benefit for a deceased member who completed more than 25 years of service credit. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "service" for "employment", substituted "monthly survivorship benefit" for "retirement allowance", before "beneficiary" inserted "designated", and after "beneficiary" substituted "equal to 50% of the final average salary of the member" for "consisting of:

(1) a member's annuity which is the actuarial equivalent of the contributor's accumulated deductions; and

(2) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, except as provided in 19-8-816, less the amount which is paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In middle of (2) inserted exception clause. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Collateral References

Pensions *key* 3, 10.

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Relationship between performance of official duties and subsequent disability or death, for purpose of pension. 85 ALR 2d 1048.

19-8-1002. Postretirement death payments.

Compiler's Comments

1999 Amendment: Chapter 562 substituted text relating to calculation of postretirement death payments for member who retires without designating contingent annuitant for former text that read: "If a member who retires on or after July 1, 1997, and who has not chosen an option 2, 3, or 4 retirement benefit under 19-8-801 dies before receiving an amount equal to the member's total amount of contributions and interest on account as that amount was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump-sum payment." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 at beginning substituted "If a member who retires on or after July 1, 1997, and who has not chosen an option 2, 3, or 4 retirement benefit" for "If a retired member who has not chosen an optional retirement benefit"; after "equal to" substituted "the member's total amount of contributions and interest on account as that amount was" for "the present value of the member's service retirement benefit under 19-8-603 as it was"; and deleted last sentence that read: "At the option of the designated beneficiary, the lump-sum payment may be annuitized and paid over the beneficiary's lifetime; however, the payment is not a benefit subject to increases." Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present text regarding postretirement death payments for former section that read: "(1) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-8-604." Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

19-8-1003. Nonduty-related death of active member.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Part 11
Postretirement Benefits and Benefit Increases

19-8-1104. Minimum monthly benefit.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit or benefit for references to retirement allowance; in (1), after "July 1, 1989", substituted "and their contingent annuitants or their designated beneficiaries receiving monthly survivorship benefits" for "or their beneficiaries"; in (1)(c), before "beneficiary", inserted "designated" and substituted "survivorship benefit or a contingent annuitant receiving a service or disability retirement benefit" for "survivorship allowance"; in (2)(a) substituted "benefit recipient" for "member", substituted "base compensation" for "base salary", and at end substituted "service credits" for "creditable service"; in (2)(b) substituted "base compensation" for "base salary"; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date: Section 7, Ch. 139, L. 1989, provided that this section is effective July 1, 1989.

19-8-1105. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may

individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-8-1110. Ad hoc cost-of-living increase.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 450, L. 1993, provided: "A statement of intent is required for this bill because [section 2] [19-8-1110(4)] gives the public employees' retirement board authority to adopt administrative rules to implement the cost-of-living adjustment provided in the bill.

It is the intent of the legislature to provide a one-time ad hoc cost-of-living adjustment to each member of the game wardens' [now game wardens' and peace officers'] retirement system who has been retired for 5 years or more, to the member's beneficiary, or to the member's contingent annuitant. The cost of the adjustment will be paid by increasing the amortization period of the system's unfunded liabilities.

It is further the intent of the legislature that the proposed statutory retirement committee established in House Bill No. 65 be assigned by the legislative council to develop legislation providing an equitable guaranteed annual benefit adjustment for each of Montana's statewide public retirement systems and that the legislation be presented to the 54th legislature for consideration. It is further the intent of the legislature that the cost of holding hearings and developing the legislation be paid by retirement systems and donations from public employee and retiree associations."

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

Effective Date: Section 9, Ch. 450, L. 1993, provided: "[This act] is effective July 1, 1993."

CHAPTER 9
POLICE RETIREMENT — STATEWIDE PLAN

Chapter Administrative Rules

ARM 2.43.302 Definitions.
ARM 2.43.303 Request for release of information by members.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.433 Purchase of full-time service by part-time members.

Part 1
General Provisions

19-9-101. Short title.

Compiler's Comments

Severability Clause: Section 41, Ch. 456, L. 1977, was a severability clause.

19-9-103. Municipal police officers' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "There is a retirement plan known as the municipal police officers' retirement system. The plan is governed" for "A municipal police officers' retirement system is established, which is governed". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 inserted reference to chapter 2; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1618.

19-9-104. Definitions.

Compiler's Comments

2003 Amendment: Chapter 429 in definition of compensation after "remuneration paid" substituted language concerning payment for services or leave for former language that read: "for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made" and inserted (c)(ii) excluding maintenance, allowances, and expenses; in definition of final average compensation at end substituted "served at least 36 months, the total compensation earned divided by the number of months of service" for "been a member that long, over the period of membership"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 inserted definition of police officer; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 at end of definition of compensation substituted "paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made" for "that a member receives as an active police officer". Amendment effective July 1, 1999.

1997 Amendment: Chapter 250 in definition of minimum retirement date, near end, substituted "5 years" for "10 years"; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendment: Chapter 265 inserted definitions of compensation and survivor; deleted definition of administrator that read: ""Administrator" means the public employees' retirement division of the department of administration"; deleted definition of base salary that read: ""Base salary" means the sum of the monthly compensations for each month in a given calendar year"; deleted definition of Board that read: ""Board" means the retirement board described in 2-15-1009"; deleted definition of credited service that read: ""Credited service" means the aggregate of a member's prior service and membership service"; deleted definition of death benefit that read: ""Death benefit" means a monthly annuity paid to a surviving spouse or dependent child or a lump-sum payment made to a beneficiary on behalf of a member who dies before retirement"; in definition of employer substituted "this retirement system" for "this plan"; deleted definition of employer annuity that read: ""Employer annuity" means monthly payments for life derived from employer and state contributions"; substituted definition of final average compensation for definition of final average salary and before "service" deleted "active"; deleted definition of fund that read: ""Fund" means the pension trust fund in the treasury system designated for the use of the plan"; deleted definition of member that read: ""Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer"; deleted definition of member contributions that read: ""Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon"; deleted definition of member's annuity that read: ""Member's annuity" means monthly payments for life derived from member contributions"; deleted definition of membership service that read: ""Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year"; in definition of minimum retirement date substituted "membership service" for "qualified service"; deleted definition of monthly compensation that read: ""Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer"; deleted definition of normal retirement date that read: ""Normal retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member completes 20 or more years of qualified service and has terminated employment as a police officer"; deleted definition of plan that read: ""Plan" means the municipal police officers' retirement system created by this chapter"; deleted definition of police officer that read: ""Police officer" means a law enforcement officer employed by an employer"; in definition of prior plan

substituted present text for former text that read: ""Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974"; deleted definition of prior service that read: ""Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan"; deleted definition of qualified service that read: ""Qualified service" means credited service plus any service purchased under the provisions of part 4 of this chapter"; deleted definition of retirement allowance that read: ""Retirement allowance" means the employer annuity plus the member's annuity"; in definition of retirement date substituted "survivorship benefits" for "survivor benefits" and substituted "survivor" for "beneficiary"; deleted definition of totally and permanently disabled that read: ""Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 178 inserted definition of qualified service. Amendment effective March 26, 1991.

Chapter 631 in definition of minimum retirement date deleted requirement that member be 50 years of age or older (rendered void by Ch. 822); and made minor changes in style. Amendment effective July 1, 1991.

Section 1, Ch. 822, inserted definition of qualified service. Section 9, Ch. 822, a coordination instruction, in definition of minimum retirement date, near beginning, deleted "or "normal retirement date"", after "age 50" deleted "or older", and substituted "and completes 10 years of qualified service" for "and completes 20 or more years of credited service"; inserted definition of normal retirement date; and made minor change in style. Amendments effective July 1, 1991.

Retroactive Applicability: Section 4, Ch. 178, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to retirements on or after January 1, 1991."

1985 Amendments: Chapter 86 deleted former (10) that read: ""Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65."

Chapter 350 inserted definition of death benefit.

1983 Amendments: Chapter 186 inserted definitions of dependent child and surviving spouse.

Chapter 282 changed "agency account" to "pension trust fund" in (9).

Administrative Rules

ARM 2.43.408 Calculation of service credit on termination of employment.

Part 2
Extension of Coverage by Local Government Employers

19-9-205. Transfer of assets and liabilities from prior plans.

Compiler's Comments

1993 Amendment: Chapter 265 at end of first sentence substituted "pension trust fund" for "account provided for in 19-9-501" and deleted last sentence that read: "The board shall ascertain the amounts to be apportioned to each account on April 19, 1977, and the state treasurer shall transfer such amounts to the appropriate accounts on July 1, 1977"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-206. Effect on members of prior plans.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning, substituted "retirement system" for "plan" and near end substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-207. Election to join retirement system — transfer of assets.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement system for references to plan or chapter; in (1), in first sentence, substituted "board" for "department of administration" and in third sentence, before first "ordinance", inserted "election", after "deposit" deleted "with the board", and at end, after "retirement fund", inserted "into the municipal police officers' pension trust fund"; in (2), in two places, substituted "plan" for

"system", in second sentence, after "respective", deleted "individual accounts of the", and at end of last two sentences substituted "board" for "administrator"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: In (2), inserted "for a period determined by the administrator" at end of third sentence and changed the basis for payments under the last sentence from "on a basis determined by the procedure described in 19-9-503(2) and (3)" to "for a period of 10 years or less as determined by the administrator".

19-9-209. Taxing authority of employers.

Compiler's Comments

2001 Amendment: Chapter 574 near middle after "chapter" substituted "the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue" for "when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any addition tax authorized by law until the general taxing authority and other revenue"; deleted former (2) and (3) that read: "(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section"; and made minor changes in style. Amendment effective July 1, 2001.

Attorney General's Opinions

All-Purpose Mill Levy — Forfeiture of Powers: Municipalities that adopt the all-purpose mill levy authorized in 7-6-4452 (now repealed) forfeit the power to impose levies for any particular purpose not clearly excepted by statute. Thus, the all-purpose mill levy supplants the taxing authority granted in 7-33-4111, 19-10-301 (renumbered 19-19-301), and 19-11-503 (renumbered 19-18-503) but does not supplant the taxing authority granted in 7-32-4117, 7-33-4130, 19-3-204, 19-9-704 (renumbered 19-9-209), sec. 2, Ch. 324, L. 1975 (not codified), sec. 2, Ch. 359, L. 1975 (not codified), and sec. 3, Ch. 438, L. 1975 (not codified). 38 A.G. Op. 112 (1980).

Part 3
Eligibility, Membership, and Vesting

Part Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1618.

19-9-301. Active membership — inactive vested member — inactive nonvested member.

Compiler's Comments

2005 Amendment: Chapter 329 in (4)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (4)(b) relating to what a lump-sum payment consists of; in (5)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (4) near end after "service" inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1)(c) inserted second sentence allowing a person who is a member of the public employees' retirement system on the date of the employer's election to remain in the public employees' retirement system or become a member of the municipal police officers' retirement system; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 250 in (4) and (5), near beginning, substituted "5 years" for "10 years". Amendment effective July 1, 1997.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendment: Chapter 265 in (1) substituted "member of the retirement system" for "member under the plan"; in (1)(a) substituted "service with" for "employment by"; in (1)(c) substituted "retirement system" for "plan"; inserted (3) regarding inactive member; inserted (4) regarding inactive vested member; inserted (5) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.440 Service purchases by inactive vested members.

Part 4
Service Credit

Part Administrative Rules

ARM 2.43.405 Membership.
ARM 2.43.406 Basic period of service.
ARM 2.43.408 Calculation of service credit on termination of employment.
ARM 2.43.410 Proof of service.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.

19-9-403. Application to purchase military service.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "15 years of service credit"; deleted former (3) that read: "(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", after "at least" substituted "5 years of membership service" for "15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (2) and (3) that read: "(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years"; in (1)(b) after "purchase" substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning purchase of service by member with at least 5 years of membership service; inserted (3) providing method for purchase of service credit; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(6), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 93, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1) inserted exception clause, after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify up to a maximum of 5 years", and at end deleted "if the member is not otherwise eligible to receive credit"; at beginning of (2) substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board"; in (3) after "may not" substituted "purchase more military service than the member's years of membership service" for "qualify more of the member's military service than the member has service credit"; in (4) at beginning of introductory clause inserted "A member is not eligible to purchase military service under this section"; in (4)(a) after "United States with a" substituted "military retirement benefit based on that military service" for "normal military service retirement benefit, the member may not qualify the member's military service under subsection (1)"; inserted (4)(b) and (4)(c) regarding certain conditions of ineligibility to purchase military service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time." Amendment effective July 1, 1999.

1993 Amendment: Chapter 265 in (1), in first sentence near beginning after "service", inserted "credit", substituted "qualify up to a maximum of 5 years of the member's active duty service" for "qualify all or any portion of his active service", and after "calculating retirement

benefits" deleted "up to a maximum of 5 years", in second sentence substituted "pension trust fund" for "account" and after "based on" substituted "the most recent actuarial valuation of the system" for "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes", and in third sentence, after "service", inserted "credit"; in (2), in first sentence, substituted "a normal military service retirement benefit" for "normal service retirement benefits" and in second sentence, after first "active", inserted "duty"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Deleted former last sentence of (1) that read: "Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service". Amendment effective March 26, 1991.

Retroactive Applicability: Section 4, Ch. 178, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to retirements on or after January 1, 1991."

Administrative Rules

ARM 2.43.423 Purchase of other types of service.

ARM 2.43.433 Purchase of full-time service by part-time members.

ARM 2.43.437 Military service.

19-9-406. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-9-410. Transfer to public employees' retirement system.

Compiler's Comments

2003 Amendment: Chapter 429 in last sentence after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-9-411. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) and (3) after references to service inserted "credit"; and in (3) after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-9-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end after "service" deleted "that the member has qualified under the retirement system"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-9-403, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

1997 Amendment: Chapter 42 in (3) substituted "19-9-403" for "19-13-403". Amendment effective March 12, 1997.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.

ARM 2.43.432 "1-for-5" additional service.

Part 7
Contributions

Part Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

Part Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-9-702. State contribution.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 532 at end of first sentence substituted "from the general fund" for "through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies", in second sentence, after "The", substituted "general fund contributions" for "payments" and after "November 1" deleted "from the gross premium tax after deduction for cancellations and returned premiums", in third sentence, before "auditor", inserted "state", and inserted fifth sentence providing that contributions are statutorily appropriated. Amendment effective July 1, 1997.

1997 Amendment Changed and Voided — Coordination: The amendments made by sec. 3, Ch. 250, L. 1997, by sec. 26, Ch. 287, L. 1997, and by sec. 2, Ch. 445, L. 1997, were voided by sec. 8(3)(c), Ch. 445, L. 1997, a coordination section, which established the state's contribution at 29.37%. Amendment effective July 1, 1997.

Section 3, Ch. 250, L. 1997, was also voided by sec. 8(3)(a), Ch. 445, L. 1997, a coordination section.

Section 26, Ch. 287, L. 1997, was also voided by sec. 8(3)(b), Ch. 445, L. 1997, a coordination section.

The amendment made by sec. 2, Ch. 445, L. 1997, was changed by sec. 8(3)(a), Ch. 445, L. 1997, a coordination section, to increase the state's contribution to 29.07%. The sec. 8(3)(a), Ch. 445, L. 1997, change was overridden by sec. 8(3)(c), Ch. 445, L. 1997, a coordination section, to increase the state's contribution to 29.37%.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendment: Chapter 265 in first sentence, after "insurance policies", deleted "which premium tax is statutorily appropriated, as provided in 17-7-502, for the contributions"; in second sentence substituted "November 1" for "September 1"; in third sentence substituted "division" for "administrator", substituted "September 1" for "April 1", and in two places, before "year", inserted "fiscal"; in fourth sentence, after "state's contribution is", substituted "15.66% of compensation paid to members" for former text that read: "(1) 14.04% of compensation paid to members before July 1, 1985;

(2) 15.06% of compensation paid to members from July 1, 1985, through June 30, 1991; and

(3) 15.66% of compensation paid to members after July 1, 1991"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: At end substituted (1), (2), and (3) establishing state contribution rates for various periods for "Before July 1, 1985, the state's contribution shall be 14.04% of such compensation and 15.06% on and after July 1, 1985". Amendment effective July 1, 1991.

1985 Amendment: At end of first sentence inserted "which premium tax is statutorily appropriated, as provided in 17-7-502, for the contributions".

1983 Amendment: At end, substituted "Before July 1, 1985, the state's contribution shall be 14.04% of such compensation and 15.06% on and after July 1, 1985" for "and the state's contribution shall be 14.04% of such compensation".

1981 Amendments: Chapter 250 inserted "after the end of each fiscal year but no later than September 1" after "annually" in the middle of the section; inserted "by April 1 of each year" after "auditor" near the end of the section.

Chapter 549 changed state's contribution from 14% to 14.04%.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-9-703. Employer contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in second sentence at beginning substituted "employer shall pay as employer contributions" for "employer's contribution, which must be paid monthly to the board, is" and at end substituted "of the employer's employees, except those properly excluded from membership" for "active members". Amendment effective July 1, 2005.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 250 near end substituted "14.41%" for "14.36%". Amendment effective July 1, 1997.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendments: Chapter 265 in first sentence, after "contribution", deleted "on behalf of members"; substituted second sentence regarding employer's contribution rate for former text that read: "The employer's contribution, which must be paid monthly to the administrator, is:

(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;

(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991; and

(3) 13.92% of the total monthly compensation paid to all active members during the preceding month after July 1, 1991"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 pursuant to sec. 5, a coordination instruction, deleted (1) and (2) that read: "(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;

(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991"; increased employer contribution from 13.92% to 14.36% and at end, after "July 1", changed 1991 to 1993; and made minor changes in style. Amendment effective May 7, 1993.

1991 Amendment: Substituted last sentence of introductory clause, (1), (2), and (3) establishing employer's contribution for various periods for "Before July 1, 1985, the employer's contribution shall be 14.04% of the total monthly compensation paid to all active members during the preceding month, 13.02% on and after July 1, 1985, and shall be payable monthly to the administrator". Amendment effective July 1, 1991.

1983 Amendment: Inserted "Before July 1, 1985" at beginning of second sentence; and near end inserted "13.02% on and after July 1, 1985" after "during the preceding month".

1981 Amendment: Changed employer contribution from 14% to 14.04%.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-9-705. Other money credited as employer contributions.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "retirement system" for "plan", before "compensation" deleted "monthly", and at end substituted "pension trust fund" for "administrator"; deleted second sentence that read: "The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-706. Contributions based on total compensation when member receives disability compensation.

Compiler's Comments

1999 Amendment: Chapter 562 deleted former last sentence that read: "The service represented by these contributions must be credited in the same manner as provided in 19-9-401." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted present text regarding contributions based on total compensation when member receives disability compensation for former section that read: "(1) When an officer receives compensation under 7-32-4132, the member contributions for retirement required under 19-9-601 will be paid on the total compensation received under 7-32-4132 and the employer contribution paid by the municipalities under 19-9-703 and the state contribution under 19-9-702 shall include as part of the salaries paid to police officers all compensation received under 7-32-4132. The service represented by these contributions will be credited in the same manner as provided in 19-9-401.

(2) When an injured officer accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under 19-3-401, all service and contributions previously credited with the municipal police officers' retirement system shall be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred will be equal to the amount that would have been contributed had the transferred service been normal employment covered under the public employees' retirement system." Amendment effective July 1, 1993.

1983 Amendment: Changed two references to the retirement account in the agency fund to the pension trust fund.

19-9-710. Member's contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in (2) substituted "contribute 9% of the member's compensation" for "pay a contribution rate equal to 9% of compensation received". Amendment effective July 1, 2005.

1999 Amendment: Chapter 463 in (1)(a) decreased percentage amount from 7.8% to 5.8%; in (1)(b) decreased percentage amount from 9% to 7%; in (1)(c) decreased percentage amount from 10.5% to 8.5%; in (1)(d) decreased percentage amount from 11% to 9%; and in (2) inserted "or 19-9-1010", substituted "9%" for "11%, and after "received" deleted "on and after July 1, 1997". Amendment effective January 1, 2000.

Saving Clause: Section 4, Ch. 463, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 substituted (1) providing exception clause and outlining various contribution rates for members actively employed as police officers for language that read: "The regular contribution of each active member first employed by an employer on or before June 30, 1975, is 7.8% of the member's compensation. In the case of a member first employed by an employer as a police officer after June 30, 1975, the contribution is 9% of the member's compensation. In the case of a member first employed by an employer as a police officer after June 30, 1979, the contribution is 10.5% of the member's compensation"; inserted (2) requiring covered member to pay rate of 11% after July 1, 1997; near end of (3) inserted reference to subsection (2); and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendments: Chapter 265 in (1), in three places before "compensation", deleted "monthly", near beginning substituted "regular contribution" for "normal contribution", after "active member" inserted "first employed by an employer on or before June 30, 1975", and deleted last sentence that read: "Compensation excludes overtime payments, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer"; in first sentence of (4), before "compensation as

defined in 19-9-104", deleted "monthly"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 522 in (1) increased normal contribution rate from 6% to 7.36%, for member employed after June 30, 1975, from 7.2% to 8.56%, and for member employed after June 30, 1979, from 8.7% to 10.06%; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 pursuant to sec. 5, a coordination instruction, in (1) increased normal contribution rate from 6% to 7.8%, for police officers employed after June 30, 1975, from 7.2% to 9%, and for police officers employed after June 30, 1979, from 8.7% to 10.5%; and made minor changes in style. Amendment effective May 7, 1993.

1991 Amendment: Inserted second sentence concerning contribution of member first employed after June 30, 1975, and in third sentence increased contribution rate from 7 ½% to 8.7%; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: In (1) substituted "The normal contribution of each active member is 6% of his monthly compensation" for "The treasurer or other appropriate official of each employer shall retain from the monthly compensation of each active member a sum equal to 6%" and deleted last sentence that read: "The monthly deduction from the salaries of police officers shall be paid to the administrator for the purpose of paying the retirement allowances of retired police officers"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

Part 8
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-9-801. Eligibility for service retirement — commencement of benefit.

Compiler's Comments

2001 Amendment: Chapter 99 substituted language outlining eligibility for service retirement and commencement of benefits for former language that read: "(1) Members are eligible for retirement as provided in this section.

(2) A member is eligible to receive a service retirement benefit when the member has completed 20 years or more of membership service and has terminated service.

(3) A member who terminates service after completing at least 5 years of membership service but prior to completing 20 years of membership service is eligible to receive a service retirement benefit when the member has reached 50 years of age." Amendment effective March 21, 2001.

1997 Amendments: Chapter 250 in (3) substituted "5 years" for "10 years"; and in (4)(b) substituted "no earlier than" for "no later than" and substituted "50th birthday" for "55th birthday" (voided by Ch. 370 amendment). Amendment effective July 1, 1997.

Chapter 370 deleted (4) that read: "(4) (a) Except as provided in subsection (4)(b), the retirement benefit may commence on the first day of the month following the member's minimum retirement date or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 55th birthday." Amendment effective April 23, 1997.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), after "retirement", deleted "and shall retire"; in (2), after "A member", deleted "employed by an employer as a police officer", after "retirement" substituted "benefit" for "allowance", substituted "membership service" for "qualified service", and at end, after "terminated", substituted "service" for "covered employment"; in (3), after "terminates", substituted "service" for "employment as a police officer with an employer", in two places substituted "membership service" for "qualified service", and substituted "retirement benefit" for "retirement allowance"; in (4)(a) substituted reference to subsection (4)(b) for reference to subsection (3)(b), substituted "retirement benefit" for "retirement allowance", and substituted "inactive member" for "terminated member"; in (4)(b) substituted "retirement benefit" for "retirement allowance" and substituted "inactive member" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 178 near end of (1) and (2), after "20 years or more", substituted "of qualified service" for "in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank". Amendment effective March 26, 1991.

Chapter 631 in (1), after "police officer", deleted "on July 1, 1975"; deleted former (2) that read: "(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank, and has terminated covered employment"; in (3)(a) changed subsection reference; and made minor change in style. Amendment effective July 1, 1991.

Section 2, Ch. 822, near middle of (1) substituted "20 years or more of qualified service" for "20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank"; and in (3)(a), near middle after "following the member's", substituted "minimum retirement date" for "last day of membership service". Section 9, Ch. 822, a coordination instruction, in (1), after "officer", deleted "on July 1, 1975"; and in (2) substituted "A member who terminates employment as a police officer with an employer after completing at least 10 years of qualified service but prior to completing 20 years of qualified service is eligible to receive a service retirement allowance when he has reached 50 years of age" for "A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank, and has terminated covered employment". Amendments effective July 1, 1991.

Composite Section: The Code Commissioner has codified the version of subsection (2) of this section found in sec. 9, Ch. 822, L. 1991, that contains the substance of the changes made to subsection (2) of this section by sec. 3, Ch. 178, L. 1991.

Retroactive Applicability: Section 4, Ch. 178, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to retirements on or after January 1, 1991."

1989 Amendment: At end of (1) and (2) inserted "and has terminated covered employment"; at beginning of (3)(a) inserted exception clause, after "allowance" substituted "may" for "must", and at end, after "service", inserted "or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application"; inserted (3)(b) that read: "(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday"; and made minor changes in punctuation and phraseology. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: Deleted former (3) that read: "Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall retire."

1983 Amendment: Inserted (4) specifying date of commencement of retirement allowance.

Attorney General's Opinions

Clarification of Police Service Retirement: The language of 19-9-802(2) (now repealed) requires a police officer hired after July 1, 1975, to remain an officer each additional year between his 20th year of service and his reaching the age of 50 in order to be eligible for service retirement. (See 1991 amendments.) 43 A.G. Op. 20 (1989).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

19-9-804. Amount of service retirement benefit — continuation of benefit after death of member.

Compiler's Comments

2005 Amendment: Chapter 329 in (2)(b) in second sentence near beginning substituted "paid pursuant to 19-2-803" for "made to the child's appointed guardian for the child's use"; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendments — Composite Section: Chapter 265 substituted (1) that read: "(1) A member with at least 20 years of membership service must receive a retirement benefit equal to the sum of:

(a) 2.5% of the member's final average compensation for each year of service credit up to and including 20 years; and

(b) 1% of the member's final average compensation for each year of service credit after 20 years" (not codified — see compiler's comment) for former (1) through (3) that read: "(1) A police officer with 20 years of qualified service who is eligible under 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement under 19-9-801 after 20 years of qualified service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of his final average salary for each year of additional qualified service, up to a maximum of 60% of his final average salary.

(3) A member who is eligible for service retirement under 19-9-801 with less than 20 years of qualified service shall receive a retirement allowance equal to 2.5% of his final average salary for each year of qualified service"; inserted (2) regarding limitation on total monthly benefit (not codified — see compiler's comment); inserted (3) regarding amount of retirement benefit for member retiring with less than 20 years of membership service (not codified — see compiler's comment); in (2), throughout subsection, substituted references to member for references to police officer or officer; in (2)(a) substituted "retirement benefit under subsection (1)" for "retirement allowance under subsection (1) or (2)", before "fund" inserted "pension trust", substituted "a benefit equal to" for "a sum equal to", and at end substituted "final average compensation" for "final average salary"; in (2)(b) substituted "service retirement benefit" for "service retirement allowance", before "fund" inserted "pension trust", substituted "a benefit equal to" for "a sum equal to", and substituted "benefit" for "allowance"; in (4)(c), near end of first sentence after "dependent", inserted "child" (not codified — see compiler's comment); and made minor changes in style. Amendment effective July 1, 1993.

Chapter 522 deleted former (1) providing for 20-year service retirement (see 1993 Session Law for text); deleted former (2) providing for 20-year service retirement and additional qualified service retirement (see 1993 Session Law for text); in (1), after "under 19-9-801", deleted "with less than 20 years of qualified service"; in (4)(a), after "benefit", inserted "based on

at least 20 years of service" and in (2)(b), after "allowance", inserted "based on less than 20 years of service" ((4) amendments rendered meaningless by deletion of sentence by Ch. 265); and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 in (2)(a), after "(2)", inserted "or (3)" (this amendment was not codified by the codifier due to Ch. 265 amendments) and after "equal to" deleted former language that read: "one-half of the officer's final average salary.

(b) Upon the death of a member receiving a service retirement allowance under subsection (3), his surviving spouse, if there is one, shall receive from the fund a sum equal to"; and made minor changes in style. Amendment effective May 7, 1993.

Compiler's Comment: Chapter 265 contained an introductory phrase that read: "(1) A member with at least 20 years of membership service must receive a retirement benefit equal to the sum of".

Chapter 522 contained an introductory phrase that read: "(1) A member who is eligible for service retirement under 19-9-801 must receive a retirement allowance equal to . . . ."

Because both chapters struck the introductory language of the other, thereby rendering the introductory phrase meaningless, the compiler has combined the language into the current introductory phrase to reflect the apparent intent of both chapters.

The insertion of (1)(a) and (1)(b) by Ch. 265 was parallel to former (2). The provision in (1)(b) concerning 1% for years of service in excess of 20 was not codified because that provision was deleted by Ch. 522. Chapter 265 apparently did not intend to make a substantive change in benefits. The compiler has not codified the inserted benefit language from Ch. 265 because that concept was deleted by Ch. 522.

The compiler has codified the apparent intent of the three chapters.

Style and gender neutral changes throughout the section were slightly different in the three chapters. In each case, the codifier chose the most appropriate of the three.

Retroactive Applicability: Section 6, Ch. 620, L. 1993, provided: "[Section 3] [19-9-804] applies retroactively, within the meaning of 1-2-109, to benefits paid on or after July 1, 1975."

1991 Amendments: Chapter 631 in (1) deleted subsection references to 19-9-801. Amendment effective July 1, 1991.

Section 4, Ch. 822, in (1), near beginning after "police officer", inserted "with 20 years of qualified service"; in (2), near beginning after "retirement", inserted "under subsection (1) or (2) of 19-9-801", substituted "after 20 years of qualified service" for "after 20 years of service", and near end substituted "additional qualified service" for "additional service"; inserted (3) regarding retirement allowance for member with less than 20 years of qualified service; in (4)(a), near beginning after "allowance under", substituted "subsection (1) or (2)" for "this section"; and inserted (4)(b) concerning surviving spouse receiving amount equal to officer's allowance at time of death. Section 9, Ch. 822, a coordination instruction, in (1), (2), and (3) deleted subsection references to 19-9-801. Amendments effective July 1, 1991.

1989 Amendments: Chapter 63 in first sentence of (3), after "shall", deleted "for as long as the spouse remains unmarried" and in second sentence, after "the death", deleted "or remarriage". Amendment effective July 1, 1989.

Chapter 196 near middle of (2), after "1% of", substituted "his final average salary for each year" for "such allowance per year"; and made minor change in phraseology. Amendment effective March 20, 1989.

Retroactive Applicability: Section 8, Ch. 63, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989."

Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to

1985 Amendments: Chapter 86 near middle of (1), after "police officer", deleted "or who is retired under 19-9-801(3) prior to reaching 20 years of service"; and deleted former (3) that read: "A police officer who is retired under 19-9-801(3) and who was theretofore eligible at his option to be retired under subsection (1) or (2) of 19-9-801 but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2)."

Chapter 350 deleted former (3) in same manner as Ch. 86 but inserted (3) providing for continuation of allowance after death of retired officer.

Administrative Rules

ARM 2.43.406 Basic period of service.

Case Notes

Retirement Under Consolidated Government — Benefits From Last System to Which Contributed: Plaintiff retired as a law enforcement officer from Butte-Silver Bow. Prior to the city-county consolidation, he was a Deputy Sheriff. When he retired and applied for benefits, the State calculated options to be offered him under 19-7-701 (renumbered 19-7-1001), the Sheriffs' Retirement System. Plaintiff contended he was entitled to benefits under 19-9-804 and 19-9-911 (renumbered 19-9-1101) of the Police Officers' Retirement System. All parties agreed that eligibility was determined under 19-7-308(1) (renumbered 19-7-801(1)). The Supreme Court held that the statutory provisions are clear and unambiguous. In such a case, rules of statutory construction have no application, so that the court gave no deference to the agency's interpretation. The dispute centered around 19-7-308(2) (renumbered 19-7-801(2)) and whether it merely determines which laws govern eligibility for death benefits or also which laws govern calculation of death benefits. The court held that under 19-7-308(2) (renumbered 19-7-801(2)) death benefits are calculated according to the provisions of the system to which the officer last made contributions. The codification instruction placing 19-7-308 (renumbered 19-7-801) under the provisions of the Sheriffs' Retirement System was only for ease of reference as between the systems. Death benefits are calculable and payable under the Police Officers' Retirement System. Bay v. St., 212 M 258, 688 P2d 1, 41 St. Rep. 1725 (1984).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

Part 9
Disability Retirement Benefits

19-9-902. Eligibility for disability retirement.

Compiler's Comments

2005 Amendment: Chapter 329 at end substituted "employment" for "service". Amendment effective July 1, 2005.

1993 Amendment: Chapter 265 near beginning substituted "member" for "police officer", before "disabled" deleted "totally and permanently", substituted "disability retirement benefit" for "disability retirement allowance", and at end substituted "the member's termination from service" for "the police officer's last day of membership service"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In two places substituted reference to police officer for reference to member. Amendment effective July 1, 1991.

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670.

Determination whether peace officer's disability is service-connected for disability pension purposes. 12 ALR 4th 1158.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member.

Compiler's Comments

2003 Amendment: Chapter 429 substituted (1) concerning disability benefit before or after 20 years of service for former text that read: "A member who is eligible under 19-9-902 before earning 20 years of service credit must receive a disability retirement benefit equal to one-half the member's final average compensation"; deleted former (2) that read: "(2) A member who is retired under 19-9-902 and who, at the time of the member's injury or disability, was eligible at the member's option to be retired under 19-9-801 but had elected to serve years in excess of 20 years of service credit and was then serving additional years must be paid for the additional years at the rate prescribed in 19-9-804"; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 throughout section substituted references to member for references to police officer; in (1) substituted "before earning 20 years of service credit" for "before completing 20 years of qualified service", substituted "disability retirement benefit" for

"disability retirement allowance", and at end substituted "one-half the member's final average compensation" for "one-half his average final salary"; in (2) substituted "20 years of service credit" for "20 years of qualified service"; in (3) substituted "disability retirement benefit" for "disability allowance" and deleted reference to subsection (4) of 19-9-804; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 631 in (2) deleted subsection references to 19-9-801. Amendment effective July 1, 1991.

Section 6, Ch. 822, in (1), near middle after "20 years of", inserted "qualified"; in (2), near middle after "elected to serve", substituted "years in excess of 20 years of qualified service" for "additional years"; and at end of (3) changed subsection reference to 19-9-804. Section 9, Ch. 822, a coordination instruction, in (2) deleted subsection references to 19-9-801. Amendments effective July 1, 1991.

1985 Amendment: Inserted (3) providing for benefits after death of officer receiving disability allowance.

19-9-904. Termination of disability benefit.

Compiler's Comments

1997 Amendment: Chapter 370 at end of fourth sentence, after "19-9-905", inserted "or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in third sentence substituted "essential elements" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in three places substituted "disability retirement benefit" for "disability retirement allowance" and in fourth sentence, before "disabled", deleted "totally and permanently"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Added the first three sentences of the section referring to medical examination of recipient of disability retirement allowance; inserted "his disability retirement allowance must be canceled when he is offered a position under 19-9-905. If he refuses to submit to a medical examination," after "no longer totally and permanently disabled"; made minor changes in phraseology.

Administrative Rules

ARM 2.43.508 through 2.43.515 Periodic medical review of disability retirees.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1686, 1687.

19-9-905. Reinstatement upon termination of disability benefit.

Compiler's Comments

2005 Amendment: Chapter 329 in (3) in first and second sentences near beginning substituted "inactive" for "retired". Amendment effective July 1, 2005.

1997 Amendment: Chapter 370 in (1)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (1)(b) regarding applicability of standards necessary for reinstatement; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), in two places, substituted "disability retirement benefit" for "disability retirement allowance", in two places, before "member", deleted "inactive", and at beginning substituted "A retired member" for "Any inactive member"; in (3), in two places, substituted "retired member" for "inactive member", in two places, after "returning to", substituted "service with" for "active work for", and in second sentence substituted "termination of service" for "termination of employment", substituted "retirement benefit" for "retirement allowance", and near end, after "service retirement", inserted "date"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Inserted "whichever is first open" after "same classification with duties within his capacity" near the middle of (1); added (2) allowing city to request medical or psychological review of officer to be reinstated.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1686, 1687.

Part 10
Postretirement Benefits and Benefit Increases

19-9-1007. Minimum benefit adjustment.

Compiler's Comments

2001 Amendment: Chapter 7 near middle of (2) after "July 1, the" substituted "board" for "division". Amendment effective October 1, 2001.

1999 Amendment: Chapter 562 at end of (2) after "determined" deleted "and shall include these amounts in the next year's report for reimbursement at that time"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments: Chapter 287 in (1), after "survivors", inserted "and that are not covered by 19-9-1009". Amendment effective July 1, 1997.

Chapter 445 at end of (1) substituted "paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired" for "paid in the current fiscal year in the appropriate city or town to newly confirmed police officers"; deleted former (2) that read:

"On or before October 1 of each year, the division shall make a report including the following information:

(a) the names of all retired members who are receiving benefits from the retirement system as of the date of the report;

(b) the names of all surviving spouses or dependent children who are receiving benefits from the retirement system because of the death of an active or retired member of this or a prior plan;

(c) for the purpose of determining the base retirement, disability, or survivorship benefits for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the benefits paid in the base fiscal year to each retired member described in subsection (2)(a);

(ii) the amount of the benefits paid in the base fiscal year to each surviving spouse or dependent child described in subsection (2)(b);

(iii) upon the death after the base fiscal year of any retired member who was receiving benefits, the amount of benefits that would have been paid to an eligible surviving spouse of the retired member if the surviving spouse had been receiving benefits in the base fiscal year;

(d) the original amount of retirement, disability, or survivorship benefits paid to retired members or their eligible survivors as of the original retirement dates after July 1, 1975;

(e) the compensation that will be paid during the current fiscal year to a newly confirmed police officer of each city or town participating in the retirement system"; in (2) deleted former first two sentences that read: "The division shall compute the difference between each amount reported under subsections (2)(c) through (2)(e) and one-half the compensation to be paid during the current fiscal year to a newly confirmed police officer of the appropriate city or town. The difference must be reported to the state auditor who shall pay the difference to the pension trust fund out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512(3) no later than November 1", in first sentence, after "current fiscal year in time", substituted "to make minimum benefit adjustments effective July 1" for "to be included in the October 1 report to the state auditor" and substituted "individual minimum benefits" for "individual supplemental benefits"; deleted (4) that read: "(4) The premium tax amount paid by the state auditor is statutorily appropriated, as provided in 17-7-502, for the payment of supplemental retirement benefits to eligible retired members and their survivors. This payment is in addition to the payment to be made by the state auditor under 19-9-702"; in (3), in two places before "benefits", deleted "supplementary"; and made minor changes in style. Amendment effective July 1, 1997.

The amendments to this section made by sec. 24, Ch. 532, L. 1997, were rendered void by sec. 8(1), Ch. 445, L. 1997, a coordination section.

1993 Amendment: Chapter 265 throughout section substituted references to benefits for references to payments; in (1) substituted present text regarding minimum benefits for former subsection that read: "(1) The payment for each fiscal year to the police officers, surviving spouses, or dependent children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the current fiscal year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase"; in (2) substituted "October 1" for "August 1" and substituted "division" for "department of administration"; in (2)(a) substituted "retired members" for "police officers", substituted "retirement system" for "plan", and after "report" deleted "and were receiving payments from a prior plan before July 1, 1975"; in (2)(b) substituted "retirement system" for "plan" and substituted "death of an active or retired member of this or a prior plan" for "death of a police officer who was receiving payments from a prior plan before July 1, 1975"; deleted former (2)(c) that read: "(c) the names of all surviving spouses or dependent children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of dependent children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975"; in (2)(c) substituted "base retirement, disability, or survivorship benefits" for "base figure"; in (2)(c)(i) substituted "retired member" for "police officer"; in (2)(c)(ii), after "dependent child", deleted "(or children)" and after "subsection (2)(b)" deleted "or (2)(c)"; in (2)(c)(iii) substituted present text regarding death after base fiscal year of retired member for former subsection that read: "(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, his surviving spouse or dependent children are entitled to receive payments from the plan, the amount which would have been paid to an eligible surviving

spouse of such police officer had that spouse been receiving payments in the base fiscal year"; inserted (2)(d) regarding original amount of benefits; in (2)(e) substituted "compensation that will be paid during" for "base salary for" and substituted "retirement system" for "plan"; in (3), in first sentence, substituted "division" for "department of administration", substituted reference to subsections (2)(c) through (2)(e) for reference to subsections (2)(d)(i) through (2)(d)(iii), and substituted "one-half the compensation to be paid during" for "one-half the base salary for", in second sentence, after "reported to", deleted "and paid by", after "state auditor" inserted "who shall pay the difference to the pension trust fund", and substituted "no later than November 1" for "to the administrator no later than September 1", and in third sentence, near beginning, substituted "compensation" for "base salary", substituted "October 1" for "August 1", substituted "division" for "department", and substituted "current compensation" for "base salary"; in (4), in first sentence after "17-7-502", inserted "for the payment of supplemental retirement benefits to eligible retired members and their survivors" and deleted last sentence that read: "The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met"; deleted former (4) that read: "(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 after the end of each fiscal year but no later than September 1, until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are statutorily appropriated as provided in 17-7-502. These payments are to be made to reimburse the retirement account for funds advanced to implement this section"; in (5), after "common parent", deleted "police officer"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), (2)(e), and (3) substituted "current fiscal year" for "previous calendar year"; in (2) substituted "August 1" for "April 1"; and in (3), near end of second sentence after "administrator", deleted "after the end of each fiscal year, but" and inserted third sentence concerning retroactive adjustments to individual supplemental benefits. Amendment effective April 24, 1991.

1985 Amendment: In (3) inserted third sentence referring to statutory appropriation; and in (4) inserted second sentence referring to statutory appropriation.

1983 Amendment: Throughout section, inserted "surviving" before "spouses" and substituted "dependent children" for "minor children"; in (2)(d)(iii), after "1975," substituted "his surviving" for "and who is survived by a" and inserted "are" after "children".

1981 Amendments — Composite: Chapter 250 deleted "to the state auditor" after "report" in (2); substituted "department of administration" for "state auditor" at the beginning of (3); deleted "upon receipt of the report referred to in subsection (2)" after "shall" at the beginning of (3); inserted "reported to and" after "difference shall be" in (3); substituted "after the end of each fiscal year, but no later than September 1" for "no later than May 31 of each year" near the middle of (3); substituted "after the end of each fiscal year but no later than September 1" for "on or before June 30 of each year" in (4).

Chapter 566 changed the internal reference in (3) to risks enumerated in 19-11-512 (renumbered 19-18-512) from 19-11-512(5) (renumbered 19-18-512(5)) to 19-11-512(3) (renumbered 19-18-512(3)). An amendment to 19-11-512 (renumbered 19-18-512) by Ch. 566, L. 1981, renumbered the subsections of 19-11-512 (renumbered 19-18-512) which required an amendment to this section.

Chapter 575 in (3), substituted "19-11-512(6) [renumbered 19-18-512(6)]" for "19-11-512(5) [renumbered 19-18-512(5)]".

The Code Commissioner has codified the amendment made by Ch. 566, in favor of the amendment made by Ch. 575, inasmuch as both new subsection references are traceable to the same language in 19-11-512 (renumbered 19-18-512) and the Ch. 566 amendment is the most appropriate in light of the renumbering of the subsections of 19-11-512 (renumbered 19-18-512) by Ch. 566.

Administrative Rules

ARM 2.43.611 Municipal police officers' supplemental benefits and allowance adjustments.

Attorney General's Opinions

Limitation of Allowance Adjustment to One-Time Adjustment: The allowance adjustment in 19-9-1011 (now repealed) was not intended to provide an annual cost-of-living increase, but rather to provide for an adjustment of the monthly allowance of a police officer who retired on or after July 1, 1975, and before July 1, 1985, in order to bring the allowance up to one-half of a

newly hired active police officer's salary as of July 1, 1985, in each city. (See 1989 amendment.) 42 A.G. Op. 79 (1988).

Payment of Pension Supplement: The first supplemental payment to recipients was intended to be made in July 1977, requiring immediate lump-sum payments retroactive to then, followed by monthly payments from the present. The appropriate funding to be implemented may be determined by the administrator of the Public Employees' Retirement Division (now by the Public Employees' Retirement Board) in conformity with this opinion. 37 A.G. Op. 77 (1977).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1696, 1703, 1704, 1707, 1708.

19-9-1009. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-9-1010. Original election — guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Saving Clause: Section 4, Ch. 463, L. 1999, was a saving clause.

Effective Dates: Section 5(1), Ch. 463, L. 1999, provided that, except as provided in subsection (2), this section is effective January 1, 2000. Subsection (2) provided that [section 2(3)(b)(ii)(A) and (4)], 19-9-1010(3)(b)(ii)(A) and (4), are effective on passage and approval. Approved April 22, 1999.

19-9-1013. Extended election — guaranteed annual benefit adjustment.

Compiler's Comments

2003 Amendment: Chapter 114 in (3)(a) substituted "12 months" for "36 months". Amendment effective October 1, 2003.

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

19-9-1020. One-time permanent ad hoc purchasing power adjustment.

Compiler's Comments

2001 Coordination Amendment: Section 3, Ch. 391, L. 2001, a coordination instruction, provided that if House Bill No. 294 was passed and approved, then at the end of the first sentence "19-9-1009 or 19-9-1010" must be changed to "19-9-1013". House Bill No. 294 became Ch. 149, L. 2001.

Effective Date: Section 4, Ch. 391, L. 2001, provided that this section is effective April 28, 2001.

Part 11
Survivorship Benefits and Death Payments

19-9-1101. Preretirement death benefits.

Compiler's Comments

2001 Amendment: Chapter 99 near beginning of first sentence substituted "death of an active member" for "death of a member before retirement" and at end substituted "payable as provided in 19-9-804(2)" for "as provided in 19-9-804"; deleted former (2) that read: "(2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent child is eligible for a refund of the member's accumulated contributions"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (1) inserted last sentence providing survivorship benefit of 2.5% of final average compensation for each year of membership service for service over 20 years. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 42 in (1) substituted "final average compensation" for "final average salary". Amendment effective March 12, 1997.

1993 Amendments — Composite Section: Chapter 265 in (1) substituted "member" for "police officer" and deleted reference to subsection (4) of 19-9-804; in (2) substituted present text regarding refund upon death of inactive nonvested member for former subsection that read: "Upon the death of a member who is no longer employed as a police officer and who did not attain the minimum retirement eligibility at the age of 50, his surviving spouse or dependent child is eligible for a refund of the member's contributions and accumulated interest on account with the retirement system on the date that the refund is made to the survivors"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 in (1), after "benefits", inserted "equal to one-half of the member's final average salary as" and after "19-9-804(4)" inserted "(b)" (subsection reference deleted by ch. 265); and made minor changes in style. Amendment effective May 7, 1993.

1991 Amendment: In (1), at end, changed subsection reference to 19-9-804; and inserted (2) concerning refund of contributions on death of certain members. Amendment effective July 1, 1991.

1985 Amendment: Substituted language referring to eligibility of surviving spouse or dependent child to receive death benefits for "(1) A member's retirement allowance shall be paid first to the member during his lifetime and, upon his death, in the manner and to the persons designated in subsection (2).

(2) Upon the death of a police officer before or after retirement, his surviving spouse, if there is one, shall, as long as such spouse remains unmarried, be paid from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the

surviving spouse, his surviving dependent child, collectively if there is more than one, shall receive the same monthly payments a surviving spouse would receive as long as the child or one of the children remains dependent as defined in 19-9-104. The payments shall be made to the child's duly appointed, qualified, and acting guardian for the child's use. If there is more than one such child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children are no longer dependent."

1983 Amendment: Near beginning of (2) substituted "unmarried" for "the surviving spouse"; after "dependent" deleted "minor"; after "surviving dependent" substituted "child" for "minor children"; near middle of (2), after "would receive" substituted language referring to dependency as defined in 19-9-104 for ", until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 years or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children have reached the age of 18 years or are married".

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Case Notes

Retirement Under Consolidated Government — Benefits From Last System to Which Contributed: Plaintiff retired as a law enforcement officer from Butte-Silver Bow. Prior to the city-county consolidation, he was a Deputy Sheriff. When he retired and applied for benefits, the State calculated options to be offered him under 19-7-701 (renumbered 19-7-1001), the Sheriffs' Retirement System. Plaintiff contended he was entitled to benefits under 19-9-804 and 19-9-911 (renumbered 19-9-1101) of the Police Officers' Retirement System. All parties agreed that eligibility was determined under 19-7-308(1) (renumbered 19-7-801(1)). The Supreme Court held that the statutory provisions are clear and unambiguous. In such a case, rules of statutory construction have no application, so that the court gave no deference to the agency's interpretation. The dispute centered around 19-7-308(2) (renumbered 19-7-801(2)) and whether it merely determines which laws govern eligibility for death benefits or also which laws govern calculation of death benefits. The court held that under 19-7-308(2) (renumbered 19-7-801(2)) death benefits are calculated according to the provisions of the system to which the officer last made contributions. The codification instruction placing 19-7-308 (renumbered 19-7-801) under the provisions of the Sheriffs' Retirement System was only for ease of reference as between the systems. Death benefits are calculable and payable under the Police Officers' Retirement System. Bay v. St., 212 M 258, 688 P2d 1, 41 St. Rep. 1725 (1984).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1683, 1684.

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-9-1102. Payments in absence of spouse or child.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If, after a member dies, a benefit is not paid pursuant to 19-9-804, 19-9-903, or 19-9-1101, then the member's designated beneficiary" for "If a retired member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the board as provided in 19-2-801, the designated beneficiary" and near end after "any" deleted "retirement" and deleted former second sentence that read: "If the member did not designate a beneficiary or the designated beneficiary predeceased the member, the amount must be paid to the member's estate." Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 at beginning after "If a" inserted "retired", substituted "the board as provided in 19-2-801" for "the division", after "paid" substituted "the amount, if any, of" for "an amount equal to", and after "accumulated contributions" substituted "minus the total of any retirement benefits already paid from the member's account" for "less any retirement benefits paid to the member before the member's death"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in first sentence substituted "division" for "administrator", substituted "the designated beneficiary must be paid" for "the administrator shall pay to the designated beneficiary", and substituted "member's accumulated contributions" for "member's

contributions"; in second sentence, near beginning before "member", deleted "deceased" and before "beneficiary" inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.402 Membership cards.
ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.
ARM 2.43.605 Designation of beneficiary.
ARM 2.43.607 Payment to an estate.

Part 12
Deferred Retirement Option Plan (DROP)

Part Administrative Rules

Title 2, chapter 43, subchapter 11, ARM Municipal Police Officers' Retirement System.

Part Law Review Articles

DROP: The Revenge of the DB Plan (Defined Benefit, Deferred Retirement Option Plan), Perdue, 32 Compensation & Benefits Rev. 54 (2000).

19-9-1201. Short title.

Compiler's Comments

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

19-9-1202. Definitions.

Compiler's Comments

2005 Amendment: Chapter 329 in definition of DROP accrual near middle and in definition of monthly DROP accrual near end substituted "service" for "employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 inserted definitions of DROP accrual and monthly DROP accrual; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

19-9-1203. Deferred retirement option plan established — compliance with federal law — rulemaking.

Compiler's Comments

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

Administrative Rules

Title 2, chapter 43, subchapter 11, ARM Municipal Police Officers' Retirement System.

19-9-1204. Eligibility — participation criteria — membership status — service interruptions.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 114 in (1) substituted "19-9-801(1)" for "19-9-801(2)". Amendment effective October 1, 2003.

Chapter 261 in (1) near middle after "under" substituted "19-9-801(1)" for "19-9-801(2)"; and inserted (6) providing that members eligible for retirement after July 1, 2002, and before July 1, 2003, who elect to participate in the deferred retirement option plan before October 2, 2003, may include in their DROP period any time during the period beginning July 1, 2002, and ending June 30, 2003. Amendment effective April 9, 2003.

Chapter 429 in (5) after "military service or" substituted "other temporary absence from work" for "disability". Amendment effective July 1, 2003.

Retroactive Applicability: Section 3, Ch. 261, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to active members of the municipal police officers' retirement system who were eligible to retire under 19-9-801(1) on or after July 1, 2002, but before July 1, 2003."

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.1104 DROP application process.
ARM 2.43.1105 DROP period.
ARM 2.43.1108 DROP participation limits.

19-9-1205. Retirement system contributions — benefit payments to individual accounts — investment returns.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) at end substituted "DROP accrual" for "DROP benefit equal to the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes". Amendment effective July 1, 2003.

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.1101 Definitions.
ARM 2.43.1108 DROP participation limits.
ARM 2.43.1110 Estimated monthly DROP accrual.
ARM 2.43.1118 Guaranteed annual benefit adjustment increases for DROP participants.
ARM 2.43.1119 Minimum benefit for DROP participants.

19-9-1206. Survivorship benefits.

Compiler's Comments

2003 Amendment: Chapter 429 at end of (1) inserted "and the member's accumulated contributions minus any benefits paid from the member's account, including monthly DROP accruals". Amendment effective July 1, 2003.

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code

Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.1105 DROP period.
ARM 2.43.1111 Interest paid to participants.
ARM 2.43.1112 Distribution of DROP benefit.

19-9-1207. Employment and benefits after DROP period.

Compiler's Comments

2005 Amendment: Chapter 329 in (3)(b) substituted "service" for "covered employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (3)(b)(ii) after "service" inserted "credit". Amendment effective July 1, 2003.

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.1115 Employment after DROP period.
ARM 2.43.1118 Guaranteed annual benefit adjustment increases for DROP participants.
ARM 2.43.1119 Minimum benefit for DROP participants.

19-9-1208. Distribution of DROP benefit.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "service" for "covered employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1)(b) substituted "eligible retirement plan" for "qualified plan"; and at end of (2) inserted reference to Internal Revenue Code. Amendment effective July 1, 2003.

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.1111 Interest paid to participants.
ARM 2.43.1112 Distribution of DROP benefit.
ARM 2.43.1113 Distribution of DROP benefit pursuant to family law order.
ARM 2.43.1118 Guaranteed annual benefit adjustment increases for DROP participants.
ARM 2.43.1119 Minimum benefit for DROP participants.

CHAPTER 13
FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM

Chapter Administrative Rules

ARM 2.43.302 Definitions.
ARM 2.43.303 Request for release of information by members.
ARM 2.43.333 Purchase of full-time service by part-time members.

Chapter Case Notes

Judgment Against "State" Binding Against Two Agencies — Retirement Benefits Setoff Barred as Compulsory Counterclaim: During a longstanding dispute by firefighters employed by the Montana Air National Guard and involving several separate lawsuits, the plaintiff was fired and began receiving retirement benefits. The plaintiff sued "the State" for reinstatement of employment, lost wages, employment benefits during the period of termination, liquidated damages, and attorney fees and costs. After other firefighters' suits were decided in the firefighters' favor, the plaintiff settled with the Department of Military Affairs (DMA) for reinstatement, lost wages, lost annual leave and sick leave benefits, retirement contributions that the DMA would have made during the termination period, and attorney fees and costs of suit. After settlement, the Public Employees' Retirement System (PERS) claimed that it was entitled to repayment of the retirement benefits that the plaintiff had been paid before reinstatement. The DMA and PERS agreed to offset the settlement damages by the retirement amount. The Supreme Court held that the state's setoff claim was barred as a compulsory counterclaim, that both agencies were bound by the DMA's settlement agreement because they were the same party collectively known as the "State of Montana", and that the plaintiff was entitled to the full settlement amount without setoff. Peters v. St., 285 M 345, 948 P2d 250, 54 St. Rep. 1185 (1997).

Part 1
General Provisions

19-13-102. Purpose — application of prior law.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1603, 1606, 1630.

19-13-103. Firefighters' unified retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "A retirement plan is established and known as the firefighters' unified retirement system. The plan is governed" for "A firefighters' unified retirement system is established and governed". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 inserted reference to chapter 2. Amendment effective July 1, 1993.

19-13-104. Definitions.

Compiler's Comments

2005 Amendment: Chapter 305 deleted definition of final average compensation that read: ""Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of final average compensation"; inserted definition of highest average compensation; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 305, L. 2005, provided: "[This act] applies to benefits calculated on or after [the effective date of this act]." Effective July 1, 2005.

2003 Amendment: Chapter 429 in definition of compensation in (a) before "remuneration" deleted "regular" and substituted language concerning payment for services for former language that read: "paid for the firefighter's service as a firefighter out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made" and inserted (c)(ii) excluding maintenance, allowances, and expenses; in definition of final average compensation at end of first sentence substituted "in the event a member has not served at least

36 months, the total compensation earned divided by the number of months of service" for "if the member has not been a member that long, over the period of the member's service" and in second sentence after "termination of" substituted "employment" for "service" and before "compensation" substituted "regular" for "normal"; in definition of full-paid firefighter after "appointed" inserted "by an employer" and after "under" inserted "the standards provided in"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 290 in definition of employer after "19-13-211" inserted "or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201"; inserted definition of retirement system; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1999 Amendments — Composite Section: Chapter 58 in definition of compensation in (a) after "paid" deleted "by an employer" and after "as a firefighter" inserted "out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made". Amendment effective July 1, 1999.

Chapter 562 in definition of minimum retirement date decreased required years of membership service from 10 to 5. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 457 in definition of final average compensation, in first sentence after "member", deleted "hired on or after July 1, 1981"; deleted definition of last monthly compensation that read: ""Last monthly compensation" means the compensation paid to a member during the member's last full month of service. Lump-sum payments for annual leave paid to the member upon termination of service may not be included in the calculation of last monthly compensation"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 inserted definitions of compensation and last monthly compensation; deleted definition of administrator that read: ""Administrator" means the public employees' retirement division of the department of administration"; deleted definition of Board that read: ""Board" means the retirement board described in 2-15-1009"; deleted definition of credited service that read: ""Credited service" means the aggregate of a member's prior service and membership service"; in definition of city or town, before "city", deleted "municipality"; in definition of employer substituted "retirement system" for "plan"; substituted definition of final average compensation for definition of final average salary and at end of first sentence substituted "service" for "membership" and inserted second sentence regarding lump-sum payments; deleted definition of fund that read: ""Fund" means the pension trust fund in the state treasury system designated for the use of the plan"; deleted definition of member that read: ""Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter"; deleted definition of member contributions that read: ""Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under this chapter or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon"; deleted definition of membership service that read: ""Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year"; in definition of minimum retirement date, at end, substituted "membership service" for "credited service"; deleted definition of monthly compensation that read: ""Monthly compensation" means:

(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on

July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class"; deleted definition of plan that read: ""Plan" means the municipal firefighters' retirement system created by this chapter"; in definition of prior plan substituted "retirement system" for "plan"; deleted definition of prior service that read: ""Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan"; deleted definition of retirement allowance that read: ""Retirement allowance" means the monthly benefit payable after service or disability retirement"; in definition of retirement date, before "benefits", deleted "the retirement or disability" and after "benefits" deleted "of a member or a beneficiary"; deleted definition of totally and permanently disabled that read: ""Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendments: Chapter 186 inserted definition of surviving spouse.

Chapter 282, in definition of fund, changed "agency account" to "pension trust fund".

Chapter 585 inserted (14)(b)(i) defining monthly compensation for a part-paid firefighter employed by a city of the second class; and in (14)(b)(ii) inserted "if that city does not employ a full-paid firefighter", after "paid" inserted "on July 1 of each year", after "confirmed" changed "active" to "full-paid", and after "second class" deleted "on July 1 of each year".

Administrative Rules

ARM 2.43.301 through 2.43.304 General rules.

ARM 2.43.402 Membership cards.

ARM 2.43.408 Calculation of service credit on termination of employment.

Attorney General's Opinions

Retirement Date for Firefighters: Prior to the enactment of sec. 7, Ch. 53, L. 1983, firefighters were able to retire during the month and receive pro rata credit for the portion of that month after retirement. Testimony on the 1983 legislation states that its purpose is to establish uniform retirement dates and to ensure that all retirees would begin accruing their benefits on the first day of the month. Under 19-13-701(2), the retirement date for a firefighter retiring from active service is the first day of the month following his last day of membership service. On that day, and not before, his service retirement benefits become payable. 40 A.G. Op. 59 (1984).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1580.

19-13-115. Firemen's association to advise board.

Compiler's Comments

1993 Amendment: Chapter 265 at end of second sentence, after "survivorship benefits", substituted remainder of sentence regarding individual member for "for members of the plan". Amendment effective July 1, 1993.

Administrative Rules

Title 2, chapter 43, subchapter 3, ARM General rules.

Part 2
Extension of Coverage by Local Government Employers

19-13-210. Participation in retirement system.

Compiler's Comments

2001 Amendment: Chapter 290 inserted (2) requiring firefighters hired by Montana air national guard on or after October 1, 2001, or on or after date of contingency regarding execution of required agreement regarding payment of contributions with federal funds, whichever is later, to participate in retirement system; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters

hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1993 Amendment: Chapter 265 in two places substituted "retirement system" for "plan" and near end substituted "survivors" for "beneficiaries"; and made minor changes in style. Amendment effective July 1, 1993.

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

19-13-211. Election to join retirement system — transfer of assets.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement system for references to plan or chapter; in (1), in fourth sentence before "ordinance", inserted "election" and after "deposit" substituted "into the pension trust fund" for "with the board"; in (2), in third sentence after "respective", deleted "individual accounts of the"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-212. Termination of participation in retirement system or reduction of employer contributions.

Compiler's Comments

2001 Amendment: Chapter 290 throughout section substituted reference to employer for reference to city. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1993 Amendment: Chapter 265 in (1), in two places, substituted "retirement system" for "plan" and near end substituted "required actuarial valuation" for "actuarial valuation required in 19-13-504"; and in (2), in first sentence, substituted "the amount determined to be necessary" for "an amount needed" and before "city" inserted "liabilities of the". Amendment effective July 1, 1993.

19-13-213. Excess unfunded liabilities of prior plans.

Compiler's Comments

1993 Amendment: Chapter 265 in (2), in two places, substituted "board" for "administrator", near beginning of first sentence substituted "retirement system" for "plan", and in second sentence, after "for deposit", substituted "in the pension trust fund" for "with the administrator"; and deleted (3) that read: "(3) For each city with an unfunded liability, any portion of the member, the employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability." Amendment effective July 1, 1993.

1991 Amendment: In (2), in first sentence, substituted "within 6 months after a city is granted membership in the plan" for "on or before October 1, 1986" and at end substituted "the city's previous plan" for "each city participating in the plan created by this chapter" and in second sentence substituted "previous" for "prior", before "is not funded" deleted "as of July 1, 1986", after "administrator" substituted "the city" for "the state auditor", and near end, after "period of

time", deleted "from the premium taxes on insurance risks enumerated in 19-11-512"; deleted former (3) that required the administrator to credit accounts for payments in excess of amount necessary to amortize the city's liabilities; and made minor changes in style. Amendment effective July 1, 1991.

1983 Amendments — Composite Section: Chapter 286, which substituted "1986" for "1984" in two places in (2), became effective on March 29, 1983.

Chapter 661, twice in (2), substituted "1986" for "1984"; following first sentence of (2) deleted "The determination must be negotiated between each city and the administrator."; inserted "For" at beginning of second sentence of (2); at end of (2) substituted "the administrator, the state auditor shall pay ... city's excess liability" for "the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by agreement between the city and the administrator."; and substituted (3) allowing administrator to credit his accounts for excess payments for "Each city determined by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for the excess payments." Chapter 661 became effective July 1, 1983.

Chapter 661 amended the duties of the administrator and date of evaluation of a plan effective approximately 3 months later than Ch. 286. However, as those duties and date of evaluation are prospective and must be accomplished or determined long after the effective date of both chapters, the differing effective dates appear inconsequential.

19-13-214. Taxing authority of employers.

Compiler's Comments

2001 Amendment: Chapter 574 near middle after "chapter" substituted "the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue" for "whenever the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue"; deleted former (2) and (3) that read: "(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section"; and made minor changes in style. Amendment effective July 1, 2001.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.405 Membership.

ARM 2.43.408 Calculation of service credit on termination of employment.

19-13-301. Active membership — inactive vested member — inactive nonvested member.

Compiler's Comments

2005 Amendment: Chapter 329 in (5)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (5)(b) relating to what a lump-sum payment consists of; in (6)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5) near end after "service" inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at end of (3) after "board" inserted "within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later"; in (7)(b) near middle after "within" substituted "30 days" for "1 month"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendments — Coordination: Chapter 254 in (1), at beginning of introductory clause, inserted "Except as provided in subsection (7)"; inserted (7) allowing certain firefighters to elect to remain in the Public Employees' Retirement System; and made minor changes in style. Amendment effective April 14, 1997.

Pursuant to sec. 2, Ch. 254, L. 1997, a coordination instruction, the Code Commissioner in (7)(a) substituted "45 years" for "40 years".

Chapter 457 in (5) and (6) reduced term of service from 10 years to 5 years; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1) substituted "member of the retirement system" for "member under the plan"; in (1)(a) substituted "service with an employer" for "employment by an employer"; in (1)(c) and (3) substituted "retirement system" for "plan"; inserted (4) regarding inactive member; inserted (5) regarding inactive vested member; inserted (6) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

Statement of Intent: The statement of intent attached to HB 674 (Ch. 566, L. 1981), provided: "A statement of intent is required for this bill in that it delegates rulemaking authority to the Public Employees' Retirement Board for the proper administration of the Montana Firefighters' Unified Retirement System.

It is contemplated that the rules will address the following:

(1) interpretation and enforcement of the provisions of this act;

(2) establishment of uniform rules to administer the provisions of this act;

(3) determination of conditions under which a person may become a member and receive benefits under the retirement system;

(4) determination of retirement disability and survivorship allowances under the provisions of this act;

(5) establishment of policy for the maintenance of records and accounts for administering the retirement system; [and]

(6) selection procedures for contracting with a qualified actuary to conduct actuarial valuation of the system."

Administrative Rules

ARM 2.43.403 Optional membership.

ARM 2.43.440 Service purchases by inactive vested members.

Attorney General's Opinions

Eligibility of Firefighter Over Thirty-Four Years of Age for Membership in Firefighters' Unified Retirement System: An individual older than 34 years of age when first hired as a firefighter by a firefighters' unified retirement system employer is in compliance with 7-33-4107 if the first appointment as a firefighter, irrespective of place of employment, occurred when the individual was not over 34 years of age. A firefighter over the age of 34 years at the time of original appointment is not eligible for membership in the firefighters' unified retirement system. 44 A.G. Op. 8 (1991).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1616.

19-13-302. Ineligibility for other retirement plans.

Compiler's Comments

1993 Amendment: Chapter 265 at end substituted "retirement system" for "plan"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Deleted "for firefighters" after "any other mandatory retirement plan".

19-13-310. Effect on members of prior plans.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "retirement system" for "plan". Amendment effective July 1, 1993.

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

Part 4
Service Credit

Part Administrative Rules

ARM 2.43.405 Membership.
ARM 2.43.406 Basic period of service.
ARM 2.43.408 Calculation of service credit on termination of employment.
ARM 2.43.410 Proof of service.
ARM 2.43.422 Most recent service purchased first.
ARM 2.43.425 Incomplete payments.
ARM 2.43.426 Part-paid firefighters' service.
ARM 2.43.427 Reinstatement — credit for lost time.
ARM 2.43.428 Acceptable documentation of public service employment.

19-13-403. Application to purchase military service.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "15 years of service credit"; deleted former (2) that read: "(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years"; deleted former (4) that read: "(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", after "at least" substituted "5 years of membership service" for "15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (1)(b) and (2) that read: "(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years"; in (1)(b) after "purchase" substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning purchase of service by member with at least 5 years of membership service; inserted (3) providing method for purchase of service credit; deleted former (4) that read: "(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit"; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(7), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 107, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause, after "member with" substituted "at least 15 years of service" for "15 years or more service", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end after "benefits" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service under 19-2-707"; at beginning of (1)(b) substituted "To purchase this military service, the member shall pay the actuarial cost of the service" for "To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board"; near beginning of (2) after "may not" substituted "purchase more military service than the member's years of membership service" for "qualify more of the member's military service than the member has service credit" and deleted former second sentence that read: "Military service purchased under this section may not be used in determining the member's eligibility for a service retirement"; substituted (3) regarding ineligibility to purchase military service for former language that read: "If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify military service under subsection (1)"; inserted (4) establishing that purchased military service is not membership service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 at end of first sentence in (1) substituted "19-2-707" for "19-2-705"; and deleted second sentence in (2) that read: "However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the active duty in

the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time." Amendment effective July 1, 1999.

1993 Amendment: Chapter 265 in (1), in first sentence near beginning after "service", inserted "credit", after "active" inserted "duty", and at end, after "credit", inserted "for this service under 19-2-705", in second sentence substituted "pension trust fund" for "account" and after "based on" substituted "the most recent actuarial valuation of the system" for former text that read: "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes", in third sentence, after "service", inserted "credit", and at end of fourth sentence, after "service retirement", deleted "requiring a minimum of 10 years of service"; in (2), in first sentence, substituted "military retirement benefits" for "normal service retirement benefits" and in second sentence, after first "active", inserted "duty"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.423 Purchase of other types of service.
ARM 2.43.428 Acceptable documentation of public service employment.
ARM 2.43.433 Purchase of full-time service by part-time members.
ARM 2.43.437 Military service.

19-13-405. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) in two places and in (3) after references to service inserted "credit"; and in (3) after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-13-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end after "service" deleted "that the member has qualified under the retirement system"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-13-403, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.422 Most recent service purchased first.
ARM 2.43.432 "1-for-5" additional service.

19-13-406. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 6
Contributions and Refunds

Part Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-13-601. Deduction remitted to firemen's association — member's contribution.

Compiler's Comments

1997 Amendment — Coordination: Section 12(1), Ch. 457, L. 1997, provided: "If House Bill No. 170 is passed and approved and if it amends 19-13-601, and if [this act] is passed and approved and if it amends 19-13-601, then [section 29 of House Bill No. 170], amending 19-13-601, is void and [section 3 of this act], amending 19-13-601, shall read:

"Section 3. Section 19-13-601, MCA, is amended to read:

"19-13-601. Deduction remitted to firemen's association — member's contribution. (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system.

(2) ~~The~~ Each member's contribution to the retirement system ~~is 7.8%~~ as a percentage of the member's compensation must be:

(a) 9.5% for a member not covered under [section 3 of House Bill No. 170]; or

(b) 10.7% for a member covered under [section 3 of House Bill No. 170].

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-604, 19-13-605, and this section must be based on the total compensation received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."""

1995 Amendment: Chapter 541 in (2) increased from 6% to 7.8% the amount of the member's contribution. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in five places, before "compensation", deleted "monthly"; in (1), at end, substituted "retirement system" for "plan"; in (2), after "retirement system", deleted "for each active member"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (3), near end of second sentence, substituted "workers' compensation" for "the workers' compensation division". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

1987 Amendment: In (1), near beginning, reduced retained sum from 7% to 1% and near middle of first sentence substituted "remit this amount" for "report and remit"; deleted (1)(a) and (1)(b) that required the 6% deleted in the opening clause of (1) to be remitted to the administrator for deposit in the fund; inserted (2) making member's contribution 6% of monthly compensation; inserted (4) requiring employer to "pick up" employee's contribution; inserted (5) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (6) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

19-13-604. State contribution.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of second sentence substituted "The general fund contributions must be made annually" for "Payments must be made annually from the general fund to the pension trust fund" and in third sentence after "auditor" inserted "by September 1 of each fiscal year" and at end substituted "preceding fiscal year" for "preceding year"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 532 at end of first sentence substituted "from the general fund" for "through the state auditor from the premium taxes on the insurance risks enumerated in 19-18-512", in second sentence, after "annually", inserted "from the general fund" and after "November 1" deleted "from the gross premium taxes after deduction for cancellations and returned premiums", near beginning of third sentence, before "auditor", inserted "state", deleted former fifth sentence that read: "As soon as practicable after receipt of the state contribution, the division shall deposit it in the pension trust fund", and inserted fifth sentence providing that contributions are statutorily appropriated. Amendment effective July 1, 1997.

1997 Amendment Changed and Voided — Coordination: The amendments made by sec. 30, Ch. 287, L. 1997, by sec. 4, Ch. 445, L. 1997, and by sec. 4, Ch. 457, L. 1997, were voided or changed by sec. 8(4)(b), Ch. 445, L. 1997, a coordination section, which established the state's contribution at 32.61%. Amendment effective July 1, 1997.

The amendment made by sec. 30, Ch. 287, L. 1997, was also voided by sec. 8(4)(a), Ch. 445, L. 1997, a coordination section.

The textual amendment made by sec. 4, Ch. 445, L. 1997, was also voided by sec. 8(2)(a), Ch. 445, L. 1997, a coordination section.

1995 Amendment: Chapter 541 in fourth sentence increased the state's contribution from 23.27% to 24.21% and at end, after "compensation", deleted "effective July 1, 1991". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in second sentence substituted "pension trust fund" for "administrator" and substituted "November 1" for "September 1", deleted former third sentence that read: "The payment is statutorily appropriated as provided in 17-7-502", in third sentence, near beginning, substituted "division" for "administrator", after "preceding year" substituted fourth sentence regarding state's contribution rate for former text that read: "and effective July 1, 1981, the state's contribution is 12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, to 22.98% effective July 1, 1985, and to 23.27% effective July 1, 1991", and in last sentence substituted "division" for "administrator" and at end, after "deposit it", substituted "in the pension trust fund" for "with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near end inserted provision that the contribution increases to 23.27% effective July 1, 1991. Amendment effective July 1, 1991.

1985 Amendment: Inserted third sentence referring to statutory appropriation.

1983 Amendment: Near end, inserted "and to 22.98% effective July 1, 1985" after "July 1, 1983".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-13-605. Employer contribution.

Compiler's Comments

2005 Amendment: Chapter 329 substituted second sentence providing that the employer pay as contributions 14.36% of the compensation paid to all of its employees, except those properly excluded from membership for "The employer's contribution is 14.36% of the total compensation paid to members." Amendment effective July 1, 2005.

2001 Amendment: Chapter 290 in first sentence after "available" deleted "to the city". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 541 in second sentence increased the employer's contribution from 13.02% to 14.36%. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 substituted second sentence regarding employer's contribution rate for former second and third sentences that read: "Effective July 1, 1981, the employer's contribution is 12% of the total monthly compensation paid to all active members during the preceding month. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, and shall decrease to 13.02% effective July 1, 1985" and in third sentence substituted "division" for "administrator" and after "deposit them" substituted "in the pension trust fund" for "with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Inserted "and shall decrease to 13.02% effective July 1, 1985" after "July 1, 1983".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-13-607. Other money credited as employer contributions.

Compiler's Comments

1999 Amendment: Chapter 562 in two places substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in two places substituted "division" for "administrator"; in first sentence substituted "retirement system" for "plan"; in second sentence substituted "shall deposit them in the pension trust fund" for "shall credit them to the fund" and after "fund" deleted "and, as soon as practicable after their receipt, deposit them with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

Part 7
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.503 Application process for service retirement.

ARM 2.43.504 Acceptable proof of date of birth.

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-13-701. Eligibility for service retirement.

Compiler's Comments

2003 Amendment: Chapter 429 near beginning of (2) substituted "completing 20 years of service" for "the minimum retirement date". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) after "membership service" inserted "has attained normal retirement age and"; and in (2) after "deposit" inserted "has attained normal retirement age and". Amendment effective March 21, 2001.

1997 Amendments: Chapter 370 in (1), at end, deleted "commencing on the first day of the month following the member's last day of service"; and deleted (3) that read: "(3) A vested inactive member may file a written application with the board requesting that the member's retirement benefit commence on the first day of the month following receipt of the application. However, the retirement benefit for an inactive vested member must commence no later than the first day of the month following the member's 55th birthday." Amendment effective April 23, 1997.

Chapter 457 at end of (3) substituted "no earlier than the first day of the month following the member's 50th birthday" for "no later than the first day of the month following the member's 55th birthday" (voided by Ch. 370 amendment). Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 541 in (1), near beginning after "who has", deleted "reached age 50 and has" and after "completed" substituted "20" for "10". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1), after "more", substituted "of membership service" for "in the aggregate as a firefighter in any capacity or rank" and at end, before "service", deleted "membership"; in (2), before first "member", inserted "vested", substituted "terminates service before the minimum retirement date" for "terminates active service before age 50", before "contributions" inserted "accumulated", after "deposit" deleted "under 19-13-304", and at end substituted "commencing on the member's minimum retirement date" for "commencing on the first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 50"; in (3), in two places, substituted "retirement benefit" for "retirement allowance", at beginning of first sentence substituted "A vested inactive member" for "A terminated member eligible under subsection (1) or (2)", and in second sentence substituted "inactive vested member" for "eligible terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (3) relating to a request for commencement of retirement allowance by a terminated member. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: In (1) deleted former (b) providing for service retirement eligibility for "a member who has reached mandatory retirement age under 19-13-702 regardless of his number

of years of service" and made minor changes in phraseology and arrangement; and inserted (2) referring to service retirement for members terminating active service before age 50.

1983 Amendment: Inserted (2) relating to time of commencement of retirement.

Attorney General's Opinions

Retirement Date for Firefighters: Prior to the enactment of sec. 7, Ch. 53, L. 1983, firefighters were able to retire during the month and receive pro rata credit for the portion of that month after retirement. Testimony on the 1983 legislation states that its purpose is to establish uniform retirement dates and to ensure that all retirees would begin accruing their benefits on the first day of the month. Under 19-13-701(2), the retirement date for a firefighter retiring from active service is the first day of the month following his last day of membership service. On that day, and not before, his service retirement benefits become payable. 40 A.G. Op. 59 (1984).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

19-13-704. Amount of service retirement benefit.

Compiler's Comments

2005 Amendment: Chapter 305 in (1) near end substituted "highest average compensation" for "final average compensation"; and in (2)(b)(i) and in (2)(b)(ii) in two places substituted "highest monthly compensation" for "final monthly compensation". Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 305, L. 2005, provided: "[This act] applies to benefits calculated on or after [the effective date of this act]." Effective July 1, 2005.

2003 Amendment: Chapter 429 in (2)(b)(i) and (2)(b)(ii) after "years of" inserted "membership". Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 in (3) substituted "the benefit" for "the allowance". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment — Coordination: Section 12(2), Ch. 457, L. 1997, provided: "If House Bill No. 170 is passed and approved and if it amends 19-13-704, and if [this act] is passed and approved and if it amends 19-13-704, then [section 31 of House Bill No. 170], amending 19-13-704, is void and [section 6 of this act], amending 19-13-704, shall read:

"Section 6. Section 19-13-704, MCA, is amended to read:

"19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member

~~(a) A member hired before July 1, 1981, who elects to retire after having reached 20 years of membership service must receive a service retirement benefit equal to the sum of:~~

~~(i) 50% of the member's last monthly compensation for years of service credit up to and including 20 years; and~~

~~(ii) 2% of the member's last monthly compensation for each year of service credit after 20 years.~~

~~(b) A member hired before July 1, 1981, who elects to retire after having reached at least 10 years but less than 20 years of membership service as an active member must receive a service retirement benefit equal to 2% of the member's last monthly compensation for each year of service credit. Upon the retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.~~

~~(2) A member hired on or after July 1, 1981,~~ who retires with at least ~~10~~ 5 years of membership service must receive a service retirement benefit equal to ~~2%~~ 2.5% of the member's final average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under [section 3 of House Bill No. 170] is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of service, a benefit equal to 2% of the member's final monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of service, a benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more

dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104."""

1995 Amendment: Chapter 541 in (1)(a), after "reached", deleted "both" and after "membership service" deleted "and age 50"; in (1)(a)(ii), at beginning, substituted "2%" for "1%"; in (1)(b), in first sentence after "10 years", inserted "but less than 20 years" and after "membership service" deleted "but prior to reaching age 50"; and deleted (3) that read: "(3) The maximum monthly benefit payable to any retiree under subsection (1) may not exceed 60% of the member's last monthly compensation. The maximum monthly benefit payable to any retiree under subsection (2) may not exceed 60% of the member's final average compensation." Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 substituted (1) and (2) regarding amount of service retirement benefit for former text that read: "(1) (a) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 20 years of service and reaching age 50 as an active firefighter shall receive a service retirement allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(b) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 10 years or more of service but has not both completed 20 years of service and reached age 50 as an active firefighter shall receive a service retirement allowance equal to 2% of the monthly compensation last received by the member for each year of service up to a maximum of 60% of his final monthly salary.

(i) If the member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter, the allowance prescribed in subsection (1)(b) must be made to the surviving spouse beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death. If there is no surviving spouse or if the surviving spouse dies and if the firefighter leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent as defined in 19-13-104.

(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).

(2) A member hired on or after July 1, 1981, who is eligible under 19-13-701 shall receive a service retirement allowance equal to 2% of his final average salary for each year of service up to a maximum of 30 years of service"; and inserted (3) regarding limitation on maximum monthly benefit. Amendment effective July 1, 1993.

1989 Amendment: At end of first sentence of (1)(b)(i) deleted "or remarriage" and in second sentence, after "dies", deleted "or remarries". Amendment effective July 1, 1989.

Retroactive Applicability: Section 8, Ch. 63, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989."

1985 Amendment: In (1)(a), (1)(b), and (2) changed "19-13-701(1)" to "19-13-701"; and deleted former (2)(b) and (2)(c) that read: "(b) is eligible under 19-13-701(2) shall receive a service retirement allowance equal to one-half his final average salary;

(c) is retired under 19-13-701(2) and who was theretofore eligible at his option to be retired under 19-13-701(1) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2)(a)".

Administrative Rules

ARM 2.43.406 Basic period of service.

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983

amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

Part 8
Disability Retirement Benefits

Part Collateral References

Determination whether firefighter's disability is service-connected for disability pension purposes. 7 ALR 4th 799.

19-13-802. Eligibility for disability retirement.

Compiler's Comments

2005 Amendment: Chapter 329 near end substituted "employment" for "service". Amendment effective July 1, 2005.

1993 Amendment: Chapter 265 in two places, before "disabled", deleted "totally and permanently", near middle substituted "disability retirement benefit" for "disability retirement allowance", and at end, after "disabled", inserted "and terminated service because of the disability"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.502 Application process for disability benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

Causal connection between fireman's performance of official duties and his disability, for purposes of recovering disability benefits. 27 ALR 2d 974.

19-13-803. Amount of disability retirement benefit.

Compiler's Comments

2005 Amendment: Chapter 305 in (1)(a) and in (1)(b) substituted "highest average compensation" for "final average compensation". Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 305, L. 2005, provided: "[This act] applies to benefits calculated on or after [the effective date of this act]." Effective July 1, 2005.

2003 Amendment: Chapter 429 substituted (2) concerning death of member receiving disability benefit for former text that read: "(2) A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's death the member leaves no surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children as defined in 19-13-104." Amendment effective July 1, 2003.

1997 Amendment: Chapter 457 in (1), after "member", deleted "hired before July 1, 1981"; in (1)(a), at end, substituted "final average compensation" for "last monthly compensation"; in (1)(b) substituted "a disability retirement benefit equal to 2.5% of the member's final average compensation" for "the disability retirement benefit provided in subsection (1)(a) increased at a rate of 2% of the member's last monthly compensation" and at end deleted "in excess of 20"; deleted former (2) that read: "A member hired on or after July 1, 1981, who becomes disabled:

(a) before completing 25 years of membership service must receive a disability retirement benefit equal to one-half the member's last monthly compensation;

(b) after completing 25 years or more of membership service must receive the disability retirement benefit provided in subsection (2)(a) increased at a rate of 2% of the member's last monthly compensation for each year of service credit in excess of 25"; and made minor changes in style. Amendment effective July 1, 1997.

Section 12(3), Ch. 457, L. 1997, voided the amendment made to 19-13-803 by sec. 32, Ch. 287, L. 1997.

1995 Amendment: Chapter 541 in (1)(b), near middle after "rate of", substituted "2%" for "1%" and at end, after "20", deleted "up to a maximum benefit equal to 60% of the member's last monthly compensation"; and in (2)(b), at end after "25", deleted "up to a maximum benefit equal to 60% of the member's last monthly compensation". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 throughout section substituted "disability retirement benefit" for "disability retirement allowance"; in (1) substituted "who becomes disabled" for "who is eligible under 19-13-802"; in (1)(a), before "service", inserted "membership" and substituted "the member's last monthly compensation" for "the monthly compensation last received by the member for his services as an active firefighter"; in (1)(b), before "service", inserted "membership", substituted "1% of the member's last monthly compensation for each year of service credit" for "1% for each year", and at end substituted "maximum benefit equal to 60% of the member's last monthly compensation" for "maximum of 60% of the monthly compensation last received by the member"; in (2) substituted "who becomes disabled" for "who is eligible under 19-13-802"; in (2)(a), before "service", inserted "membership" and substituted "member's last monthly compensation" for "monthly compensation last received by the member for his services as an active firefighter"; in (2)(b), before "service", inserted "membership", substituted "2% of the member's last monthly compensation for each year of service credit" for "2% for each year", and at end substituted "maximum benefit equal to 60% of the member's last monthly compensation" for "maximum of 5 years of additional service"; inserted (3) regarding payment of benefit upon member's death; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (2)(a) substituted "the monthly compensation last received by the member for his services as an active firefighter" for "his final average salary". Amendment effective July 1, 1991.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670.

19-13-804. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

1997 Amendment: Chapter 370 in (1), in fourth sentence after "examination", inserted "or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties" and near end, before "position", inserted "former"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in four places substituted references to disability retirement benefit or benefit for references to disability retirement allowance, disability allowance, or allowance; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.508 through 2.43.515 Periodic medical review of disability retirees.

19-13-805. Reinstatement upon termination of benefit.

Compiler's Comments

2005 Amendment: Chapter 329 in (3) in second sentence near middle substituted "service" for "employment"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 290 in two places in (2) substituted "employer" for "city". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1997 Amendment: Chapter 370 in (1)(a), at beginning of first sentence, substituted exception clause for "An inactive" and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; and inserted (1)(c) regarding applicability of standards necessary for reinstatement. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit, disability benefit, retirement benefit, or benefit for references to disability retirement allowance, disability allowance, retirement allowance, or allowance; and made minor changes in style. Amendment effective July 1, 1993.

Part 9
Survivorship Benefits and Death Payments

Part Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Part Collateral References

Right to survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-13-902. Survivorship benefit.

Compiler's Comments

2005 Amendment: Chapter 305 in (2)(a) substituted "highest average compensation" for "final average compensation". Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 305, L. 2005, provided: "[This act] applies to benefits calculated on or after [the effective date of this act]." Effective July 1, 2005.

2001 Amendment: Chapter 99 at beginning of first sentence of (1) substituted "A member's" for "Upon the death before retirement of an active member the member's" and at end substituted

"amount as provided in this section" for "equal to one-half the final average compensation received by the member", in second sentence after "leaves" deleted "one or more dependent children, then, upon the member's death if the member leaves", near middle after "member's" inserted "surviving", and at end inserted "under this section", and at beginning of third sentence inserted "A child may receive a share of the benefit"; substituted (2) regarding payment of the survivorship benefit upon death of a member who has completed more than or less than 20 years of service for former (2) that read: "(2) If the deceased member completed over 20 years of membership service, the survivorship benefit must be equal to 2.5% of the final average compensation for each year of service"; inserted (3) providing that benefits are subject to benefit adjustments; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 457 in (1), in first sentence after "member", deleted "hired before July 1, 1981" and substituted "final average compensation" for "last monthly compensation"; at end of (2) substituted "must be equal to 2.5% of the final average compensation for each year of service" for "provided in subsection (1)(a) must be increased at a rate of 2% of the last monthly compensation for each year in excess of 20"; deleted former (2) that read: "(2) Upon the death before retirement of a member hired on or after July 1, 1981, the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half of the member's final average compensation. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104"; and made minor changes in style. Amendment effective July 1, 1997.

Section 12(4), Ch. 457, L. 1997, voided the amendment made to 19-13-902 by sec. 33, Ch. 287, L. 1997.

1995 Amendment: Chapter 541 in (1)(b), near middle after "rate of", substituted "2%" for "1%" and at end, after "20", deleted "up to a maximum of 60% of the last monthly compensation received by the member". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 throughout section substituted references to survivorship benefit or benefit for references to survivorship allowance or allowance; in (1), at end of first sentence after "member", deleted "for his service as an active firefighter" and near end of second sentence, after "dependent", inserted "children"; in (1)(b), near beginning before "service", inserted "membership" and after "1%" inserted "of the last monthly compensation"; in (2), in first sentence, substituted "final average compensation" for "final average salary" and near beginning of second sentence substituted "member" for "firefighter" and near end, after "dependent", inserted "children"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In first sentence of (1)(a), after "shall", deleted "as long as such spouse remains unmarried" and in second sentence, after "upon the death", deleted "or remarriage"; and in first sentence of (2), after "shall", deleted "as long as such spouse remains unmarried" and in second sentence, after "upon the death", deleted "or remarriage". Amendment effective July 1, 1989.

Retroactive Applicability: Section 8, Ch. 63, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989."

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1651, 1652, 1654 through 1660.

19-13-903. Payments to designated beneficiary.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If, after a member dies, a benefit is not paid pursuant to 19-13-704, 19-13-803, or 19-13-902, then" for "If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the board as provided in 19-2-801", after "pay to the" inserted "member's", and after "total of any" deleted "retirement" and deleted former second sentence that read: "If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, the amount must be paid to the member's estate." Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in first sentence in two places substituted references to the board for references to the division and after "designated beneficiary" substituted "the amount, if any, of the retired member's accumulated contributions minus the total of any retirement

benefits already paid from the member's account" for "an amount equal to the member's contributions less any retirement benefits paid to the member before the member's death"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 near beginning, before "child", inserted "dependent" and in two places substituted "division" for "administrator"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Substituted language providing for payment of death benefits in absence of spouse or child for "If a member dies without leaving a surviving spouse or children, the administrator shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the administrator, the administrator shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate."

Administrative Rules

ARM 2.43.604 Death benefits, survivor benefits, and optional retirement benefits.

ARM 2.43.605 Designation of beneficiary.

ARM 2.43.607 Payment to an estate.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1653, 1658, 1683, 1684.

Part 10
Postretirement Benefits and Benefit Increases

Part Attorney General's Opinions

Enactment With Knowledge of Construction of Other Section: In enacting 19-13-1006 (now repealed), the Legislature is presumed to have acted with full knowledge of the construction given to the predecessor section (19-11-606, renumbered 19-18-606, now repealed) from which the wording of 19-13-1006 (now repealed) was adopted, and the Legislature is presumed to have adopted the construction of the predecessor section. 39 A.G. Op. 72 (1982).

Reimbursement of Division for Payments Made in Previous Year: Section 19-13-1006 (now repealed) permitted the payment of supplemental benefits to the recipients based on the monthly salary paid that same fiscal year to a confirmed active firefighter of the city which last employed him. The funds distributed to the Public Employees' Retirement Division for this purpose in subsection (2) should therefore be used to reimburse the Division for the payments made to the recipients in the previous fiscal year. 39 A.G. Op. 72 (1982).

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

19-13-1007. Minimum benefit adjustment.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) before "service" inserted "membership". Amendment effective July 1, 2003.

2001 Amendment: Chapter 290 throughout section substituted reference to employer for reference to city; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board.

The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1999 Amendment: Chapter 562 in (1) inserted "with 10 or more years of service". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments Changed and Voided — Coordination: The amendments made by sec. 35, Ch. 287, L. 1997, by sec. 5, Ch. 445, L. 1997, and by sec. 9, Ch. 457, L. 1997, were voided by sec. 8(2)(b) and 8(6), Ch. 445, L. 1997, coordination instructions, and were changed by sec. 8(6), Ch. 445, L. 1997, a coordination section, to: in (1) substituted "The following applies to a member who has not elected to be covered under 19-13-1010" for "For a member retiring on or after July 1, 1973, who was hired before July 1, 1981"; in (1)(a), at beginning, inserted "For the member", substituted "19-13-704" for "19-13-704(1)(a)", substituted "19-13-803" for "19-13-803(1)", and substituted "19-13-902" for "19-13-902(1)(b)"; in (1)(b) substituted "subsection (1)(a)" for "subsections (1) and (2)"; deleted former (2) that read: "(2) For a member hired on or after July 1, 1981, or the member's surviving spouse or dependent children, the disability retirement benefit provided in 19-13-803(2) and the survivorship benefit provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city"; in (2) inserted "who has not elected to be covered under 19-13-1010" and substituted "19-13-704" for "19-13-704(1)(b)"; in (2)(b) substituted "earned more than 5" for "earned more than 10" and increased minimum survivor's benefit from "2%" to "2.5%"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 541 in (4), near beginning after "discontinued", deleted "before the member reaches age 50". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 throughout section substituted references to service retirement benefit, disability retirement benefit, survivorship benefit, service retirement benefit, or benefit for references to service retirement allowance, disability retirement allowance, survivorship allowance, service retirement allowance, or allowance and substituted "retirement system" for "plan"; in (3) substituted "survivor's benefit" for "his beneficiary's allowance"; in (4)(a) and (4)(b) substituted "earned" for "completed" and before "service" inserted "membership"; deleted (5) that read: "(5) In lieu of the benefit adjustment provided in subsection (4), a member may elect to receive an early retirement allowance, beginning upon termination of employment, that is the actuarial equivalent of the accrued portion of the service retirement allowance that would have been payable to him beginning at age 50"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: In (1), substituted "a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or his surviving spouse" for "a member hired on or after July 1, 1973, but before July 1, 1981, and his surviving spouse"; inserted (3) requiring comparison to salary of firefighters in other cities in certain cases; inserted (4) referring to allowance to be paid in case of vested member hired before July 1, 1981, who is involuntarily discontinued before age 50 in certain cases; and inserted (5) allowing certain members to elect an early retirement allowance.

Administrative Rules

ARM 2.43.610 Minimum benefit adjustment for retirees with part-paid firefighter service.

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

19-13-1010. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-13-1011. Election — guaranteed annual benefit adjustment.

Compiler's Comments

2003 Amendment: Chapter 114 in(3)(a) substituted "12 months" for "36 months". Amendment effective October 1, 2003.

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

CHAPTER 17
VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

Chapter Attorney General's Opinions

Workers' Compensation — Rural Volunteers Not Covered: A rural volunteer firefighter is not an "employee" as defined in 39-71-118 for the purposes of workers' compensation, but this chapter provides him with similar benefits. 40 A.G. Op. 9 (1983).

Part 1
General Provisions

Part Attorney General's Opinions

Fire on Federally Managed Property — Benefits to Volunteer Rural Fire Crew: When a rural fire crew organized pursuant to 7-33-2201, et seq., responds to a request to suppress fires on property managed by a federal agency within the county or on property within an incorporated city or town within the county or in an adjacent county, the benefits of Title 19, ch. 12 (renumbered Title 19, ch. 17), attach. 38 A.G. Op. 100 (1980).

19-17-101. Short title.

Collateral References

Municipal Corporations *key* 176(3).

62 C.J.S. Municipal Corporations §§450 through 453; 63 C.J.S. Municipal Corporations §535.

Right of firemen to recover under workmen's compensation acts. 81 ALR 478; 10 ALR 201.

19-17-102. Definitions.

Compiler's Comments

2005 Amendment Void: The amendment to this section made by sec. 1, Ch. 332, L. 2005, was rendered void by sec. 4, Ch. 332, L. 2005, a coordination section, that provided: "If Senate Bill No. 197 and [this act] are both passed and approved, then [this act] is void." Senate Bill No. 197 was passed and approved as Ch. 391, L. 2005.

2001 Amendment: Chapter 99 in definition of pension trust fund after "pay" inserted "claims and"; in definition of retiree or retired member after "participation benefits" inserted "or disability benefits"; and at end of definition of service substituted "fiscal year increments" for "fiscal years". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 deleted definition of division that read: ""Division" means the public employees' retirement division of the department"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in definition of disability or permanent total disability, before "defined", substituted "means permanent total disability as" for "has the meaning". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 175 inserted definitions of active member, benefit, claim, Department, dependent child, disability, Division, member, retiree, service, supplemental insurance, surviving spouse, survivorship benefit, and volunteer firefighter; redefined fire company and fiscal year; and substituted pension trust fund for fund as defined term. Amendment effective July 1, 1995.

1983 Amendments: Chapter 57 substituted "board provided for in 2-15-1009" for "board of the public employees' retirement system" in definition of Board; deleted former (2), which read:

""Division" means the division of workers' compensation of the department of labor and industry."

Chapter 282 substituted "pension trust fund" for "compensation account in the agency fund" in definition of fund.

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§573 through 590, 592, 593.

19-17-103. Payments to fire companies maintaining supplemental insurance.

Compiler's Comments

1995 Amendment: Chapter 175 substituted "not to exceed $150 per fire company" for "not exceeding two units for any one company"; and changed terminology to conform section to the revision of this chapter and the change in definitions and terminology. Amendment effective July 1, 1995.

1983 Amendment: Substituted "board" for "division".

Administrative Rules

ARM 2.43.803 Application for group insurance premium payments.

ARM 2.43.804 Payments to service providers for medical expenses resulting from duty-related injuries and illnesses.

Attorney General's Opinions

Workers' Compensation — Rural Volunteers Not Covered: A rural volunteer firefighter is not an "employee" as defined in 39-71-118 for the purposes of workers' compensation, but this chapter provides him with similar benefits. 40 A.G. Op. 9 (1983).

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§573 through 590, 592, 593.

19-17-104. Penalty for false statements or claims.

Compiler's Comments

2001 Amendment: Chapter 99 near end after "punished by a fine" substituted "in an amount not exceeding $1,000 or by imprisonment for a term not exceeding 1 year" for "not exceeding $500 or imprisonment not exceeding 6 months"; and made minor changes in style. Amendment effective March 21, 2001.

19-17-106. Pension trust fund established — restrictions on use.

Compiler's Comments

2001 Amendment: Chapter 99 inserted (2) requiring that the pension trust fund be funded on an actuarially sound basis; inserted (5) regarding vesting and nonforfeiture if the fund terminates or partially terminates or if contributions to the fund are discontinued; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2)(c) substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 25, Ch. 175, L. 1995, provided that this section is effective July 1, 1995.

19-17-107. Employment of actuary — biennial investigation.

Compiler's Comments

Effective Date: Section 25, Ch. 175, L. 1995, provided that this section is effective July 1, 1995.

Administrative Rules

ARM 2.43.304 Actuarial rates and assumptions.

19-17-108. Credit for service as volunteer firefighter.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 212 in (3)(c) near middle after "owns" inserted "rents, or uses"; deleted former (3)(d) that read: "(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 329 deleted former (3)(d) that read: "(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 inserted (3)(b) concerning documented participation; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 near end of (3)(a) substituted "board" for "division" and "supervisor" for "foreman". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 25, Ch. 175, L. 1995, provided that this section is effective July 1, 1995.

Part 2
Administration of Fund

Part Compiler's Comments

1983 Title: The title to Ch. 57, L. 1983, read: "An act consolidating the administration of disability, death, and pension benefits provided in the Volunteer Firefighters' Compensation Act under the Public Employees' Retirement Board; amending sections 19-12-102, 19-12-103, 19-12-201 through 19-12-204, 19-12-402 through 19-12-404, 19-12-407, 19-12-502 through 19-12-504, and 19-12-506, MCA; and providing an effective date." (NOTE: Title 19, chapter 12, renumbered Title 19, chapter 17.)

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-17-201. Administration of chapter.

Compiler's Comments

1995 Amendment: Chapter 175 in (1) substituted provision that the Board is the trustee of money collected under this chapter and has exclusive control of fund administration, except as otherwise provided by law, for provision that the Board shall administer this act and the pension plan and payments under this chapter; inserted (2) requiring the Department to deposit amounts received in the state treasury; inserted (3) making the State Treasurer the fund custodian, subject to control of the Board for fund administration and of the Board of Investments for investment of fund money; and in (4) substituted "provided under this chapter" for "paid by the retirement system". Amendment effective July 1, 1995.

1993 Amendment: Chapter 481 inserted second sentence requiring Board to review sufficiency of benefits paid by retirement system and to recommend to Legislature changes that may be necessary for retired members and their beneficiaries to maintain stable standard of living.

1983 Amendment: Consolidated administration of both the Volunteer Firefighters' Compensation Act and their pension plan under the Public Employees' Retirement Board by substituting language providing for Board administration for "(1) Except as provided in subsection (2), the division shall administer the Volunteer Firefighters' Compensation Act, and all payments made under 19-12-103 and 19-12-506 shall be made by warrants drawn by the division.

(2) The board shall administer the volunteer firefighters' pension plan, and all payments made under 19-12-405 and 19-12-407 shall be made by warrants drawn by the public employees' retirement system. Annually, on or before the 15th day after the close of the fiscal year, the division shall notify the board in writing of the balance remaining in the volunteer firefighters' fund as of the end of the fiscal year."

Administrative Rules

Title 2, chapter 43, subchapter 8, ARM Volunteer firefighters.

Collateral References

Employer's liability for action of trustees or similar body administering employer's pension plan. 54 ALR 3d 644.

19-17-202. Reports of board.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) substituted "As soon as practical after the close of each fiscal year, the board shall file with the governor a report covering administration of the Volunteer Firefighters' Compensation Act for that fiscal year" for "The board shall, not later than

November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan"; in (2) substituted "The report must include:

(a) a statement of the accumulated cash and securities in the pension trust fund as certified by the state treasurer and the board of investments; and

(b) the most recent published report of the actuary of the actuarial valuation of the assets and liabilities of the plan" for "The report may include suggestions or recommendations that the board considers of value for public information"; and deleted former (2) that read: "(2) Copies of the reports must be made available by the board to the chief or other representative of any volunteer fire company or companies that request them." Amendment effective March 21, 2001.

1993 Amendments: Chapter 10 deleted former (3) that read: "(3) By January 10, 1993, the board shall provide to the 53rd legislature a report on the funding available in the volunteer firefighters' fund for benefits provided under the Volunteer Firefighters' Compensation Act. The legislature shall review the sufficiency of the fund to provide the current level of benefits and may eliminate, modify, or continue the benefit levels provided in 19-12-404"; and made minor changes in style.

Chapter 283 in first sentence in (3) substituted "1995" for "1993" and "54th legislature" for "53rd legislature". Amendment effective July 1, 1993.

Effective Date: Section 4, Ch. 81, L. 1991, provided: "[This act] [enacting 19-12-202(3), renumbered 19-17-202] is effective July 1, 1991."

1983 Amendment: Throughout section, substituted "board" for "division" or "public employees' retirement system"; deleted former (1) which read: "The division shall, at the time specified in 39-71-210 for making the report therein required, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act, with such suggestions or recommendations as it may consider of value for public information."; and in (1), inserted "Volunteer Firefighters' Compensation Act and the" before "volunteer firefighters' pension plan".

19-17-203. Rules to be made by board.

Compiler's Comments

1983 Amendment: Substituted "board" for "division and the board"; and after "Volunteer Firefighters' Compensation Act" inserted "and the volunteer firefighters' pension plan".

Administrative Rules

Title 2, chapter 43, subchapter 6, ARM Payments and adjustments.

Title 2, chapter 43, subchapter 8, ARM Volunteer firefighters.

19-17-204. Administrative expenses.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 175 in first sentence substituted "expenses for the administration" for "expenses of the board for office supplies, stationery, and forms in connection with the administration" and near end inserted "pension trust"; deleted sentence requiring the Board to draw from the fund through warrants as necessary to pay expenses; and at end inserted sentences requiring expenses to be paid from investment earnings of the public employees' pension trust fund and requiring the Division, prior to the end of each fiscal year, to compute expenses under this chapter for the past year and transfer that amount from the volunteer firefighters' pension trust fund to the public employees' pension trust fund. Amendment effective July 1, 1995.

1983 Amendment: Throughout section, substituted "board" for "division" or "public employees' retirement system"; inserted "and the volunteer firefighters' pension plan"; substituted last sentence allowing Board to pay administration expenses by drawing from fund for "The public employees' retirement system shall draw from the fund through warrants executed by the division upon the request of the public employees' retirement system, at such intervals as the board considers proper."

Part 3
Contributions to Fund

19-17-301. Fire insurance premium tax to be paid into pension trust fund.

Compiler's Comments

1997 Amendment: Chapter 532 near beginning of first sentence, after "auditor", deleted "and ex officio commissioner of insurance", after "annually" substituted "pay from the general fund to" for "deposit in", and at end substituted "50-3-109" for "19-18-512". Amendment effective July 1, 1997.

Coordination: Section 39(2), Ch. 532, L. 1997, provided: "(2) If either House Bill No. 173 or House Bill No. 430, is passed and approved, or if both are passed and approved, and if either or both repeal 19-13-1006, then:

(a) [section 28 of this act], amending 19-17-301, shall read:

"Section ~~27~~ 28. Section 19-17-301, MCA, is amended to read:

"19-17-301. Fire insurance premium tax to be paid into pension trust fund. The state auditor ~~and ex officio commissioner of insurance~~ shall annually ~~deposit in~~ pay from the general fund to the pension trust fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in ~~19-18-512~~ 50-3-109. The sum must be computed before the amounts provided for by 19-13-604 and 19-18-512 are deducted. The money must be used for the payment of claims, benefits, and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502."";

and

(b) the internal reference to 19-13-1006 in [section 15 of this act], amending 17-7-502, must be removed." Both House Bill No. 173 (Ch. 445, L. 1997) and House Bill No. 430 (Ch. 457, L. 1997) were passed and approved, and House Bill No. 430 repealed 19-13-1006; therefore, both 17-7-502 and 19-17-301 were revised in Ch. 532, L. 1997, as directed.

1995 Amendment: Chapter 175 in first sentence substituted "pension trust fund" for "volunteer firefighters' fund"; in third sentence, after "claims", inserted "benefits"; and made minor changes in style. Amendment effective July 1, 1995.

1985 Amendment: Inserted last sentence referring to statutory appropriation.

1981 Amendments: Chapter 313 substituted "computed before the amounts provided for by 19-11-512 [renumbered 19-18-512] are deducted" for "computed after the amounts provided for by 19-11-512 have first been deducted".

Chapter 566 added "and 19-13-604" in the middle of the section.

Collateral References

Insurance *key* 7.

44 C.J.S. Insurance §§3, 6, 17, 18; 45 C.J.S. Insurance §1647.

60A Am. Jur. 2d Pensions and Retirement Funds §1617.

Whose Slice of Which Pie? Understanding the Insurance Premium Tax as a Funding Source for Police and Fire Pension Plans, A Report to the 58th Legislature by the State Administration and Veterans' Affairs Interim Committee, Mont. Leg. Serv. Div. (2002).

19-17-302. Investment of pension trust fund.

Compiler's Comments

1995 Amendment: Chapter 175 deleted former section, which provided that earnings on money received under 19-17-301 become part of such money; and inserted (1) through (3) providing that the fund be invested by the Board of Investments under the unified investment program, that income earned by fund assets be paid into the fund as received, and that for investment purposes, the fund may be commingled with other pension funds administered by the Board, with a separate account for each system. Amendment effective July 1, 1995.

Part 4
Pension, Disability, and Survivorship Benefits

Part Attorney General's Opinions

Workers' Compensation — Rural Volunteers Not Covered: A rural volunteer firefighter is not an "employee" as defined in 39-71-118 for the purposes of workers' compensation, but this chapter provides him with similar benefits. 40 A.G. Op. 9 (1983).

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-17-401. Eligibility for pension and disability benefits.

Compiler's Comments

2005 Amendment: Chapter 391 inserted (5)(b) authorizing member who is receiving full pension benefit to return to service with volunteer fire department without loss of benefits and prohibiting returning member from earning active member service credit; and made minor changes in style. Amendment effective April 25, 2005.

The amendments to this section made by sec. 2, Ch. 332, L. 2005, were rendered void by sec. 4, Ch. 332, L. 2005, a coordination section, that provided: "If Senate Bill No. 197 and [this act] are both passed and approved, then [this act] is void." Senate Bill No. 197 was passed and approved as Ch. 391, L. 2005.

2003 Amendment: Chapter 262 in (1) near beginning before "disability" substituted "a full pension, partial pension, or" for "pension and"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (3) near middle after "total disability" inserted "as defined in 39-71-116 and determined pursuant to 19-17-410"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 164 in (4) at beginning inserted exception clause; inserted (5) allowing a retired firefighter not receiving a disability benefit under this chapter to work for a fire company during a declared emergency without becoming an active member of the volunteer firefighters' pension plan and without loss of previously earned benefits and providing that the fire chief determines who may return to service and prescribes the returnee's duties; and made minor changes in style. Amendment effective March 29, 2001.

1995 Amendment: Chapter 175 substituted current text concerning the requirements for qualifying for benefits for former text (see 1995 Session Law for former text). Amendment effective July 1, 1995.

1993 Amendment: Chapter 283 in (1)(b), in first sentence after "20 years' service", deleted "by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control" and at end inserted reference to attainment of age 60; in (2)(a), after exception clause, inserted reference to receipt of pension benefits; in (5) inserted introductory clause concerning receipt of pension benefits; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (2)(b) deleted subsection reference to 39-71-116.

1981 Amendment: Inserted "Except as provided in subsection (2)(b)" at the beginning of (2)(a); added subsection (2)(b) relating to partial pension for permanent, total disability.

Section Not Codified: Section 11-2023(3), R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 4, Ch. 65, L. 1935; amd. sec. 2, Ch. 118, L. 1965; amd. sec. 1, Ch. 161, L. 1967; amd. sec. 1, Ch. 46, L. 1969; amd. sec. 2, Ch. 80, L. 1971; amd. sec. 2, Ch. 199, L. 1973; amd. sec. 1, Ch. 48, L. 1975; amd. sec. 1, Ch. 233, L. 1975; amd. sec. 22, Ch. 157, L. 1977.

Administrative Rules

ARM 2.43.801 Basic unit of service time.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

19-17-402. Certificate of eligibility.

Compiler's Comments

2003 Amendment: Chapter 429 near end of first sentence after "oath" inserted "before a notary". Amendment effective July 1, 2003.

1995 Amendments: Chapter 137 near beginning of first sentence substituted "chief or presiding officer" for "chief or foreman"; inserted second sentence requiring certificate to contain date of organization; and made minor changes in style.

Chapter 175 substituted current text concerning certificate of eligibility for former text that read: "On or before September 1 of each year, the chief or foreman of every volunteer fire company shall prepare and file with the board a certificate, subscribed and verified under oath, stating whether or not his company qualified under 19-17-401(4) during the preceding fiscal year

and listing the full name and residence address of each member of his company who satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-17-401(3). The verified certificate shall be maintained in a permanent file by the board for the purpose of establishing eligibility for participation in the volunteer firefighters' pension plan and shall be open for inspection as a public record." Amendment effective July 1, 1995.

1983 Amendment: Substituted "board" for "public employees' retirement system" twice.

Administrative Rules

ARM 2.43.802 Required reports.

19-17-403. Application for benefits.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) after "terminating" deleted "covered". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 inserted (1) allowing application for benefits before terminating covered service; inserted (3)(c) requiring the date of the member's death, if applicable; in (4) near beginning after "proof of age" inserted "death"; deleted former (4) that read: "(4) If a qualified member properly submits an application, the member is entitled to receive benefits as of the first day of the month following approval of the application"; and made minor changes in style. Amendment effective March 21, 2001.

1995 Amendment: Chapter 175 substituted current text concerning application for benefits for former text that read: "(1) Anyone claiming eligibility under the volunteer firefighters' pension plan must file his claim with the board upon a form to be provided therefor by the board. The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.

(2) The claim must contain:

(a) the name, address, and date of birth of the claimant and of the volunteer firefighter, if he is not the claimant;

(b) the fiscal year during which eligibility will commence; and

(c) the years during which service as a volunteer firefighter was rendered and the names of the volunteer fire companies with which the service was rendered.

(3) The board may require such proof of age and service as it may consider proper, but it must accept a certificate filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of such service.

(4) If the claim is properly filed and the claimant is found by the board to be properly qualified to participate in the volunteer firefighters' pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant will then be entitled to participate in the volunteer firefighters' pension plan as of the fiscal year beginning July 1 next following the filing of the claim." Amendment effective July 1, 1995.

1983 Amendment: Throughout section, substituted "board" for "public employees' retirement system".

Collateral References

Workmen's Compensation *key* 1257.

99 C.J.S. Workmen's Compensation §§471 through 474.

60A Am. Jur. 2d Pensions and Retirement Funds §§1713, 1717.

19-17-404. Amount of pension and disability benefits.

Compiler's Comments

2005 Amendment: Chapter 391 in (2)(c) near beginning after member deleted "who has completed 20 years of service and is at least 55 years of age and", after second "member" inserted "after completing 20 years of service", and after "service" inserted "the member completed after 20 years of service"; and made minor changes in style. Amendment effective April 25, 2005.

2003 Amendment: Chapter 262 in (2)(a) substituted "Except as provided in subsection (2)(c), the full pension benefit paid to eligible members is $150 a month" for "The base pension benefit is $150 a month for members who are eligible for full pension benefits"; in (2)(b) near middle before "member's" inserted "eligible"; inserted (2)(c) providing for a monthly pension benefit increase for members with 20 years of service and who are at least 55 years of age for each additional year of service up to 30 years; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 inserted (3) regarding correction of errors and adjustment of payments upon a fraudulent change or inadvertent mistake in records; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 209 in (1)(b) increased base pension benefit amount from $100 to $150 a month; and in (1)(c) after "benefit" substituted "in subsection (1)(b)" for "of $100". Amendment effective July 1, 2001.

1995 Amendment: Chapter 175 substituted current text concerning amount of benefits for former text that read: "(1) Each person who meets the requirements set forth in 19-17-401 or, in the case of a beneficiary, 19-17-405(1) and who has completed and filed a claim as provided in 19-17-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

(2) The payments must be computed each year in the following manner:

(a) For fiscal years 1994 and 1995, the base benefit level is $120 per month for each retiree qualifying for full participation under the provisions of 19-17-401(1)(a). Partial participation is calculated under the provisions of 19-17-401(1)(b).

(b) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $6 million, the board shall set aside the amount to be paid to each qualifying claimant.

(c) For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter must be treated collectively as one claimant.

(3) If the amount of the benefit for a qualified claimant is at least $20 per month throughout the succeeding fiscal year, the pension must be paid monthly on or before the last day of each month. If the amount of the benefit for a qualified claimant is less than $20 per month, the qualified claimant's full pension for that year must be paid in one lump payment on or before December 15 of that year." Amendment effective July 1, 1995.

1993 Amendment: Chapter 283 in 2(a) substituted "fiscal years 1994 and 1995" for "fiscal years 1992 and 1993"; deleted former (2)(c) that read: "(c) The total pension payable to a qualified claimant under this section may not exceed $200 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of $200 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (2)(a) establishing base benefit level for fiscal years 1992 and 1993; in (2)(b) increased amount from $1 million to $6 million, after "set aside" deleted "the smaller of the amount in excess of $1 million and an amount equal to 95% of the increase of the balance over the balance at the end of the preceding fiscal year for the payment by the board of pensions to qualified claimants during the immediately succeeding fiscal year", and after "claimant" deleted "shall be determined by dividing the amount set aside by the number of claimants qualifying to participate in the pension plan at the beginning of such succeeding fiscal year"; near beginning of first sentence of (3), after "amount", substituted "of the benefit for a" for "set aside is sufficient to pay each", near beginning of second sentence, after "amount", substituted "of the benefit for a" for "set aside is not sufficient to pay each", and near middle substituted "is less than" for "at least"; and made minor changes in style. Amendment effective July 1, 1991.

1983 Amendments: Chapter 24, in (2)(b), increased the maximum pension from $100 to $200.

Chapter 57, in (2)(a), substituted "board" for "division" and for "public employees' retirement system" and after "board shall set aside" deleted "and pay over to the public employees' retirement system".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

19-17-405. Survivorship benefits to surviving spouse or dependent children.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) at beginning inserted reference to subsection (2); at end of (1)(a) inserted exception for spouse causing member's death or disability; inserted (1)(b) concerning dependent children; inserted (2) concerning benefits payable to dependent child; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (3) inserted second sentence allowing lump-sum payment in lieu of up to 40 months of survivorship benefits. Amendment effective March 21, 2001.

1995 Amendment: Chapter 175 substituted current text concerning survivorship benefits for former text that read: "(1) The full or partial participation pension shall be paid or continue to be paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer firefighter left no surviving spouse but left a child or children under the age of 18, to

the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death on or after July 1, 1985, of a volunteer firefighter after qualifying for full participation but before receiving payments totaling at least $4,000; or

(d) the death on or after July 1, 1985, of a volunteer firefighter after he has qualified for partial participation but before he has received payments totaling the proportion of $4,000 determined under the formula prescribed in 19-17-401(1)(b).

(2) Payments under subsection (1) shall terminate, in the case of a full participation pension, when a total of $4,000 has been paid upon the pension, including any payments made to the volunteer firefighter before his death, or in the case of a partial participation pension, when a total of the proportion of $4,000 determined under the formula prescribed in 19-17-401(1)(b) has been paid upon the pension, including any payments made to the volunteer firefighter before his death." Amendment effective July 1, 1995.

1985 Amendment: At beginning of (1)(a) and (1)(c) inserted "on or after July 1, 1985"; in (1)(b) and (1)(d) substituted reference to July 1, 1985, for "February 27, 1971"; and increased payments of $2,000 to $4,000 throughout section.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1651, 1652, 1654 through 1660, 1683, 1684.

19-17-406. Termination of pension when no surviving spouse or child.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1651 through 1656, 1658.

19-17-407. Exemption from taxation and legal process.

Compiler's Comments

2005 Amendment: Chapter 329 in (2) at beginning deleted "Except as provided in 19-2-907 and 19-2-909"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 inserted (2) providing that with some exceptions, benefits are not subject to execution, garnishment, attachment, or any other process; and made minor changes in style. Amendment effective March 21, 2001.

1995 Amendment: Chapter 175 deleted (1), which required payments under the plan to be approved by the Board and paid by warrants drawn on the fund and payable to the firefighter or beneficiary. Amendment effective July 1, 1995.

1991 Amendment: Inserted (2) concerning exempting first $3,600 of retirement allowance from taxation by state, county, or municipality. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1983 Amendments: Chapter 57 substituted "board" for "public employees' retirement system".

Chapter 282 substituted "pension trust fund" for "agency fund".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

19-17-408. Medical review of certain disability retirees.

Compiler's Comments

1995 Amendment: Chapter 175 in first sentence substituted "a member who receives a disability benefit" for "the recipient of a partial pension resulting from a permanent, total disability"; in second and third sentences substituted reference to member for reference to recipient; in third sentence, after "examinations", inserted "and the advice of the board's consulting physician"; and made minor changes in style. Amendment effective July 1, 1995.

19-17-409. Cancellation and reinstatement of disability benefits.

Compiler's Comments

1995 Amendment: Chapter 175 substituted current text concerning cancellation and reinstatement of disability benefits for former text that read: "(1) The board may cancel a recipient's partial pension resulting from a permanent, total disability if:

(a) the board determines that the recipient is no longer permanently and totally disabled as provided in 19-17-408;

(b) the recipient refuses to submit to a medical examination under 19-17-408; or

(c) the recipient engages in a gainful occupation during the previous year and the compensation earned by him in that year exceeds $5,500.

(2) The cancellation of a pension under this section does not prejudice any right of a firefighter to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

(3) If a former recipient's earnings in any year after the cancellation of his pension under subsection (1)(c) are less than $5,500, his pension must be reinstated." Amendment effective July 1, 1995.

19-17-410. Determination of disability.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-17-411. Time benefits commence.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 5
Medical and Funeral Expenses

19-17-501. Eligibility for medical and funeral expenses.

Compiler's Comments

1995 Amendment: Chapter 175 in (1) substituted "medical expenses" for "benefits"; in (1) and (2), before "firefighter", inserted "volunteer"; in (2) substituted "funeral expenses" for "benefits"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In (1), near beginning after "19-12-504 [renumbered 19-17-504]", deleted "and 19-12-505", near middle, after "incurred", deleted "or, in the case of a claim under 19-12-505, at the time of death", and at end inserted "not covered by workers' compensation insurance"; inserted (2) requiring active enrollment at time of death as a condition for receipt of benefits; and made minor change in style.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670, 1683, 1684.

Determination whether firefighter's disability is service-connected for disability pension purposes. 7 ALR 4th 799.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

Causal connection between fireman's performance of official duties and his disability, for purposes of recovering disability benefits. 27 ALR 2d 974.

19-17-502. Procedure for claiming medical expenses.

Compiler's Comments

1995 Amendment: Chapter 175 in (1), in first sentence, substituted "member who claims medical expenses" for "firefighter claiming benefits" and substituted "shall submit a claim on a form" for "must file his claim with the board on a form", in second sentence substituted "member and by competent medical authority" for "claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined", and in third sentence substituted "submitted" for "filed with the board" and substituted "incurring the injury or disease" for "disability"; in (2)(a) and (2)(g) substituted "member" for "claimant"; in (2)(b) substituted "the injury or illness" for "of disability"; in (2)(d) substituted "of hospitalization, if hospitalized" for "of confinement, if confined, or if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse"; in (2)(e) inserted reference to nurse, substituted "injury or illness" for "disability", and substituted "expenses" for "charges"; in (2)(f) substituted "if hospitalized" for "if confined in a hospital", substituted "from competent authority" for "of a person in charge", substituted "injury or illness" for "disability", substituted "hospitalization" for "confinement", and at end deleted "incurred while so confined"; in (2)(g) substituted "time of the injury or illness" for "date of disability" and substituted "injury or illness" for "disability"; deleted (2)(h), which required the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendments: Chapter 49 inserted "as defined in 19-12-105 [renumbered 19-17-105]" at end of (1)(g).

Chapter 57, in (1), substituted "board" for "division" twice and after "form to be provided" substituted "by the board" for "therefor".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670, 1713, 1717.

19-17-503. Procedure for claiming funeral expenses.

Compiler's Comments

1995 Amendment: Chapter 175 after "claiming the" substituted "funeral expenses" for "benefit"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Substituted "board" for "division" three times; and after "provided" deleted "therefor".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1683, 1684, 1713, 1717.

19-17-504. Medical expenses.

Compiler's Comments

1995 Amendment: Chapter 175 substituted current text concerning medical expenses for former text that read: "(1) Each member of a fire company is entitled to receive compensation for disability incurred while in the performance of his duties as a firefighter, as defined in 19-17-105, when the disability necessitates the services of a physician or surgeon, whether the member is confined or not. The compensation shall equal the amount of the member's necessary and reasonable medical expenses resulting directly from the disability and incurred within 36 months from the date of the injury which caused the disability. The total compensation may not exceed $25,000.

(2) When an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall order that an artificial member be furnished. The expense of furnishing an artificial member may not exceed $1,500. The artificial member so furnished shall be replaced every 5 years, if necessary." Amendment effective July 1, 1995.

1983 Amendments: Chapter 49, in (1), inserted "as defined in 19-12-105 [renumbered 19-17-105]" after "duties as a firefighter".

Chapter 57, in (2), substituted "board" for "division".

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670.

Determination whether firefighter's disability is service-connected for disability pension purposes. 7 ALR 4th 799.

Causal connection between fireman's performance of official duties and his disability, for purposes of recovering disability benefits. 27 ALR 2d 974.

19-17-505. Funeral expenses.

Compiler's Comments

1995 Amendment: Chapter 175 substituted "active member" for "firefighter covered under this chapter"; and made minor changes in style. Amendment effective July 1, 1995.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1683, 1684.

19-17-506. Payment of medical and funeral expenses.

Compiler's Comments

1995 Amendment: Chapter 175 substituted current text concerning medical and funeral expenses for former text that read: "When a claim under 19-17-504 or 19-17-505 is received by the board and is found to be in compliance with 19-17-502 or, in the case of a claim under 19-17-505, with 19-17-503, the board must order the allowance thereof and pay it by warrants drawn upon the volunteer firefighters' fund to the order of the attending physician or surgeon, attending nurse, and hospital or the provider of funeral services, as applicable." Amendment effective July 1, 1995.

1983 Amendment: Substituted "board" for "division" twice.

Administrative Rules

ARM 2.43.804 Payments to service providers for medical expenses resulting from duty-related injuries and illnesses.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1722 through 1724.

Rights to survival benefit under public pension or retirement plans as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

CHAPTER 18
FIREFIGHTERS' RETIREMENT

Part 1
General Provisions

19-18-102. Formation of fire department relief association — membership.

Case Notes

Membership in Fire Department Relief Association — Legal Right: Plaintiff was temporarily employed as a fireman in the Missoula Fire Department beginning on Sept. 1, 1918. His employment was discontinued about April 30, 1919. On April 20, 1920, when he was past 45 years of age he was appointed to the position of auto mechanic. He was reappointed on a yearly basis until June 15, 1941, when the position was abolished. During his period of service he occasionally performed as a fireman but was never confirmed as such. Plaintiff never took any action seeking confirmation or followed the statutory procedure to gain membership. The fire department relief association was a creature of statute and supported by a statutory levy. The State may enforce such statutory requirements for membership as it chooses. Plaintiff did not meet these qualifications so could not be granted membership for purposes of receiving a pension. State ex rel. Russ v. Fire Dept. Relief Ass'n, 114 M 430, 136 P2d 989 (1943).

Attorney General's Opinions

Fire Chief or Assistant Chief as Member of Relief Association: Under 7-33-4106 and 7-33-4122, a chief or assistant chief of a municipal fire department is a confirmed member of the fire department. Section 19-11-102 (renumbered 19-18-102) authorizes the formation of a fire department relief association by the confirmed members of a fire department. Because a chief or an assistant chief is a confirmed member of his fire department, he could be a member of the fire department relief association. 39 A.G. Op. 22 (1981).

Qualifications for Membership in Firemen's Relief Association: A city or firemen's relief association had no authority to deduct firemen's relief association dues from the wages of a probationary fireman, nor could a probationary fireman willingly contribute to a firemen's relief association and thereby receive benefits from that association. 36 A.G. Op. 30 (1975).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1616.

Misconduct as affecting right to pension or retention of position in retirement system. 76 ALR 2d 566.

19-18-104. Board of trustees of association.

Collateral References

Employer's liability for action of trustees or similar body administering employer's pension plan. 54 ALR 3d 644.

19-18-105. Establishment of disability and pension fund.

Case Notes

Association Benefits for Members of Organized Fire Departments Only: To entitle a fireman to the benefits of the disability and pension fund of the firemen's relief association, he had to be a member of an organized fire department, whether it be a paid or voluntary one, and confirmed as such by the City or Town Council (19-11-103, renumbered 19-18-103, and 19-11-205, renumbered 19-18-205). Where a volunteer department was abolished, a member thereof could no longer qualify as an eligible member of the relief association. State ex rel. Casey v. Brewer, 107 M 550, 88 P2d 49 (1939).

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§573 through 590, 592, 593.

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611, 1616.

19-18-106. Transfer of money into fund by city treasurer.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-18-107. Retention of firefighters' rights when local government consolidated.

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§573 through 590, 592, 593.

Part 2
Management and Protection of Fund

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-18-201. Management of fund.

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§573 through 590, 592, 593.

19-18-202. Treasurer's bond.

Case Notes

Effect of Abolishment on Membership of Association: A volunteer fire department was abolished upon the creation of a paid department. The volunteer members were no longer members of the relief association, and an election of a treasurer by such members was illegal. A treasurer elected by the members of the paid department was entitled to the possession of the property and funds of the association. Courts may take judicial notice of the articles of incorporation in passing upon qualifications of members. State ex rel. Casey v. Brewer, 107 M 550, 88 P2d 49 (1939).

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§594, 595.

19-18-203. Use of disability and pension fund.

Compiler's Comments

1987 Amendment: In introductory clause deleted reference to part 3.

Attorney General's Opinions

Fire Department Relief Association — Retired Firefighters — Benefits: A fire department relief association may decide whether retired firefighters should remain members of the association and what rights and duties they should have in it. Retired firefighters are ineligible for the blanket policy of insurance that the firefighters relief association is authorized to purchase under this section. Funeral expense money provided under this section is payable to a deceased firefighter's estate. 36 A.G. Op. 62 (1976).

Volunteer Firefighters: Volunteer firefighters in second-class cities are entitled to all relief association benefits other than the service pension. 35 A.G. Op. 67 (1974).

Blanket Insurance Policy: After the 1967 amendment to this section, a fire department relief association may purchase a blanket insurance policy that will compensate for death or injuries of members not incurred in the line of duty. 32 A.G. Op. 3 (1967).

Funeral Benefits — Right: Unless otherwise provided in its charter or bylaws, it is discretionary with a fire department relief association as to whether funeral benefits will be paid to either its active or retired members. 30 A.G. Op. 1 (1963).

Right of Widow to Pension: A firefighter's widow who remarries and whose remarriage is annulled ab initio has remained unmarried and is entitled to the widow's pension under the fire department association pension plan retroactive to the day her pension was cut off. 28 A.G. Op. 41 (1959).

Collateral References

Misconduct as affecting right to pension or retention of position in retirement system. 76 ALR 2d 566.

19-18-204. Review and report by board of trustees.

Compiler's Comments

1991 Amendment: Near beginning substituted "review" for "audit". Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

19-18-205. Annual report of secretary and treasurer to association and state auditor.

Compiler's Comments

2001 Amendment: Chapter 483 in second sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In first sentence, before "report", deleted "detailed" and after "year" inserted "in accordance with 2-7-503" and in second sentence, after "association", inserted "the department of commerce"; and made minor changes in style. Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund

loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§594, 595.

19-18-206. Authority of department of administration — mishandling of funds.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) and (2) after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: Substituted references to department of commerce for references to department of administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1) and (2).

19-18-207. Theft from funds.

Compiler's Comments

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Collateral References

Embezzlement *key* 11(2).

29A C.J.S. Embezzlement §14.

Part 4
Management of Association — Investment of Fund

19-18-401. Management of association.

Compiler's Comments

1981 Amendments: Chapter 270 added "and of fire department relief associations of pure volunteer fire departments in first- and second-class cities".

Chapter 566 deleted "in municipalities other than first- and second-class cities" after "The management of fire department relief associations".

19-18-402. Investment of fund by trustees.

Compiler's Comments

1985 Amendment: In (1)(a) after "savings and loan association", inserted "or credit union" and made minor change in phraseology.

19-18-403. Investment of fund by board of investments.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) near beginning of second sentence substituted "board of investments" for "department of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

1981 Amendments: Chapter 274 substituted "department of administration" for "department of community affairs".

Chapter 566 inserted "Whenever" in place of "When" at the beginning of (1); inserted "under the direction of" in place of "by" following "state treasurer for investment"; substituted "17-6-204" for "19-11-302 for associations in first- and second-class cities"; and added (2) defining surplus money.

Part 5
Contributions to Fund

19-18-501. Contributions to fund.

Compiler's Comments

2005 Amendment: Chapter 193 in (2) at beginning after "monthly" substituted "contribution to" for "fee which shall be paid into"; in (3) after "provided for in" deleted "19-18-503 and"; in (4) after "those" inserted "payments"; and made minor changes in style. Amendment effective April 7, 2005.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

19-18-502. Refund of firefighter's contribution.

Attorney General's Opinions

Refunds: Firefighters separated from service after July 1, 1967, for reasons other than retirement, death, or disability are entitled to a return of all contributions made by them to the disability and pension fund of the fire department relief association. 32 A.G. Op. 9 (1967).

19-18-503. Fund to be soundly funded.

Compiler's Comments

2005 Amendment: Chapter 193 in (1) at beginning deleted "The purpose of this section is to provide a means by which" and after "fund" substituted "must be soundly funded. The fund is soundly funded if, subject to subsection (2)" for "may be"; in (1)(a) at beginning inserted "assets in the fund are"; inserted (1)(b) requiring that funding be maintained at an actuarially sound level; inserted (2) regarding request and conduct of an actuarial valuation; deleted former (2) that read: "(2) Subject to 15-10-420, if the fund contains less than 0.21% of the total assessed value of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a tax as provided in 19-18-504. The tax must be collected as other taxes are collected and, when collected, must be paid into the disability and pension fund"; and made minor changes in style. Amendment effective April 7, 2005.

2001 Amendments — Composite Section: Chapter 29 in (1) after "at least" substituted "0.21% but not more than 0.52% of the total assessed value of taxable property, determined as provided in 15-8-111" for "4% but no more than 10% of the taxable valuation of all taxable property"; and near beginning of (2) after "less than" substituted "0.21% of the total assessed value" for "4% of the taxable valuation". Amendment effective July 1, 2001.

Chapter 574 in (2) at beginning inserted "Subject to 15-10-420" and in two places before "tax" deleted "special"; deleted former (3) that read: "(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 33, Ch. 29, L. 2001, was a saving clause.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

1999 Amendment: Chapter 553 in (1) near middle substituted "at least 4% but no more than 10%" for "4%". Amendment effective January 1, 2000.

1989 Amendment: In (1) and (2) increased "3%" to "4%"; and made minor changes in grammar.

1983 Amendment: Inserted (3) requiring special tax levy to be in addition to all-purpose mill levy.

1981 Amendment: Increased 2% to 3% wherever it appears.

Attorney General's Opinions

No Authority of City to Levy Additional Special Tax to Fund Firefighters' Disability and Pension Fund When Maximum Mill Levy Already Imposed: This section authorizes a special tax levy as a means of maintaining a firefighters' disability and pension fund at a level equal to at least 4% but not more than 10% of the taxable valuation of all taxable property within the limits of a city or town. Whenever the fund contains less than 4% of the taxable valuation of all taxable

property within the city limits, the governing body is required to levy a special tax as provided in 19-18-504. However, if the city has already imposed the maximum mill levy to fund the firefighters' disability and pension fund, it may not levy an additional special tax or seek voter approval for an additional special tax even if the fund's value is less that 4% of the taxable valuation of all taxable property within the city. (See 2001 and 2005 amendments.) 48 A.G. Op. 15 (2000).

All-Purpose Mill Levy — Forfeiture Powers: Municipalities that adopt the all-purpose mill levy authorized in 7-6-4452 (now repealed) forfeit the power to impose levies for any particular purpose not clearly excepted by statute. Thus, the all-purpose mill levy supplants the taxing authority granted in 7-33-4111, 19-10-301 (renumbered 19-19-301), and 19-11-503 (renumbered 19-18-503) (before 2005 amendment) but does not supplant the taxing authority granted in 7-32-4117, 7-33-4130, 19-3-204, 19-9-704 (renumbered 19-9-209), sec. 2, Ch. 324, L. 1975 (not codified), sec. 2, Ch. 359, L. 1975 (not codified), and sec. 3, Ch. 438, L. 1975 (not codified). 38 A.G. Op. 112 (1980).

Collateral References

Municipal Corporations *key* 961.

64A C.J.S. Municipal Corporations §1739.

19-18-504. Special tax levy for fund required.

Compiler's Comments

2005 Amendment: Chapter 193 in (1) near beginning after "less than" substituted "the minimum amount required to keep the fund soundly funded pursuant to 19-18-503" for "0.21% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town"; inserted (3) requiring that all revenue from the tax be deposited in the fund; and made minor changes in style. Amendment effective April 7, 2005.

2001 Amendments — Composite Section: Chapter 29 in first sentence after "less than" substituted "0.21% of the total assessed value of taxable property, determined as provided in 15-8-111" for "4% of the taxable valuation of all taxable property" and after "shall" inserted "subject to 15-10-420" and in second sentence after "less than" substituted "0.52% but more than 0.21% of the total assessed value" for "10% but more than 4% of the taxable valuation"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 495 in first sentence substituted "annual tax" for "annual special tax" and in second sentence inserted "as provided in 15-10-425" and substituted "annual tax" for "annual special tax"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 574 in first sentence after "council shall" substituted "subject to 15-10-420, levy an annual tax on the taxable value of all taxable property" for "levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property" and at end of second sentence substituted "voters as provided in 15-10-425, levy an annual tax" for "voters, levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 33, Ch. 29, L. 2001, was a saving clause.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

1999 Amendment: Chapter 553 in first sentence near middle inserted "or town" and inserted second sentence regarding levy of annual special tax; and made minor changes in style. Amendment effective January 1, 2000.

1989 Amendment: Increased "3%" to "4%".

1981 Amendments — Composite Section: Chapter 566 deleted former subsections (1) and (2) that provided for a special tax levy of not more than 4 mills for first- and second-class cities; deleted "In cities of the third class" at the beginning of the section; and substituted "Whenever" for "when" at the beginning of the section.

Chapter 614 increased 2% to 3% in (1), (2)(a), (2)(b), and (3); and increased 1% to 1.5% in (2)(a).

Because the deletion of former subsections (1) and (2) by Ch. 566, L. 1981, is an amendment in the nature of a repeal, the Code Commissioner has not codified the amendments to these subsections contained in Ch. 614, L. 1981. See 1-2-204.

Attorney General's Opinions

No Authority of City to Levy Additional Special Tax to Fund Firefighters' Disability and Pension Fund When Maximum Mill Levy Already Imposed: Section 19-18-503 authorizes a

special tax levy as a means of maintaining a firefighters' disability and pension fund at a level equal to at least 4% but not more than 10% of the taxable valuation of all taxable property within the limits of a city or town. Whenever the fund contains less than 4% of the taxable valuation of all taxable property within the city limits, the governing body is required to levy a special tax as provided in this section. However, if the city has already imposed the maximum mill levy to fund the firefighters' disability and pension fund, it may not levy an additional special tax or seek voter approval for an additional special tax even if the fund's value is less that 4% of the taxable valuation of all taxable property within the city. (See 2001 and 2005 amendments.) 48 A.G. Op. 15 (2000).

19-18-511. Annual report of clerks of cities having fire departments.

Collateral References

Insurance *key* 9.

44 C.J.S. Insurance §20.

19-18-512. State auditor — payment to association.

Compiler's Comments

1997 Amendment: Chapter 532 in (1), at end of third sentence, substituted "general fund" for "premium taxes on insurance risks enumerated in subsection (3) collected by the state auditor"; in (2), at beginning, deleted "If" and after "subsection (1)" substituted "must be for at least" for "is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is"; deleted (3) that read: "(3) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: In (1) inserted last sentence referring to statutory appropriation.

1981 Amendments: Chapter 250 substituted "After" for "At" at the beginning of (1).

Chapter 566 deleted former subsections (1), (2), and (3) (see Ch. 296, L. 1979, for text), which are no longer necessary because cities of the first and second class can no longer participate in the retirement plan provided for in Title 19, chapter 11 (renumbered Title 19, chapter 18); deleted "except cities and towns of the first and second class" after "the treasurer of every city or town" in the first sentence of (1); changed internal references to conform to 1981 deletions.

19-18-514. State treasurer to pay warrants.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted provisions applicable only to first- and second-class cities which are no longer eligible to participate in the retirement plan provided for in Title 19, chapter 11 (renumbered Title 19, chapter 18).

Part 6
Benefits

Part Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits

under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981, are entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

Practical Effect of Section on Use of Funds: Although the provisions of 19-18-606 (now repealed) are in conflict on the issue of whether the funds to be paid to the various fire relief associations are to be used by the associations to supplement retirees' pensions or reimburse the associations' treasuries for pension adjustments already paid out, the practical effect of the law, at least for the first few years of its operation, is to provide the associations with funds at the beginning of the fiscal year from which they can supplement the pensions of the retirees for that fiscal year. 36 A.G. Op. 41 (1975).

Pension Adjustments: Section 19-18-606 (now repealed) required the treasurer of a fire department relief association to request and the State Auditor to issue from the earmarked revenue fund (changed to special revenue fund in 1983) an amount equal to the sum total of the annual dollar difference between what the retirees or their surviving spouses and children received from the fund of the relief association for the fiscal year just preceding and one-half of the sum paid by the respective city or town to the position of a confirmed active fireman for the fiscal year just preceding. 36 A.G. Op. 41 (1975).

Computation of Benefits: Insurance premiums paid on behalf of firefighters are not part of their "regular monthly salary" for purposes of computing pension benefits under 19-18-606 (now repealed). 36 A.G. Op. 40 (1975).

19-18-601. Benefits the association may provide.

Case Notes

Pensioner Without Vested Right in Pension: A pension granted by the public authorities was not a contractual obligation but a gratuitous allowance in the continuance of which the pensioner had no vested right, the pension being terminable at the will of the grantor. A City Council could abolish its volunteer fire department when in its judgment a paid department should be established and could also destroy the membership of a volunteer member in the firemen's relief association. State ex rel. Casey v. Brewer, 107 M 550, 88 P2d 49 (1939), explained in Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Incapacity Due to Illness: Under this section, a city fireman could properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. In such case the provisions of 19-11-602 (renumbered 19-18-602) and 19-11-604 (renumbered 19-18-604), providing for a service pension and limiting it to one-half the monthly salary last received by such member, had no application. State ex rel. Barry v. O'Leary, 83 M 445, 272 P 677 (1928).

Attorney General's Opinions

Right of Widow to Pension: A firefighter's widow who remarries and whose remarriage is annulled ab initio has remained unmarried and is entitled to the widow's pension under the fire department association pension plan retroactive to the day her pension was cut off. 28 A.G. Op. 41 (1959).

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§573 through 590, 592, 593.

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Misconduct as affecting right to pension or retention of position in retirement system. 76 ALR 2d 566.

19-18-602. Service pension.

Compiler's Comments

2001 Amendment: Chapter 51 in (3)(b) after "pension may" substituted "be set by the board of trustees of the association, but may not exceed $225 a month" for "not exceed $150 a month"; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: Near end of (3), increased monthly pension payment to volunteer firefighters from $100 to $150 a month.

Interpretation: Section 4, Ch. 484, L. 1977, read: "This act is not intended to increase or decrease benefits earned by present members under prior acts. The amendments in section 3 of this act are intended to clarify that section but are not intended to imply that prior to the effective date of this act a member could have retired prior to age 50 with full benefits to be paid at age 50."

Case Notes

Incapacity Due to Illness: Under 19-11-611 (renumbered 19-18-611), a city fireman could properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. In such a case the provisions of this section and 19-11-604 (renumbered 19-18-604), providing for a service pension and limiting it to one-half the monthly salary last received by such member, had no application. State ex rel. Barry v. O'Leary, 83 M 445, 272 P 677 (1928).

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981, are entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

Determination of Length of Service: Eligibility for a service pension from a fire department relief association under this section is calculated on the basis of years of active duty as a fully paid firefighter and is not dependent upon the date of appointment or confirmation. 38 A.G. Op. 4 (1979).

Volunteer Firefighters: Volunteer firefighters in second-class cities are entitled to all relief association benefits other than the service pension. 35 A.G. Op. 67 (1974).

Computation of Time: A fully paid firefighter who is not working in the department during the time of a disability is not on active duty and does not accrue time toward the necessary 20 years of active duty for a service pension. 33 A.G. Op. 11 (1969).

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§573 through 590, 592, 593.

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

Retroactive application of fireman's or policeman's pension statutes. 27 ALR 2d 978.

19-18-603. Partial service pension.

Attorney General's Opinions

Determination of Length of Service: Eligibility for a service pension from a fire department relief association under this section is calculated on the basis of years of active duty as a fully paid firefighter and is not dependent upon the date of appointment or confirmation. 38 A.G. Op. 4 (1979).

19-18-604. Disability pension.

Compiler's Comments

1983 Amendment: Near end of (3), increased monthly disability pension for volunteer firefighters from $75 to $125.

Case Notes

Workmen's Compensation Proviso Unconstitutional: The provisions of a repealed section clearly impaired an obligation of contract and had to be declared unconstitutional insofar as they prohibited a fireman or his widow or orphan from receiving payments from the disability and pension fund if they were also receiving payments under the Workmen's Compensation Act (section 92-101, et seq., R.C.M. 1947, now repealed; see Title 39, ch. 71). State ex rel. Evans v. Fire Dept. Relief Ass'n, 138 M 172, 355 P2d 670 (1960).

Incapacity Due to Illness: Under 19-11-611 (renumbered 19-18-611), a city fireman could properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. In such a case the provisions of 19-11-602 (renumbered 19-18-602) and this section, providing for a service pension and limiting it to one-half the monthly salary last received by such member, had no application. State ex rel. Barry v. O'Leary, 83 M 445, 272 P 677 (1928).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670.

Determination whether firefighter's disability is service-connected for disability pension purposes. 7 ALR 4th 799.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

Causal connection between fireman's performance of official duties and his disability, for purposes of recovering disability benefits. 27 ALR 2d 974.

19-18-605. Pensions to surviving spouses and children.

Compiler's Comments

1987 Amendment: In (3), in last sentence after "the pension", inserted "paid to a surviving spouse or children", after "exceed" substituted final clause, relating to service pension, for "$75 per month", and made minor changes in phraseology.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1651, 1652, 1654 through 1660, 1683, 1684.

Rights in survival benefits under public pension or retirement plans as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-18-607. Payment of death benefits in absence of spouse or child.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1653, 1658, 1683, 1684.

Rights in survival benefits under public pension or retirement plans as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-18-611. Procedure — applying for and collecting benefits.

Case Notes

Pensioner Without Vested Right in Pension: A pension granted by the public authorities was not a contractual obligation but a gratuitous allowance in the continuance of which the pensioner had no vested right, the pension being terminable at the will of the grantor. A City Council could abolish its volunteer fire department when in its judgment a paid department should be established and could also destroy the membership of a volunteer member in the firemen's relief association. State ex rel. Casey v. Brewer, 107 M 550, 88 P2d 49 (1939), explained in Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Incapacity Due to Illness: Under this section, a city fireman could properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. In such case the provisions of 19-11-602 (renumbered 19-18-602) and 19-11-604 (renumbered 19-18-604), providing for a service pension and limiting it to one-half the monthly salary last received by such member, had no application. State ex rel. Barry v. O'Leary, 83 M 445, 272 P 677 (1928).

Collateral References

Municipal Corporations *key* 200.

63 C.J.S. Municipal Corporations §§573 through 590, 592, 593.

60A Am. Jur. 2d Pensions and Retirement Funds §§1713, 1717.

Misconduct as affecting right to pension or retention of position in retirement system. 76 ALR 2d 566.

19-18-612. Protection of benefits from legal process and taxation — nonassignability.

Compiler's Comments

1997 Amendment: Chapter 552 at beginning of (1) inserted exception clause. Amendment effective July 1, 1997.

1991 Amendment: Inserted (2) concerning exempting first $3,600 of retirement allowance from taxation by state, county, or municipality. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

Collateral References

Exemptions *key* 49.

35 C.J.S. Exemptions §43.

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings. 93 ALR 3d 711.

CHAPTER 19
POLICE RETIREMENT — LOCAL FUNDS

Chapter Compiler's Comments

Section Not Codified: Section 11-1849, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 19, Ch. 335, L. 1974, as amended by sec. 1, Ch. 406, L. 1977.

Chapter Attorney General's Opinions

Prior Out-of-State Service Not Applicable to Local Retirement Fund: A police officer participating in a local police retirement fund may not buy an additional number of years toward retirement based on prior out-of-state police service. 43 A.G. Op. 17 (1989).

Part 2
Management of Police Retirement Funds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-19-201. Local boards of trustees of funds.

Compiler's Comments

1999 Amendment: Chapter 562 near end of (3) substituted "presiding officer of the board" for "chairman"; near end of (4) substituted "the public employees' retirement board" for "the department of administration and the board"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Collateral References

Employer's liability for action of trustees or similar body administering employer's pension plan. 54 ALR 3d 644.

19-19-202. Limit on use of fund.

Compiler's Comments

1987 Amendment: In (2), in four places after "city's" or "city", inserted "or town's" or "or town".

1985 Amendment: In (1) at beginning, inserted exception clause; and inserted (2) providing for dissolution of the fund and refund of state contributions in certain cases.

19-19-203. Investment of fund.

Compiler's Comments

1981 Amendment: Deleted "except that the fund may not be invested in common stocks" from subsection (3) after "investments in 17-6-211".

19-19-205. Actuarial valuation of police retirement fund.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in first sentence near beginning changed "October" to "September". Amendment effective July 1, 2005.

1999 Amendment: Chapter 562 throughout section substituted "the public employees' retirement board" for references to the department of administration. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments: Chapter 422 in (3), in two places, substituted "state treasurer" for "state auditor" and at end deleted "The payment is statutorily appropriated as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (3), at end of third sentence, substituted "from the general fund" for "designated in the request"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: In (3) inserted last sentence referring to statutory appropriation.

Part 3
Contributions to Funds

Part Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-19-301. City's contribution to fund.

Compiler's Comments

2001 Amendment: Chapter 574 at end substituted "met, the city, subject to 15-10-420, may impose an additional levy in an amount that is sufficient to meet the demand" for "met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand"; and made minor changes in style. Amendment effective July 1, 2001.

Attorney General's Opinions

All-Purpose Mill Levy — Forfeiture of Powers: Municipalities that adopt the all-purpose mill levy authorized in 7-6-4452 (now repealed) forfeit the power to impose levies for any particular purpose not clearly excepted by statute. Thus, the all-purpose mill levy supplants the taxing authority granted in 7-33-4111, 19-10-301 (renumbered 19-19-301), and 19-11-503 (renumbered 19-18-503) but does not supplant the taxing authority granted in 7-32-4117, 7-33-4130, 19-3-204, 19-9-704 (renumbered 19-9-209), sec. 2, Ch. 324, L. 1975 (not codified), sec. 2, Ch. 359, L. 1975 (not codified), and sec. 3, Ch. 438, L. 1975 (not codified). 38 A.G. Op. 112 (1980).

Unauthorized Levies Not to Be Used as Basis for Temporary Increase: The special levies authorized by 7-32-4117, 7-33-4130, and 19-10-301 (renumbered 19-19-301) must be included in the 65-mill levy authorized by 7-6-4451. Any such special levies improperly levied in addition to the 65-mill all-purpose levy may not be used in computing the basis for a 5% increase under 15-7-122 (now repealed). 38 A.G. Op. 44 (1979).

Collateral References

Municipal Corporations *key* 187.

63 C.J.S. Municipal Corporations §§524 through 532.

19-19-302. Officer's contribution deducted from salary.

Attorney General's Opinions

Withholding Retirement Contributions From Temporary Officer's Compensation Not Proper: The City Treasurer may not withhold contributions for the retirement fund from a temporary

officer's compensation, as the purpose of the retirement fund is to benefit active officers who have completed 20 years or more of service. 41 A.G. Op. 29 (1985).

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

Municipal Corporations *key* 187.

63 C.J.S. Municipal Corporations §§524 through 532.

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

19-19-303. Refund of officer's contribution.

Attorney General's Opinions

No Retroactive Effect: Right to a refund of contributions of a retired police officer of the Montana Statewide Police Reserve Fund is confined to police officers whose service with the city is discontinued after July 1, 1975, as there not only was no provision for refund of contributions but a prohibition against repayments as a pension or refund. 36 A.G. Op. 57 (1976).

Prior Decision: In an opinion written before the adoption of this section, it was held that a police officer who resigns from a city police force is not entitled to withdraw his contribution from the police pension fund. 29 A.G. Op. 11 (1961).

19-19-305. Annual state payments to municipality with police department.

Compiler's Comments

1997 Amendment: Chapter 532 in (1), in second sentence after "payment", inserted "from the general fund"; deleted former (2) that read: "The payments provided for by 19-19-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512. Such payments may only be made after deductions have been made from the gross premium tax for cancellations and returned premiums"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: In (1) inserted last sentence referring to statutory appropriation.

1981 Amendment: Substituted "After" for "At" at the beginning of (1).

Case Notes

Conditions Attached to Appropriation: Where title of appropriation bill indicated that its purpose was to provide for annual payment to cities and towns for police reserve fund, section of statute which contained restrictions on such payments, contrary to provisions of metropolitan police law (Title 7, ch. 32, part 41), was repugnant to Art. V, sec. 23, 1889 Mont. Const. (similar to Art. V, sec. 11(4), 1972 Mont. Const.), and therefore void. Helena v. Omholt, 155 M 212, 468 P2d 764 (1970).

Attorney General's Opinions

Pension Trust for PERS Members Prohibits Use of State Funds: Subsection (8) of 19-3-403 prohibits use of annual state payments received by a city pursuant to this section for a pension trust plan for police officers who are also members of the Public Employees' Retirement System. 42 A.G. Op. 92 (1988).

Consolidated Law Enforcement Funding: Third-class cities or towns that have consolidated their police departments with county law enforcement offices may not use the funds received from the State Auditor under 19-10-305 (renumbered 19-19-305) to pay the county for their share of the consolidated law enforcement expense unless those funds are used exclusively for pensions and/or training. 37 A.G. Op. 117 (1978).

Expenditure of State Funds for Police Officers: A town may expend funds received pursuant to 19-10-305 (renumbered 19-19-305) to purchase an annuity for former members of its police department even though the town now has a consolidated department. 37 A.G. Op. 103 (1977).

Interlocal Agreement — Qualifies for State Payment: A contracting city or town under an interlocal agreement providing for cooperative law enforcement services would not forfeit the right to receive state payments as each municipality would still be provided law enforcement services through a local police department. A city or town not governed by the provisions of the police retirement system may thus properly expend the state payment received under this section for police training or to purchase pensions for members of the police department supplying police services pursuant to the interlocal agreement. 35 A.G. Op. 72 (1974).

Part 4
Eligibility for Retirement Benefits

19-19-401. Eligibility for service retirement.

Compiler's Comments

1985 Amendment: Deleted former (3) that read: "Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall pass from the active list to the retired list."

Attorney General's Opinions

Retirement Credit for Temporary Police Duty — Contributions: Time served for temporary duty as a special officer counts toward a police officer's time requirements for the retired list under this section. The City Treasurer may not withhold contributions for the retirement fund from a temporary officer's compensation, as the purpose of the retirement fund is to benefit active officers who have completed 20 years or more of service. 41 A.G. Op. 29 (1985).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

19-19-402. Eligibility for disability retirement.

Case Notes

Employer May Decide Date of Impairment and Date of Retirement: This section makes it clear that the appropriate entity has discretion in making the determination as to whether and when an injury or disability permanently impairs ability to perform and makes it clear that a transfer to the retired list is mandatory only upon the making of an impairment determination. The section does not mandate transfer and the commencement of retirement benefits as of the date of the injury or disability. Silva v. Columbia Falls, 258 M 329, 852 P2d 671, 50 St. Rep. 556 (1993).

Grant of Retirement as of Date of Evidence of Permanent Disability Rather Than Date of Injury: A police officer was injured in January 1989 and applied for disability retirement in March 1989. Medical evidence in March and August 1989 indicated that he would be able to return to work. The first medical statement that he would not be able to return to work was received by the city on June 21, 1990, from a doctor who stated that plaintiff's disability had existed since the date of the injury. This statement conflicted with the prior medical evidence. The city's decision to grant retirement benefits as of June 21, 1990, had a reasonable basis, was not arbitrary and capricious, and was affirmed. Silva v. Columbia Falls, 258 M 329, 852 P2d 671, 50 St. Rep. 556 (1993).

Stress-Related Problems Not Compensable: A police officer was involved in two automobile accidents while on active duty, but neither injury resulted in wage loss nor did the officer mention any problems related to the injuries. The officer quit the department some years later due to stress and anxiety problems. The District Court properly affirmed the City Council decision to deny benefits because the officer's problems did not result from the active discharge of his duties but rather from stress and anxiety generally associated with his employment, neither of which is compensable as a workers' compensation injury or occupational disease. Norman v. Whitefish, 258 M 26, 852 P2d 533, 50 St. Rep. 441 (1993).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670.

Determination whether peace officer's disability is service-connected for disability pension purposes. 12 ALR 4th 1158.

19-19-403. Option of officer to remain on active list.

Compiler's Comments

1985 Amendment: At end of (1) deleted "except that he may not elect to serve past his 65th birthday".

19-19-404. Reinstatement to retired list.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1637, 1638, 1640.

Part 5
Benefits

Part Compiler's Comments

Section Not Codified: Section 11-1846, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 16, Ch. 335, L. 1974.

19-19-501. Service retirement allowance.

Compiler's Comments

1985 Amendment: Near middle of (1), after "police officer", deleted "or who is placed on the retired list under 19-10-401(3) prior to reaching 20 years of service"; and deleted former (3) that read: "A police officer who is placed on the retired list under 19-10-401(3) and who was theretofore eligible at his option to be placed on the retired list under 19-10-401(1) or (2) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2) of this section."

Attorney General's Opinions

Withholding Retirement Contributions From Temporary Officer's Compensation Not Proper: The City Treasurer may not withhold contributions for the retirement fund from a temporary officer's compensation, as the purpose of the retirement fund is to benefit active officers who have completed 20 years or more of service. 41 A.G. Op. 29 (1985).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

19-19-502. Disability retirement allowance.

Case Notes

Authority to Place Incapacitated Police Officer on Reserve List: The Board of Police Commissioners for the city of Great Falls found that appellant's ability to act as a police officer was impaired. They recommended that the City Council place him on the reserve list. The City Council refused the recommendation. Section 5108.4, R.C.M. 1935 (now repealed), gave disjunctive authority to the Police Commissioners and the City Council to act in this matter. The finding of disability on the part of appellant made by the Board of Police Commissioners was binding on the City Council, and appellant was entitled to be placed on the reserve list and receive a disability pension. State ex rel. Goings v. Great Falls, 112 M 51, 112 P2d 1071 (1941).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1668, 1670.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

19-19-503. Death benefits.

Attorney General's Opinions

Annulment of Surviving Spouse's Remarriage: A police officer's surviving spouse who remarries and whose remarriage is annulled ab initio is entitled to reinstatement of pension benefits. 37 A.G. Op. 48 (1977).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1683, 1684.

Rights in survival benefits under public or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-19-504. Protection of benefits from legal process and taxation.

Compiler's Comments

1997 Amendment: Chapter 552 at beginning of (1) inserted exception clause. Amendment effective July 1, 1997.

1991 Amendment: Inserted (2) concerning exempting first $3,600 of retirement allowance from taxation by state, county, or municipality. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

Collateral References

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings. 93 ALR 3d 711.

19-19-506. Supplement to certain pensions.

Compiler's Comments

1997 Amendment: Chapter 532 in (2)(d)(iii), near middle after "minor", substituted "child" for "children"; in (4), in second sentence after "out of the", substituted "general fund" for "premium tax collected on insurance, as provided in 19-19-305(2)"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: In (4) inserted last sentence referring to statutory appropriation.

Attorney General's Opinions

Payment of Pension Supplement: The first supplemental payment to recipients was intended to be made in July 1977, requiring immediate lump-sum payments retroactive to then, followed by monthly payments from the present. The appropriate funding to be implemented may be determined by the administrator of the Public Employees' Retirement Division in conformity with this opinion. 37 A.G. Op. 77 (1977).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1696, 1703, 1704, 1707, 1708.

CHAPTER 20
TEACHERS' RETIREMENT

Chapter Compiler's Comments

Section Not Codified: Section 75-6218, R.C.M. 1947, discontinuing the former retirement system was not codified in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 113, Ch. 5, L. 1971.

Chapter Administrative Rules

Title 2, chapter 44, ARM Teachers' Retirement Board rules.

Chapter Case Notes

Compulsory Retirement: Motion and rules adopted by school trustees requiring the retirement of all teachers upon arriving at the age of 65 years were void. Abshire v. School District, 124 M 244, 220 P2d 1058 (1950).

Chapter Law Review Articles

A Roadmap Through TIAA-CREF, Schloss & Abildsoe, 22 Tax Mgmt. Est., Gifts, & Tr. J. 151 (1997).

Chapter Collateral References

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

Montana Teachers' Retirement System, Summary of Information, July 1, 1999 to June 30, 2001, Montana Teachers' Retirement Board.

Part 1
General Provisions

19-20-101. Definitions.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 174 in definition of normal retirement age in (c) substituted "without an actuarial reduction" for "without actuarial or similar reduction" and at end after "benefits" deleted "because of retirement before a specified age". Amendment effective March 31, 2003.

Chapter 114 in definition of earned compensation in (e)(i) inserted "26 U.S.C. 457(f)"; in definition of Internal Revenue Code substituted "has the meaning provided in 15-30-101" for "means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999"; and in definition of termination pay in (b)(ii) inserted "26 U.S.C. 457(f)". Amendment effective October 1, 2003.

2001 Amendment: Chapter 45 in definition of actuarial equivalent after "computed" substituted "upon" for "with regular interest, on" and at end substituted "mortality table and interest rate assumption set by the retirement board" for "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; in definition of beneficiary near beginning substituted "one or more persons" for "a person"; in definition of earned compensation inserted (e)(ii) excluding sick, annual, or other types of leave and inserted (e)(iii) excluding incentive or bonus payments; inserted definition of normal retirement age; in definition of part-time service substituted "180 days" for "9 months"; in definition of regular interest after "means interest" deleted "at 4% a year compounded annually or"; in definition of retired member substituted "qualified the person" for "is eligible"; in definition of retirement allowance substituted "monthly payment due" for "payment due monthly"; in definition of termination pay at end inserted "and on which employee and employer contributions have been paid as required by 19-20-716"; in definition of written application near beginning inserted "or "written election"" and substituted "required by statute or the rules of the board" for "specified by the board"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 in definition of average final compensation at end of first sentence after "19-20-602" deleted "or 19-20-413" and at end of third sentence substituted "19-20-716(1)(b)" for "19-20-716(2)"; in definition of earned compensation at beginning of (c) inserted "Unless included pursuant to 19-20-716" and after "include" substituted "termination pay" for "lump-sum payments in respect to unused, accumulated sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive or severance payment contingent upon the employee terminating employment" and inserted (e) providing that earned compensation does not include compensation paid to a member from a plan for the deferral of compensation under the federal tax code; inserted definitions of internal revenue code, retired member, and written application; in definition of retirement system after ""system"" inserted "or "plan""; in definition of termination inserted "or "terminate""; in definition of termination pay after "form of" substituted "bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other" for "termination pay made at the time of retirement or death", after "employment" deleted "any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence", and inserted (b) outlining what is excluded from termination pay; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 deleted definition of annuity that read: ""Annuity" means the payments made to a beneficiary for life that are derived from a member's accumulated contributions"; deleted definition of annuity reserve that read: ""Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board"; in definition of average final compensation, near middle of first sentence, inserted reference to 19-20-805 and at end inserted reference to 19-20-413, inserted second and third sentences regarding inclusion in calculation of average final compensation of amounts not included in earned compensation, and deleted (b) through (e) that read: "(b) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation for each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered termination pay as provided in subsection (5)(d).

(d) If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602(1) and 19-20-605(1).

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member, and contributions made under 19-20-602 and 19-20-605 must be refunded.

(e) For purposes of this subsection (5), termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence"; in definition of beneficiary substituted "person formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient" for "person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system"; in definition of earned compensation, in first sentence after "remuneration", inserted "exclusive of maintenance, allowance, and expenses" and at end substituted "employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation" for "employer, as defined under this chapter, before any tax-deferred deductions allowed under the Internal Revenue Code, exclusive of maintenance, allowances, and expenses", deleted second, third, and fourth sentences that read: "The earned compensation is remuneration that would have been paid to a member for full-time service but was not paid to the member because of a reduction in compensation, pay, or salary due to a temporary absence, provided that the retirement system receives the contribution required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding the member's retirement is the compensation, pay, or salary that the member would have earned had the member's part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received had the member completed the full year, except that any termination pay, as defined in subsection (5)(e), received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year", inserted (b) and (b)(i) through (b)(iv) excluding from earned compensation employer-paid insurance premiums, employer-paid professional dues and maintenance expenses, imputed value of insurance, and employer-provided noncash benefits, inserted (c) excluding from earned compensation lump-sum payments and bonuses, and inserted (d) providing that fringe benefits

are earned compensation; in definition of part-time service, at end of first sentence, substituted "in a normal academic year" for "in any year"; deleted definition of pension that read: ""Pension" means the payments made to a beneficiary for life that are paid out of the pension accumulation fund"; deleted definition of pension reserve that read: ""Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board"; in definition of retirement allowance, after "means", substituted reference to monthly payment for service or disability retirement or for death of member for "the annuity plus the pension"; in definition of Retirement Board inserted "or "board""; in definition of retirement system inserted "or "system""; inserted definitions of termination, termination pay, and vested; and made minor changes in style. Amendment effective April 30, 1997.

1995 Amendment: Chapter 111 in definition of average final compensation, in (b) after "19-20-804", substituted "the compensation for each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less" for "the amount of each year's earned compensation that may be used in the calculation of average final compensation may not exceed the member's earned compensation from the preceding year by more than 10%"; near beginning of definition of earned compensation, after "means", substituted "except as limited by 19-20-715, remuneration paid for services by a member out of funds controlled by an employer, as defined under this chapter, before any tax-deferred deductions allowed under the Internal Revenue Code, exclusive of maintenance, allowances, and expenses" for "the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement, a cafeteria plan, a tax sheltered annuity, a deferred compensation program, and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member" and in second sentence, after "compensation is", substituted "remuneration" for "the full compensation, pay, or salary"; and made minor changes in style. Amendment effective March 10, 1995.

1991 Amendment: In definition of earned compensation inserted fourth sentence regarding compensation that was not paid to a member due to a temporary absence.

1989 Amendments: Chapter 56 in first sentence of definition of earned compensation inserted reference to a cafeteria plan; and made minor changes in phraseology and punctuation. Amendment effective July 1, 1989.

Chapter 331 in definition of average final compensation inserted (b) and (c) relating to calculation based on earned compensation and in (d)(iii) inserted "and contributions made under 19-4-602 [renumbered 19-20-602] and 19-4-605 [renumbered 19-20-605] must be refunded"; corrected internal reference; and made minor change in punctuation. Amendment effective March 27, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 331, L. 1989, provided: "It is the intent of the legislature to provide equitable retirement benefits to all members of the teachers' retirement system based on their normal service and salary. The legislature further intends to limit the effect on the retirement system of isolated salary increases received by selected individuals through promotions or one-time salary enhancements during their last years of employment.

The bill provides that the amount of each year's earned compensation that may be used in calculating a member's average final compensation may not exceed the member's earned compensation for the preceding year by more than 10%, except as provided by rule by the board. The legislature intends that the board's rules exempt from the 10% statutory cap increases that:

(1) result from collective bargaining agreements;

(2) have been granted by the employer to all other similarly situated employees; or

(3) have been received as compensation for summer employment.

In addition, the legislature intends that the board's rules require a member to provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% statutory cap."

1987 Amendment: At end of (2) substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "mortality tables adopted by the retirement board".

1985 Amendments: Chapter 224 in (5)(a)(ii) after "compensation", inserted "if the member has 4 or more years of service with the employer from which the termination pay was received", after "creditable service", deleted "with the employer from whom this type of compensation was

received", and in last sentence substituted "contributions on the termination pay according to the rates provided for in 19-4-602(1) [renumbered 19-20-602(1)] and 19-4-605(1) [renumbered 19-20-605(1)]" for "the regular contribution on the termination pay".

Chapter 464 in (5)(a) at end of first sentence, substituted "19-4-602 [renumbered 19-20-602]" for "19-4-602(1)".

1983 Amendment: In definition of earned compensation substituted language of first two sentences defining earned compensation and providing that the employer shall fix the value of any housing provided for ""Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including irregular forms of remuneration, such as amounts paid for special duty or under a salary reduction agreement, and amounts paid in kind, such as maintenance. The employer shall fix the value of any compensation paid in kind." and inserted third sentence excluding other amounts paid in kind and fringe benefits and exception at end.

1981 Amendment: Added the three options in definition of average final compensation, one of which must be selected if earned compensation includes termination pay; and added (5)(b) defining termination pay.

Section Not Codified: Section 75-6201(19), R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 96, Ch. 5, L. 1971.

Administrative Rules

ARM 2.44.517 Formula for determining contributions due on termination pay.
ARM 2.44.517A Reporting of termination pay.
ARM 2.44.518 Limit on earned compensation.
ARM 2.44.525 Calculation of age.
ARM 2.44.526 Value of housing.

Case Notes

Constitutionality: Provisions of 1945 amendment to former subsection defining accumulated contributions were unconstitutional as impairing teacher's contractual rights where they deprived withdrawing member of interest to which she would have been entitled under law prior to amendment. Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Attorney General's Opinions

Earned Compensation — Inclusion of Unearned Sick and Vacation Leave of Disabled Teacher: If a teacher retires on a disability allowance prior to the completion of a full year and is statutorily entitled to earned compensation in the Teachers' Retirement System in an amount equal to the "compensation, pay or salary which he would have received had he completed the full year", the Teachers' Retirement Board must include in the calculation of his earned compensation the value of the sick leave and vacation leave the member would have earned had he completed the contract year. (See 2001 amendment to this section's definition of "earned compensation".) 40 A.G. Op. 10 (1983).

Earned Compensation — Severance Payments — Unused Sick or Vacation Leave: Contractual severance payments and payments based on unused sick or vacation leave are earned compensation of a member for the year in which they are actually paid to the member provided they are properly reported to the system. Severance payments that are not provided for by contract and are unrelated to length of service or unused sick or vacation leave are not earned compensation. 37 A.G. Op. 176 (1978), clarifying 37 A.G. Op. 113 (1978).

Collateral References

Schools and School Districts *key* 146.
78A C.J.S. Schools and School Districts §§507 through 510.
60A Am. Jur. 2d Pensions and Retirement Funds §§1619 through 1621, 1626.

19-20-102. Retirement system.

Compiler's Comments

Former System: The former retirement system, prior to 1937 (sections 1113 to 1132, R.C.M. 1935), was discontinued by sec. 12, Ch. 87, L. 1937; sec. 6, Ch. 28, L. 1949; and sec. 2, Ch. 270, L. 1959.

Although recognized as the state teachers' retirement system by 19-4-102 (renumbered 19-20-102), the 1937 chapter and amendments thereto were repealed by sec. 496, Ch. 5, L. 1971.

Case Notes

Contractual Nature of Rights: The Teachers' Retirement Act of 1937 was one providing for payments of annuity rather than a pension and created a contractual annuity. Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Attorney General's Opinions

Out-of-State: Applicants entering the teachers' retirement system prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States and whether in a public, private, or federal institution; but applicants entering after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States or its territories or possessions in state or locally financed public schools and institutions. 37 A.G. Op. 157 (1978).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1614, 1615.

19-20-104. Guarantee by state.

Compiler's Comments

1997 Amendment: Chapter 442 near middle substituted "maintenance of accumulated contributions in the annuity savings fund" for "maintenance of annuity reserves in the annuity reserve fund" and near end substituted "payment of all retirement allowances" for "payment of all annuities, pensions". Amendment effective April 30, 1997.

19-20-106. Retaining qualified plan status — board rulemaking authority.

Compiler's Comments

1999 Amendment: Chapter 111 in (1) inserted first sentence requiring board to administer plan to satisfy requirements for qualified governmental plan under federal tax code and in second sentence after "systems" inserted language referring to plan's status as a qualified governmental plan under 414(d) of federal tax code; inserted (2) providing composition of the plan document for retirement plan; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 442, L. 1997, provided: "A statement of intent is required for this bill because [section 3] [19-20-106] gives the teachers' retirement board authority to adopt administrative rules.

The legislature finds that it is beneficial to maintain the teachers' retirement system as a qualified plan under Internal Revenue Code regulations. Therefore, it is the intent of the legislature that statutory provisions governing the teachers' retirement system be subject to federal tax law applicable to public retirement plans. The legislature intends that the board make rules useful and necessary to ensure compliance with federal law and necessary to maintain a federal tax qualified plan status."

Effective Date: Section 33, Ch. 442, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

Part 2
Administration of System

19-20-201. Administration by retirement board.

Compiler's Comments

2003 Amendment: Chapter 174 in (1)(d) after "planning" deleted "as a part of the information required by 17-7-111"; inserted (2) authorizing board or representative to conduct hearings, administer oaths, take depositions, and issue subpoenas in discharge of duties; and made minor changes in style. Amendment effective March 31, 2003.

2001 Amendment: Chapter 45 inserted (2) authorizing board to send certain material for delivery to employees and requiring employers to provide board with point of contact; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1993 Amendment: Chapter 349 at beginning of (4) substituted "submit a report to the office of budget and program planning as a part of the information required by 17-7-111, detailing" for "publish a biennial report by January 1 of each year the legislature meets which reports in detail" and at end, after "system", deleted "and submit the biennial report to the governor and, as provided in 5-11-210, to the legislature"; and made minor changes in style.

1991 Amendment: Near end of (4) substituted "as provided in 5-11-210" for "furnish copies". Amendment effective March 20, 1991.

Administrative Rules

ARM 2.44.202 Applicability of rules.
Title 2, chapter 44, subchapter 3, ARM Membership.
Title 2, chapter 44, subchapter 4, ARM Creditable service.
Title 2, chapter 44, subchapter 5, ARM Benefits.
ARM 2.44.522 Family law order — contents and duration.
ARM 2.44.523 Family law orders — approval and implementation.
ARM 2.44.524 Adjustment of disability allowance for outside earnings.

Collateral References

Employer's liability for action of trustees or similar body administering employer's pension plan. 54 ALR 3d 644.

19-20-202. Per diem and expenses of board members.

Compiler's Comments

1983 Amendment: Increased per diem from $25 to $50.

19-20-203. Officers and employees of retirement board.

Compiler's Comments

1997 Amendment: Chapter 532 in (1)(c), after "system", inserted "and establish their compensation pursuant to Title 2, chapter 18"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 111 inserted (2) providing that a quorum is three members; and made minor changes in style. Amendment effective March 10, 1995.

1987 Amendments: Chapter 24 deleted former (4) that read: "(4) when the retirement board considers it necessary, designate a medical board to be composed of three physicians who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system".

Chapter 490 in (4), after "actuary", inserted "who meets the qualifications established by the retirement board".

Administrative Rules

ARM 2.44.304 Qualification of the actuary.

19-20-204. Board's policy governing creditable service.

Administrative Rules

ARM 2.44.301A Definitions.
ARM 2.44.408 Creditable service for absence without pay.

Attorney General's Opinions

Teachers to Receive Creditable Service Time for Sabbatical Leave Without Pay: The Teachers' Retirement Board may award a public school teacher up to 1 month's creditable service for 1 or more months of sabbatical leave without pay, if the Board adopts such a policy. 38 A.G. Op. 53 (1979).

19-20-205. Board to determine membership.

Administrative Rules

Title 2, chapter 44, subchapter 3, ARM Membership.

19-20-206. Board to grant benefits.

Compiler's Comments

2001 Amendment: Chapter 45 inserted second and third sentences regarding granting of benefits by board. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

Administrative Rules

ARM 2.44.306 Actuarial assumptions, rates, and tables.

19-20-208. Duties of employer.

Compiler's Comments

2005 Amendment: Chapter 320 in (5) at end substituted "19-20-731" for "19-20-804". Amendment effective April 21, 2005.

2003 Amendment: Chapter 174 inserted (5) requiring employer to report monthly to board name, social security number, and gross earnings of each retired member employed part-time; and made minor changes in style. Amendment effective March 31, 2003.

1997 Amendment: Chapter 442 near end of (1) substituted "executive director" for "secretary"; in (2), at beginning, substituted "transmit to the executive director" for "pay to the secretary" and at end, after "transmitted", deleted "to the secretary"; inserted (8) requiring employers to report to Board amounts converted to earned compensation; and made minor changes in style. Amendment effective April 30, 1997.

1987 Amendment: Inserted (5) referring to optional retirement program.

1985 Amendment: In (1) at beginning substituted "pick up" for "deduct", and in middle after "19-4-602 [renumbered 19-20-602]", deleted "from each salary payment for each payroll period".

Administrative Rules

ARM 2.44.515 Correction of errors on contributions and overpayments.

19-20-212. General internal revenue service qualification rules.

Compiler's Comments

2005 Amendment: Chapter 320 in (5)(a) at beginning substituted "If at any time that the board finds that benefits payable or contributions required under this chapter would exceed the limits established under section 415 of the Internal Revenue Code, the board may establish" for "The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. If the board elects to establish", near middle after "arrangement" substituted "and" for "the board shall", and at end inserted "and this section"; inserted (5)(b) introductory clause relating to excess benefit arrangement requirements; and made minor changes in style. Amendment effective April 21, 2005.

Removal of Contingent Effective Date: Section 17, Ch. 320, L. 2005, amended sec. 29(2), Ch. 111, L. 1999, by removing language related to a contingent effective date and replacing it with an effective date of July 1, 2005.

Contingent Effective Date: Section 29(2), Ch. 111, L. 1999, provided: "The provisions in [sections 4 and 19] [19-20-212 and 19-20-718], providing for the creation and use of an excess benefit arrangement, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan."

2003 Amendment: Chapter 174 at beginning of second sentence in (5) inserted "If the board elects to establish a qualified governmental excess benefit arrangement"; and made minor changes in style. Amendment effective March 31, 2003.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Part 3
Membership

Part Administrative Rules

Title 2, chapter 44, subchapter 3, ARM Membership.

19-20-301. Membership application.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1614, 1615.

Services included in computing period of service for purpose of teachers' retirement benefits. 2 ALR 2d 1033, superseded by 56 ALR 5th 493.

19-20-302. Active membership.

Compiler's Comments

2005 Amendment: Chapter 320 in (5) at end substituted "19-20-731" for "19-20-804". Amendment effective April 21, 2005.

2003 Amendment: Chapter 402 inserted (1)(f) requiring person elected as county superintendent of schools to be active member of retirement system; at beginning of (2) substituted "A retired member" for "A person", after "schools" inserted "or appointed to complete the term of an elected county superintendent of schools", and after "become" inserted "or to not become"; and made minor changes in style. Amendment effective April 17, 2003.

2001 Amendment: Chapter 45 in (1) after "the retirement system" deleted former exception that read: "with the exception that those persons who became eligible for membership on

September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members"; in (1)(c) near beginning substituted "a teaching capacity" for "an instructional services capacity"; deleted former (1)(e) and (1)(f) that read: "(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time of the election, and who may elect to become a member of the retirement system"; inserted (1)(e) regarding superintendent of public instruction or another person; in (4)(a) inserted reference to part-time teacher's aide; in (4)(a)(i) substituted "shall file" for "shall make" and after "irrevocable" inserted "written"; in (4)(a)(ii) near middle substituted "after completing 210 hours" for "on the 31st day" and after "substitute teacher" inserted "or part-time teacher's aide"; inserted (4)(b) regarding membership by part-time teacher's aid and substitute teacher; in (4)(c) near middle substituted "shall file" for "shall make" and after "irrevocable" inserted "written"; inserted (4)(d) concerning irrevocable election by part-time teacher's aide; in (4)(e) near middle inserted reference to part-time teacher's aide; in (4)(f) in two places inserted reference to part-time teacher's aide and after "a written statement" inserted "with the employer"; inserted (5) concerning membership of school district clerk or business official in teachers' retirement system; in (7) inserted definition of part-time teacher's aide; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 at end of (4)(a)(i) and in (4)(c) after "employment" deleted "in any fiscal year"; at beginning of (4)(a)(i) substituted "shall make an irrevocable election whether to become" for "may elect to become"; inserted (4)(b) requiring person employed as substitute teacher on July 1, 1999, who has not elected to be a member to make an irrevocable election on first day of employment as substitute; inserted (4)(d) requiring substitute teacher who declines membership during election period to execute written membership waiver; deleted former (5) that read: "(5) A substitute teacher who did not elect membership under subsection (4)(a)(i) and who subsequently becomes a member must be awarded credible service for substitute teaching service if the substitute teacher contributes:

(a) an amount equal to the combined employee and employer contributions that would have been made if the substitute teacher had elected membership; plus

(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 42 in (1)(c) substituted "speech-language pathologist" for "speech therapist". Amendment effective March 12, 1997.

1995 Amendments: Chapter 111 inserted (2) concerning a person elected to the office of County Superintendent of Schools after July 1, 1995; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 308 deleted (1)(b)(i) that read: "(i) a vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 178 in (1)(b)(ii), before "to participate", inserted "or is not required"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (4) relating to the award of creditable service to a substitute teacher; and made minor change in form. Amendment effective July 1, 1989.

1987 Amendments — Composite Section: Chapter 22 inserted (3) referring to substitute teachers.

Chapter 296 near beginning of (1)(c), after "employed", inserted "as a speech therapist, school nurse, or school psychologist or"; inserted (1)(d) referring to administrative officers and certain instructional staff; and in (1)(e) and (1)(f) inserted reference to (1)(d).

Chapter 494 in (1)(b)(ii), after "university system", inserted reference to optional retirement program.

Chapter 658 inserted (1)(b)(i) referring to vocational-technical center.

In preparation of the composite of the Ch. 494 and Ch. 658 amendments to this section, the Code Commissioner outlined subsection (1)(b) to reflect that the optional retirement program does not apply to employees of vocational-technical centers (now colleges of technology).

1983 Amendment: At end of (1)(b), after "university system" deleted "except as provided in 19-4-305".

1981 Amendment: Inserted "a special education cooperative" following "the office of a county superintendent" in (1)(c).

Administrative Rules

ARM 2.44.305 Optional retirement program for certain members of the Montana University System.

ARM 2.44.307 Membership of teacher's aides and part-time employees.

ARM 2.44.308 Independent contractor.

ARM 2.44.511 Reinstatement of benefits.

Attorney General's Opinions

Out-of-State: Applicants entering the teachers' retirement system prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States and whether in a public, private, or federal institution; but applicants entering after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States or its territories or possessions in state or locally financed public schools and institutions. 37 A.G. Op. 157 (1978).

Retirement Systems — Teachers: A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance. 37 A.G. Op. 80 (1977).

19-20-303. Inactive membership.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

19-20-304. Membership termination.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

19-20-305. Alternate payees — family law orders.

Compiler's Comments

1997 Amendment: Chapter 442 in definition of participant, after "member", inserted "retiree"; in definition of family law order, after "means", substituted "a certified copy of a judgment" for "a judgment" and after "court" substituted "with competent jurisdiction" for "of competent jurisdiction under Title 40"; inserted (7) requiring family law order to contain statement that order is subject to Board review; and made minor changes in style. Amendment effective April 30, 1997.

Effective Date: Section 13(1) provided that this section is effective on passage and approval. Approved March 10, 1995.

Administrative Rules

ARM 2.44.522 Family law order — contents and duration.

ARM 2.44.523 Family law orders — approval and implementation.

19-20-306. Execution or withholding for support obligation.

Compiler's Comments

Effective Date: Section 103(1), Ch. 552, L. 1997, provided that this section is effective July 1, 1997.

Part 4
Creditable Service

Part Administrative Rules

Title 2, chapter 44, subchapter 4, ARM Creditable service.

ARM 2.44.407 Creditable service for teaching in private educational institutions.

ARM 2.44.413 Creditable service for members after July 1, 1989.

ARM 2.44.414 Installment purchase.

19-20-401. Creditable service.

Compiler's Comments

2005 Amendment: Chapter 320 inserted (2)(j) relating to service awarded for service purchased; and made minor changes in style. Amendment effective April 21, 2005.

1989 Amendments: Chapter 56 inserted (4) relating to calculation of cost to purchase creditable service by a member completing only part-time service during the qualifying period. Amendment effective July 1, 1989.

Chapter 690 inserted (2)(g) relating to service transferred from the public employees' retirement system.

1987 Amendments: Chapter 38 inserted (2)(h) referring to service for absence due to employment-related injury.

Chapter 79 inserted (2)(g) referring to service for extension service employment.

1981 Amendment: Inserted (2)(f) referring to employment service.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.414 Installment purchase.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the

TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

Attorney General's Opinions

Payments to Teachers' Retirement Board for Teacher on Sabbatical Leave With Pay: Prior to the 1983 amendment of 19-4-602 (renumbered 19-20-602) and the 1981 and 1983 amendments of 19-4-605 (renumbered 19-20-605), when a school district granted a public school teacher sabbatical leave with pay, the district must have: (a) deducted from the teacher's compensation 6.187% of the full compensation actually paid the teacher for the employee's contribution; and (b) contributed 6.312% of the full compensation actually paid the teacher for the employer's contribution. 38 A.G. Op. 53 (1979).

Creditable Service for Teachers on Sabbatical Leave With Pay: The Teachers' Retirement Board must award a public school teacher creditable service for sabbatical leave with pay. 38 A.G. Op. 53 (1979).

Teachers to Receive Creditable Service Time for Sabbatical Leave Without Pay: The Teachers' Retirement Board may award a public school teacher up to 1 month's creditable service for 1 or more months of sabbatical leave without pay, if the Board adopts such a policy. 38 A.G. Op. 53 (1979).

Collateral References

Disciplinary suspension of public employees as affecting computation of length of service for retirement or pension purposes. 6 ALR 2d 506.

Services included in computing period of service for purpose of teachers' retirement benefits. 2 ALR 2d 1033, superseded by 56 ALR 5th 493.

19-20-402. Creditable service for employment in out-of-state public and federal schools.

Compiler's Comments

2003 Amendment: Chapter 174 in (2)(b) near end of first sentence before "July" inserted "the salary was reported to the system for the fiscal year beginning". Amendment effective March 31, 2003.

2001 Amendment: Chapter 45 throughout section substituted references to purchase of service for references to qualifying service; in (1)(a) after "system for out-of-state" deleted "employment"; and in (1)(c) after "out-of-state" substituted "service" for "employment". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1995 Amendment: Chapter 136 in (1)(a), after "A member who", substituted "has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive" for "became a member before July 1, 1989, may apply for"; in (1)(b), in first sentence, inserted "the member shall roll the member's contributions over into the retirement system" and before "service" deleted "out-of-state" and deleted second sentence that read: "The member must be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system as provided in subsection (2)"; inserted (1)(c)(i) relating to federal or other public school or institution; in (1)(c)(ii), after "institution", deleted "if the service would have been acceptable under this chapter if performed in the state of Montana"; in (2)(a), at beginning, deleted "Except as provided in subsection (2)(b)", substituted "service described in subsection (1)(c)(i)" for "service under this section", after "member" inserted "who became a member before July 1, 1989", after "contribute" inserted "for each year of service to be qualified", after "out-of-state service" deleted "for each year of creditable service", and after "interest" deleted "at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana"; in (2)(b) substituted "service described in (1)(c)(ii)" for "service performed outside the United States in a federal or other public or private school or institution", after "member" inserted "who became a member before July 1, 1989", and after "interest" deleted "at the rate the contribution would have earned had the contribution been in his account from the date he was eligible to qualify the service"; inserted (2)(c) relating to actuarial cost; inserted (3) relating to rate of interest; in (4), after "contributions", inserted "and interest"; inserted (5) referring to 19-20-405; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendments: Chapter 113 near beginning of first sentence inserted "before July 1, 1989"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Chapter 357 in (1)(a), at beginning, substituted "A member who became a member before July 1, 1989, may apply" for "A person applying for membership may also apply", inserted second sentence requiring applicant to receive refund of out-of-state contributions before qualifying service under this section, at beginning of third sentence substituted "The member must" for "The person shall", and at end of third sentence inserted reference to subsection (2); inserted (1)(b) providing that out-of-state service includes service outside the United States; in (2)(a), at beginning, inserted "Except as provided in subsection (2)(b), to qualify service under this section, the member must contribute"; inserted (2)(b) stating method for qualifying service performed outside United States; in (3), near beginning, inserted "required under subsection (2)" and near end substituted "member" for "person"; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Coordination Instruction: Section 5, Ch. 357, L. 1989, a coordination instruction, provided for insertion near beginning of (1) of language "who became a member before July 1, 1989" if Senate Bill No. 125 was enacted. Senate Bill No. 125 was passed and approved March 16, 1989, and became Ch. 113, L. 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.411 Creditable service for employment in a federal, public, or private school outside the United States or its possessions.

ARM 2.44.414 Installment purchase.

Case Notes

Credit for Out-of-State Service: Section 75-2705(9), R.C.M. 1947 (now repealed), as in effect in 1954, allowed any teacher in the Montana State Teachers' Retirement System to receive credit for "out-of-state teaching employment" without distinction between service in public or in private schools. State ex rel. Sullivan v. St., 174 M 482, 571 P2d 793 (1977).

Attorney General's Opinions

Out-of-State: Applicants entering the teachers' retirement system prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States and whether in a public, private, or federal institution; but applicants entering after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States or its territories or possessions in state or locally financed public schools and institutions. 37 A.G. Op. 157 (1978).

19-20-403. Creditable service for employment while on leave.

Compiler's Comments

2001 Amendment: Chapter 45 in (1)(b), (2)(a), and (3) substituted references to purchase of service for references to qualifying service. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1995 Amendment: Chapter 136 at beginning of (1)(a), after "member", substituted current language regarding qualifications for "with 5 years or more of creditable service in the retirement system who became a member before July 1, 1989", substituted "may receive up to 2 years of creditable service" for "may apply for creditable service", and after first sentence deleted "If he contributes to the retirement system as provided in subsection (2), the member must be awarded creditable service in an amount not exceeding 2 years as determined by the board, conditional upon his having"; at beginning of (1)(b) inserted "To be eligible to qualify service under this section, a member must have at least 5 years of membership service in the retirement system, must have"; in (2)(a), at beginning, substituted "For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be qualified" for "To qualify service under this section, the member must contribute", after "leave" deleted "for each year of creditable service", and after "interest" deleted "at the rate the contribution would have earned had the contribution been in his account. The contribution rate must be the rate in effect at the time he is eligible for the service"; inserted (2)(b) requiring contribution of actuarial cost of service; inserted (3) relating to interest rate on contributions; in (4) substituted "contributions and interest" for "contribution"; inserted (5) referring to 19-20-405; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendments: Chapter 113 near beginning of first sentence inserted "before July 1, 1989"; and made minor change in phraseology. Amendment effective July 1, 1989.

Chapter 357 in (1) substituted "A member with 5 years or more of creditable service in the retirement system who became a member before July 1, 1989, may apply for creditable service for employment while on leave. If he contributes to the retirement system as provided in subsection (2), the member must be awarded creditable service in an amount not exceeding 2 years as determined by the board, conditional upon his having been a member prior to his leave and upon his completing 1 year of active membership in Montana subsequent to his return" for "A person applying for membership may also apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon his completing 5 years of active membership in Montana subsequent to his return, if his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board in an amount not exceeding 2 years, if he contributes to the retirement system"; in (2), in first sentence at beginning, inserted "To qualify service under this section, the member must contribute" and at end deleted "upon the completion of 5 years of membership service in Montana" and near end of third sentence substituted "member" for "person"; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Coordination Instruction: Section 5, Ch. 357, L. 1989, a coordination instruction, provided for insertion near beginning of (1) of language "who became a member before July 1, 1989" if Senate Bill No. 125 was enacted. Senate Bill No. 125 was passed and approved March 16, 1989, and became Ch. 113, L. 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.414 Installment purchase.

Attorney General's Opinions

Creditable Service for Teachers on Sabbatical Leave With Pay: The Teachers' Retirement Board must award a public school teacher creditable service for sabbatical leave with pay. 38 A.G. Op. 53 (1979).

Payments to Teachers' Retirement Board for Teacher on Sabbatical Leave With Pay: Prior to the 1983 amendment of 19-4-602 (renumbered 19-20-602) and the 1981 and 1983 amendments of 19-4-605 (renumbered 19-20-605), when a school district granted a public school teacher sabbatical leave with pay, the district must have: (a) deducted from the teacher's compensation 6.187% of the full compensation actually paid the teacher for the employee's contribution; and (b) contributed 6.312% of the full compensation actually paid the teacher for the employer's contribution. 38 A.G. Op. 53 (1979).

Retirement Systems — Teachers: A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance. 37 A.G. Op. 80 (1977).

19-20-404. Creditable service for active service in military, red cross, or merchant marine.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (1) near middle of first sentence after "Korean" substituted "war" for "conflict". Amendment effective October 1, 2001.

Chapter 45 in (1) near middle of first sentence substituted "Korean war" for "Korean conflict" and near beginning of second sentence substituted "receive credit for" for "qualify"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 in middle of second sentence in (1) after "board" substituted "a written application" for "a completed application"; in middle of first sentence of (2) deleted "except as provided in subsection (2)(b)"; deleted former (2)(b) that read: "(b) If a member elects to purchase additional service under 19-20-412, service purchased under this subsection (2) may be used only for the purpose of calculating the member's retirement allowance and may not be considered creditable service for the purpose of determining eligibility under 19-20-801 or 19-20-802"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1993 Amendment: Chapter 185 in (1), before "Vietnam conflict", inserted provision concerning the Korean conflict; and made minor changes in style. Amendment effective March 25, 1993.

1989 Amendments: Chapter 113 near middle of first sentence of (2)(a) inserted exception clause; inserted (2)(b) stating purpose for which purchased service may be used; near beginning

of (3) inserted reference to subsection (2); and made minor changes in phraseology and form. Amendment effective July 1, 1989.

Chapter 204 in (1) substituted December 22, 1961, for August 5, 1964. Amendment effective July 1, 1989.

Applicability: Section 5, Ch. 204, L. 1989, provided: "[Sections 1 and 2] apply to all members of the teachers' retirement system who are active members on or after July 1, 1989."

1981 Amendment: Added (1) allowing member creditable service for active service in U.S. armed forces; substituted "If a member is ineligible for service credit under subsection (1), he may apply under the provisions of this subsection" for "A person applying for membership may also apply" at the beginning of (2).

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.402 Credit for military service.
ARM 2.44.414 Installment purchase.

19-20-405. Limit on creditable service that may be awarded.

Compiler's Comments

1999 Amendment: Chapter 111 near end after "19-20-410(1)" deleted "and 19-20-412"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 408 after "19-20-410" inserted "(1)"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 136 after "total creditable service for" substituted current language referring to service purchased under certain MCA sections for "out-of-state teaching, employment while on leave, employment with the Montana cooperative extension service, and active service in the armed forces of the United States or the American red cross or merchant marine". Amendment effective July 1, 1995.

1987 Amendment: Near middle inserted "employment with the Montana cooperative extension service".

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.414 Installment purchase.

19-20-406. Creditable service for prior service.

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.414 Installment purchase.

19-20-407. No duplication of credit for same period of service.

Compiler's Comments

2005 Amendment: Chapter 320 inserted second sentence relating to granting creditable service for time a retirement benefit was received. Amendment effective April 21, 2005.

1997 Amendment: Chapter 408 substituted current text prohibiting duplicate credit for service for "There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member." Amendment effective July 1, 1997.

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.414 Installment purchase.

19-20-408. Creditable service for employment in private schools.

Compiler's Comments

2001 Amendment: Chapter 45 in (3) near end substituted "purchase" for "qualify". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1995 Amendment: Chapter 136 in (1)(a) substituted "A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service" for "A person applying for membership before July 1, 1989, may also apply for creditable service" and near end substituted "employment within the United States" for "employment service"; in (1)(b), at beginning of first

sentence, substituted "Employment to be credited" for "Employment service" and after "nature" deleted "or be employment" and inserted second sentence related to employment in teaching kindergarten through grade 12 and after insertion deleted "Employment service does not include students"; in (1)(c), at beginning, inserted "Members may not receive credit for service as a student" and after first sentence deleted "The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in the retirement system, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes"; in (2)(a), at beginning, inserted "For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute", after "retirement system" substituted "or after returning" for "or returning", after "later" deleted "for each year of creditable service", and after "interest" deleted "at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service"; inserted (2)(b) requiring contribution of actuarial cost of service; inserted (3) relating to interest rate on contributions; in (4), after "contributions", inserted "and interest"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: Near beginning of first sentence inserted "before July 1, 1989"; and made minor change in punctuation. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.407 Creditable service for teaching in private educational institutions.

ARM 2.44.414 Installment purchase.

19-20-409. Transfer of service credits and contributions from public employees' retirement system.

Compiler's Comments

2001 Amendment: Chapter 45 in (1), (4), and (6) substituted references to purchasing service for references to qualifying service; in (1) in first sentence near beginning substituted "file" for "make", substituted "written application" for "written election", and substituted "purchase" for "qualify in the teachers' retirement system"; in (3) in second sentence near middle substituted "a transfer" for "payment"; in (4) near middle substituted "receive credit" for "qualify"; in (7)(a) near middle inserted "public employees' retirement board shall transfer to the teachers' retirement system the" and at end after "contributions plus interest" deleted "must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, respectively, are the liability of the employee and the employing entity where the error occurred"; inserted (7)(c) regarding liability for employee and employer contributions; inserted (8) providing conditions under which member of teachers' retirement system may purchase creditable service for time previously spent in public employees' retirement system defined contribution plan; inserted (9) concerning determination of creditable serviced purchased under subsection (8); and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1997 Amendment: Chapter 442 at beginning of (2) deleted introductory clause referring to subsection (3); in (6), near beginning of first sentence after "public employees' retirement system", inserted "teachers' retirement system"; in (7), in first sentence after "contributions and service", inserted "together with employer contributions plus interest", after "19-20-605" inserted "respectively", and after "error occurred" deleted "respectively" and inserted second sentence requiring interest on employer contributions to be calculated at short-term investment pool rate; and made minor changes in style. Amendment effective April 30, 1997.

Retroactive Applicability: Section 32, Ch. 442, L. 1997, provided: "[Section 9] [19-20-409] applies retroactively, within the meaning of 1-2-109, to all occurrences on or after January 1, 1995."

1995 Amendment: Chapter 412 in first sentence of (1) substituted "An active member" for "A member"; in (2) inserted "In addition to the amounts directly paid or transferred by the member under subsection (3)" and at end substituted "payable by the member" for "determined in accordance with subsection (3)"; in (3) substituted "The member" for "The employee", after "pay" inserted "either directly or by transferring contributions on account with the public employees' retirement system", and after "time" substituted "that active membership was terminated" for "he terminated active membership under 19-2-601"; in (6), at beginning, substituted "an active member" for "a member"; in (7), near beginning after "classified", inserted "and reported to the public employees' retirement system"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1991 Amendment: Near beginning of (2), after "equal to", substituted "72% of the amount determined in accordance with subsection (3)" for "5% of the final compensation, as defined in 19-3-104, earned by the member multiplied by the total years of creditable service being transferred plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the public employees' retirement system. If the member had less than 3 full years of membership service, the final compensation must be based on the compensation reported to the public employees' retirement board by the employer.

(b) If the sum of the rates provided in 19-4-602 and 19-4-605 exceeded the sum of the rates provided in 19-3-701 and 19-3-801 at the time the employee terminated active membership under 19-3-406, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:

(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided in 19-4-602 and 19-4-605 and the sum of the rates provided in 19-3-701 and 19-3-801; plus

(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.

(c) If the member chooses not to make the contribution as provided in this section, he shall receive credit for the service transferred, based on the ratio between the retirement systems' employee and employer contribution rates provided for under 19-3-701, 19-3-801, 19-4-602, and 19-4-605". Amendment effective February 27, 1991.

Retroactive Applicability: Section 3, Ch. 64, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to service credits transferred between the public employees' retirement system and the teachers' retirement system on and after October 1, 1989."

1989 Amendment: Deleted former (1) that read: "(1) For the purpose of this section, "assumed salary" means the sum of the following:

(a) compensation for all membership service as defined in 19-3-104; and

(b) the salary base used by the public employees' retirement system when granting military service under 19-3-502 and 19-3-503 and service credits for time when a member is absent from service because of injury or illness under 19-3-504"; at end of (1) substituted "to qualify this service under this section is the sum of subsections (2) and (3)" for "to qualify this service under subsection (2) is the sum of the following"; in (2) substituted language relating to transfer of amounts from the public employees' retirement system to the teachers' retirement system for "(a) from the public employees' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-4-602 and 19-4-605, based on the assumed salary, less the amount paid by the employee in subsection (3)(b)"; in (3)(a), at beginning, substituted "the employee shall pay an amount equal to his accumulated contributions" for "from the employee, the amount of his accumulated contributions" and at end, before "retirement system", inserted "public employees'"; inserted (3)(b) relating to calculation of additional required payments; inserted (3)(c) relating to credit for transferred service when member does not make contributions; in (6), before "contributions", deleted "employee and employer" and substituted "subsections (2) and (3)" for "subsection (3)(a)"; in (7) substituted "19-4-602 [renumbered 19-20-602] and 19-4-605 [renumbered 19-20-605]" for "subsection (3)(a)", before "employing entity" inserted "employee and the", and at end inserted "respectively"; and made minor changes in form.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.409 Transfer of service credit from Public Employees' Retirement System.

ARM 2.44.414 Installment purchase.

19-20-410. Creditable service for extension service employment.

Compiler's Comments

2001 Amendment: Chapter 45 throughout section substituted references to purchase of service for references to qualifying service; in (1)(a) near middle substituted "may file" for "may make" and substituted "written application" for "written election"; in (1)(b) at beginning substituted "For each year of service to be purchased" for "To qualify service", near middle inserted "rate in effect at the time that the member is eligible to purchase the service multiplied by", after "a member of the retirement system" deleted "for each year of creditable service", and deleted former last sentence that read: "The contribution rate must be that rate in effect at the

time that the member is eligible for the service"; in (2) near middle substituted "a member who has purchased" for "a member with", substituted "creditable service" for "qualified service", and substituted "may purchase additional years of" for "may qualify any"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1997 Amendment: Chapter 408 inserted (2) allowing member with 5 years or more of qualified service to qualify service in cooperative extension service; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: Inserted (1)(a) requiring membership before July 1, 1989; and made minor changes in phraseology and form. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.414 Installment purchase.

19-20-411. Absence because of employment-related injury.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) in first and second sentences substituted "purchase" for "qualify". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1995 Amendment: Chapter 136 in (1), near beginning of first sentence after "subsection", substituted reference to subsection (6) and to member absent because of employment-related injury for "(5), time during which a member is absent because of an injury related to employment covered by the retirement system that entitles him to workers' compensation payments may be qualified under the retirement system if the member was a member of the retirement system before July 1, 1989" and in second sentence, after "system", inserted reference to subsection (2); in (2)(a), at beginning, inserted "A member who became a member before July 1, 1989, shall contribute"; at end of (2)(a)(iii) substituted "subsection (3)" for "subsection (1)(b)"; inserted (2)(b) requiring contribution of actuarial cost of service; in (3), in two places, substituted "subsection (2)(a)" for "subsection (1)(a)"; in (4) substituted "subsection (2)" for "subsection (1)(a)"; in (5), after "contributions", deleted "due because of the period of absence" and at end inserted "as agreed between the board and the member"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: At end of first sentence (1)(a) inserted language requiring membership before July 1, 1989. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.414 Installment purchase.

19-20-414. Payment methods for purchase of service credit.

Compiler's Comments

2003 Amendment: Chapter 174 at end of (1) substituted "purchase the service credit by making payment as provided in this section" for "roll over or transfer the member's accumulated contributions on deposit with any other eligible retirement plan"; inserted (2) outlining method or combination of methods by which service credit may be purchased; in (3)(a) after "transferred" inserted "or rolled over" and after "system" inserted "pursuant to subsection (2)"; in (4) substituted "this section" for "subsection (1)"; inserted (5) allowing member's surviving spouse to complete member's service purchase and requiring spouse to apply to complete payments and pay balance due system prior to benefits distribution; and made minor changes in style. Amendment effective March 31, 2003.

2001 Amendment: Chapter 45 in (1) near beginning of first sentence substituted "to purchase" for "to qualify". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 at end of first sentence in (1) substituted "eligible retirement plan" for "qualified retirement plan"; at beginning of (2) after "If" substituted "in the case of a transfer, the transferred account" for "the account", after first "taxed" substituted "amounts" for "contributions", and after second "taxed" substituted "amounts" for "contribution and interest balances"; inserted (3) requiring board to accept direct rollover of eligible distributions from another retirement plan to the extent allowed by federal tax law; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Effective Date: Section 13(1) provided that this section is effective on passage and approval. Approved March 10, 1995.

19-20-415. Procedure for purchase of service credit and pick up.

Compiler's Comments

2005 Amendment: Chapter 320 in (1) near middle substituted "19-20-427" for "19-20-602(3)". Amendment effective April 21, 2005.

2001 Amendment: Chapter 45 throughout section substituted references to written application for references to payroll deduction authorization; in (1)(c) in first sentence near end substituted "complete the irrevocable written application to purchase service" for "elect the irrevocable payroll deduction authorization"; in (3)(a)(ii) substituted text regarding date written application is signed by member and member's employer for "the execution of the irrevocable payroll deduction authorization form"; in (3)(b) at beginning of second sentence substituted "A written application to purchase additional service that is" for "An irrevocable payroll deduction authorization"; in (4) at beginning of first sentence substituted "The irrevocable written application to purchase service" for "If the irrevocable payroll deduction authorization is elected by the member, it" and at end inserted "and filed with the board"; in (5) near beginning of first sentence substituted "installments required by subsection (4)(b)" for "irrevocable payroll deduction authorization", deleted former second sentence that read: "The minimum number of years specified to be purchased may not be less than 1 year or the total number of years that the member is eligible to purchase", and near beginning of second sentence inserted "number of years that may be purchased"; in (6) deleted former second sentence that read: "A member may make more than one binding, irrevocable payroll deduction authorization so long as a subsequent deduction authorization does not amend a previous binding, irrevocable payroll deduction authorization"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Contingent Effective Date: Section 29(3), Ch. 111, L. 1999, provided: "The provisions in [sections 9, 13, and 18] [19-20-415, 19-20-602, and 19-20-716], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan." The contingency occurred on March 3, 1999, and this section became effective July 1, 1999.

Administrative Rules

ARM 2.44.414 Installment purchase.

ARM 2.44.416 Service purchase resolutions.

19-20-416. Credit for legislative service required.

Compiler's Comments

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Effective Date: Section 29(1), Ch. 111, L. 1999, provided that this section is effective July 1, 1999.

19-20-417. Credit for substitute teaching service, teacher's aide service, or other service not reported.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) near beginning inserted reference to part-time teacher's aide and after "creditable service for" substituted language concerning service not reported if member makes contributions that would otherwise have been made for former text of introduction and former (1) and (2) that read: "substitute teaching service if the substitute teacher contributes:

(1) an amount equal to the combined member and employer contributions that would have been made if the substitute teacher had elected membership; and

(2) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system"; inserted (2) regarding purchase of service by member who would have been eligible for membership; inserted (3) requiring employer and employee to make contributions in certain instance; inserted (4) allowing contributions to be made in lump-sum

payments or in installments; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Effective Date: Section 29(1), Ch. 111, L. 1999, provided that this section is effective July 1, 1999.

19-20-426. Creditable service for employment under optional retirement program.

Compiler's Comments

Effective Date: Section 19, Ch. 320, L. 2005, provided that this section is effective on passage and approval. Approved April 21, 2005.

19-20-427. Redeposit of contributions previously withdrawn.

Compiler's Comments

Effective Date: Section 19, Ch. 320, L. 2005, provided that this section is effective on passage and approval. Approved April 21, 2005.

Part 5
Management of Funds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-20-501. Financial administration of money.

Compiler's Comments

2001 Amendment: Chapter 45 in (2) inserted second sentence establishing minimum rate of interest; in (3) in last sentence inserted "less amortization of intangible assets"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1997 Amendment: Chapter 532 in introductory clause, near end after "money", inserted "as provided in Article VIII, section 15, of the Montana constitution"; in (3), at end of second sentence after "allocated to", substituted "administrative expenses" for "the expense fund under the provisions of 19-20-606" and inserted third sentence limiting the amount that may be used for administrative expenses; at beginning of (5) inserted "For purposes of Article VIII, section 12, of the Montana constitution"; and inserted (6) regarding payment of benefits and refunds payable pursuant to contract. Amendment effective July 1, 1997.

1991 Amendment: Near end of (3) substituted "fund" for "account"; deleted second and third sentences of (4) that read: "All expenditures from the moneys may be made only upon claims signed by two persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as its authority for approving such claims"; and made minor changes in style. Amendment effective February 1, 1991.

1983 Amendment: In (3) and (5), substituted three references to retirement system reserves for references to retirement system funds; near end of (3), substituted "expense account" for "expense fund"; and in (5), after "chapter" deleted ", except the expense fund,", substituted "pension trust fund type" for "agency fund", and deleted last sentence, which read: "The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure."

Case Notes

Investments in Emergency Relief Warrants: Under Ch. 87, L. 1937 (now repealed), the retirement board had supervision over the investment of funds mentioned therein and might in its discretion invest such funds in emergency relief warrants issued under sec. 2, Ch. 85, L. 1937 (not codified). Kraus v. Riley, 107 M 116, 80 P2d 864 (1938).

Collateral References

Schools and School Districts §146.

78A C.J.S. Schools and School Districts §512.

19-20-502. Restrictions on use of money.

Compiler's Comments

2001 Amendment: Chapter 45 inserted (4) requiring assets to remain in trust until warrant is paid or transfer made; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 inserted (3) prohibiting board from engaging in transaction prohibited by section 503(b) of the federal tax code; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

19-20-503. Transfer of dormant or unclaimed accounts.

Compiler's Comments

1997 Amendment: Chapter 442 inserted (2) requiring claim for retirement benefits to be made within 5 years of member's death and providing for reversion of funds; and made minor changes in style. Amendment effective April 30, 1997.

19-20-504. Vesting of retirement allowances upon termination of system.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1619 through 1621, 1626.

19-20-510. Probate and nonprobate transfer statutes superseded.

Compiler's Comments

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 101, Ch. 562, L. 1999, provided that this section is effective July 1, 1999.

Retroactive Applicability: Section 102, Ch. 562, L. 1999, provided: "[Section 19] [19-2-1015 and 19-20-510] applies retroactively, within the meaning of 1-2-109, to July 1, 1997."

Part 6
Funds — Contributions

19-20-601. Method of financing.

Case Notes

Special Tax Levy — Teachers' Retirement: Under the applicable 1974 statutes the Flathead County Board of County Commissioners had authority to levy a special tax to finance the Flathead Valley Community College district's teachers' retirement fund contribution separate from other levies made to finance the general fund, building debt service, and adult education program. Burlington N., Inc. v. Flathead County, 176 M 9, 575 P2d 912 (1978).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1608, 1611.

19-20-602. Annuity savings fund — member's contribution.

Compiler's Comments

2005 Amendment: Chapter 320 deleted former (3) that read: "(3) In addition to the normal contributions, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415"; and made minor changes in style. Amendment effective April 21, 2005.

1999 Amendments — Composite Section: Chapter 111 in (1)(a) substituted "Internal Revenue Code" for "federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985"; in (1)(a)(i) substituted "this subsection (2)" for "this section"; inserted (1)(a)(ii) requiring employer to pick up and pay contributions as provided in 19-20-716; inserted (1)(a)(iii) authorizing employer to pick up and pay contributions payable by member pursuant to 19-20-415; in (3) in first sentence after "board" inserted "and to the extent permitted by section 415(k)(3) of the Internal Revenue Code" and inserted second sentence requiring redeposit in accordance with 19-20-415; and made minor changes in style. Amendment effective on later of occurrence of contingency or July 1, 1999.

Chapter 360 in (1) near middle of second sentence after "member is" substituted "7.15%" for "7.044%"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Contingent Effective Date: Section 29(3), Ch. 111, L. 1999, provided: "The provisions in [sections 9, 13, and 18] [19-20-415, 19-20-602, and 19-20-716], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan." The contingency occurred on March 3, 1999, and the amendments to this section became effective July 1, 1999.

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

1997 Amendment: Chapter 442 in introductory clause, in middle of first sentence, substituted "for their retirement allowance or benefits" for "for their annuities". Amendment effective April 30, 1997.

1995 Amendment: Chapter 111 near middle of first sentence in (1)(c), after "member's", substituted "earned compensation as defined" for "wages as defined in 19-1-102 and his earned compensation as used to define his average final compensation"; and made minor changes in style. Amendment effective March 10, 1995.

1985 Amendment: In lead-in, in first sentence, after "contributions", substituted "for" for "from" and inserted second sentence referring to percentage of earned compensation as normal contribution; in (1)(a) substituted language requiring employer to "pick up" employee's contribution for "Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date on which the member became a member an amount equal to 7.044% of the member's earned compensation"; inserted (1)(b) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (1)(c) requiring "picked up" contributions to be paid from member's compensation; and in (2) near beginning, substituted "normal contributions" for "contributions deducted from compensation".

1983 Amendments: Chapter 198 substituted "pension accumulation fund" for "annuity reserve fund" at end of (4).

Chapter 527 increased employee's contribution from 6.187% to 7.044% in (1).

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Administrative Rules

ARM 2.44.403 Redeposit of amounts withdrawn.

ARM 2.44.528 Extra duty compensation.

Attorney General's Opinions

Payments to Teachers' Retirement Board for Teacher on Sabbatical Leave With Pay: Prior to the 1983 and 1985 amendments of 19-4-602 (renumbered 19-20-602) and the 1981, 1983, and 1985 amendments of 19-4-605 (renumbered 19-20-605), when a school district granted a public school teacher sabbatical leave with pay, the district must have: (a) deducted from the teacher's compensation 6.187% of the full compensation actually paid the teacher for the employee's contribution; and (b) contributed 6.312% of the full compensation actually paid the teacher for the employer's contribution. 38 A.G. Op. 53 (1979).

Law Review Articles

Mandatory Retirement Contributions and the Section 414(h)(2) "Pick-Up" Provision—An Overlooked Windfall for Qualifying Public Employees, Buckner & Cash, 62 Taxes 388 (June 1984).

Collateral References

Validity of retroactive change in rate of employee's contribution to public pension fund. 78 ALR 2d 1197.

19-20-603. Withdrawal of accumulated contributions — options.

Compiler's Comments

2001 Amendment: Chapter 45 in (3) in third sentence substituted "forms for filing" for "forms for making". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 deleted former (3) that read: "(3) A person whose membership terminates under the provisions of 19-20-304(4) may withdraw the person's accumulated

contributions"; in (3) in first sentence substituted "written application to the board" for "written request", at end of third sentence substituted "written application" for "written request", and inserted fifth sentence requiring board to allow members and qualified beneficiaries to elect direct rollover to another retirement plan to extent allowed by federal tax code; inserted (4) requiring board to pay accumulated contributions in lump sum without written application if nonvested member terminates with less than $200 and providing that upon payment of contributions, member is considered withdrawn from system; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 in introductory clause, near middle after "terminates", inserted "without a prospect or anticipation that the member will return to work for an employer within 60 days of termination", after "member's" deleted "or person's", and near end substituted "annuity savings fund" for "annuity account"; in (4), in first sentence, substituted "payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member" for "payment of the accumulated contributions split. The tax-deferred portion of the contributions may be paid directly to an individual retirement account or other qualified plan designated by the member", at beginning of second sentence substituted "The portion not rolled over or transferred must be paid" for "and the other portion must be paid", and near end of fourth sentence, before "status", inserted "tax-deferred"; and made minor changes in style. Amendment effective April 30, 1997.

1993 Amendment: Chapter 226 inserted (4) relating to a terminated member's request for the splitting of paid accumulated contributions; and made minor changes in style. Amendment effective March 30, 1993.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

Annuity or Pension — Voluntariness Determines: Plaintiff was a teacher in the Montana public school system at the time the teacher's retirement act was enacted. She did not file the notification required to become a member of the retirement system. She continued to teach until she resigned. For the 8-year period prior to her resignation, 5% of her earnable compensation was deducted from her salary, which was the contribution required from members of the retirement system. When plaintiff resigned, she was not eligible for retirement or disability benefits. She applied for withdrawal of amounts standing to her credit in the annuity savings fund along with three-fourths of the regular rate of interest. Defendants refused to pay her the interest. The origin of the sum determines the rights of the employee. She was entitled to interest from an annuity fund but not a pension fund. If contributions are voluntary, the fund is an annuity. The test is whether the contributor had the power to elect whether the deduction would be taken from her salary. Plaintiff voluntarily consented to the deductions, so that the fund was an annuity. Her rights in the fund were contractual rights, the terms of which were ascertained by statute and could not be impaired. Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Constitutionality: The provisions of a 1945 amendment to a former subsection providing that a withdrawing member should be paid only the amount contributed were unconstitutional as impairing teachers' contractual rights. The amendment deprived a withdrawing member of interest to which she would have been entitled under the law prior to amendment. Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

19-20-604. State contributions — termination.

Compiler's Comments

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

Effective Date: Section 9, Ch. 360, L. 1999, provided: "[This act] is effective July 1, 1999."

19-20-605. Pension accumulation fund — employer's contribution.

Compiler's Comments

1997 Amendments: Chapter 442 in introductory clause, at end of first sentence, substituted "for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries" for "payment of pensions and annuities must be accumulated and from which pensions, annuities, and benefits must be paid to or on account of beneficiaries credited with prior service"; deleted former (6) that read: "All pensions, annuities, and benefits must be paid from the pension accumulation fund"; and made minor changes in style. Amendment effective April 30, 1997.

Chapter 532 in (6), after "board may", deleted "in its discretion" and after "accumulation fund" inserted "to the expense fund"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 530 in (1) increased the employer's contribution from 7.459% to 7.47%; and made minor changes in style. Amendment effective January 1, 1994.

1989 Amendment: In (1) increased percentage to 7.459% from 7.428%. Amendment effective July 1, 1989.

Applicability: Section 5, Ch. 204, L. 1989, provided: "[Sections 1 and 2] apply to all members of the teachers' retirement system who are active members on or after July 1, 1989."

1985 Amendment: In (1) near middle increased "7.320%" to "7.428%".

1983 Amendment: In (1), increased employer's contribution from 6.463% to 7.320%.

1981 Amendments: Chapter 193 increased percentage in subsection (1) from 6.312% to 6.463%.

Chapter 251 inserted "annuities" twice in the first sentence; deleted "and the annuity reserve fund" after "savings fund" in (5); inserted "annuities" in (6); deleted "the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also" after "accumulation fund" in (7); inserted "necessary" after "amount" at the end of (7); and made other minor changes to reflect amendments.

Chapter 549 increased percentage in (1) from 6.312% to 6.432%.

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Coordination — Composite Section — Sum of Increases: Section 3, Ch. 193, L. 1981, provided: "If both this act and HB 45, introduced in the 47th Legislature, are passed and approved, the percentage amount contained in 19-4-605 [renumbered 19-20-605] shall reflect the sum of the increases in the employer contribution provided in HB 45 and this act." House Bill 45 was passed and approved, becoming Ch. 549, L. 1981. In preparing the composite of this section, the Code Commissioner has therefore inserted "6.463" in (1) as the sum of the increases. See 1981 Amendments compiler's comments, this section.

Administrative Rules

ARM 2.44.528 Extra duty compensation.

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

Payments to Teachers' Retirement Board for Teacher on Sabbatical Leave With Pay: Prior to the 1983 and 1985 amendments of 19-4-602 (renumbered 19-20-602) and the 1981, 1983, and

1985 amendments of 19-4-605 (renumbered 19-20-605), when a school district granted a public school teacher sabbatical leave with pay, the district must have: (a) deducted from the teacher's compensation 6.187% of the full compensation actually paid the teacher for the employee's contribution; and (b) contributed 6.312% of the full compensation actually paid the teacher for the employer's contribution. 38 A.G. Op. 53 (1979).

19-20-621. Montana university system optional retirement program supplemental contributions.

Compiler's Comments

Effective Date: Section 5, Ch. 419, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 7
Benefits in General

Part Administrative Rules

Title 2, chapter 44, subchapter 5, ARM Benefits.

19-20-701. Benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

19-20-702. Optional allowances.

Compiler's Comments

1999 Amendment: Chapter 111 near beginning of (3)(a) and (3)(b) substituted references to written application for references to written request; in (3)(a) at end after "allowance" substituted "to a normal form of retirement allowance" for "to a regular retirement or disability allowance"; in (3)(a)(i) inserted second sentence requiring benefit to be converted to normal form of allowance effective on the first of the month following death of beneficiary; in (3)(a)(ii) inserted second sentence requiring benefit to be converted to normal form of allowance effective on the first of the month following receipt of application and verification; in (4) at beginning deleted "Effective on the first of the month following the death of a person nominated as the designated beneficiary" and following "October 1, 1993" substituted "may file a written application to revert the optional retirement allowance" for "will revert"; inserted (4)(a) requiring benefit to revert to full normal form of allowance effective on the first of the month following death of beneficiary; inserted (4)(b) regarding procedure for reversion of benefit to full normal retirement allowance as part of divorce settlement; in (6) near beginning after "member" substituted "shall file the written application required by subsection (3) or (4)" for "may, within 18 months of the death of the designated beneficiary, file a written application", following "beneficiary" substituted "or to select an actuarially equivalent optional allowance, or both, within 18 months of the death or divorce of the designated beneficiary" for "and to select an actuarially equivalent optional allowance", and deleted former second sentence that read: "The optional allowance is effective on the first day of the month following receipt of the retiree's application"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 near beginning of (2) substituted "member's service retirement or disability retirement allowance at the time of the member's retirement effective date" for "member's retirement or disability allowance at the time of the member's retirement"; deleted former (2)(d) that read: "Option D—some other benefit will be paid either to the member or the member's surviving designated beneficiary in accordance with provisions approved by the retirement board"; inserted (2)(d), (2)(d)(i), and (2)(d)(ii) providing for payment for period certain or for life; in (3)(a), after "a retired member", inserted "whose effective date of retirement is before October 1, 1993"; in (4), in first sentence, substituted "following the death" for "following receipt of notification of the death" and substituted "(2)(a), (2)(b), or (2)(c)" for "(2)", and inserted third and fourth sentences allowing change of beneficiary and selection of actuarially equivalent optional allowance and establishing effective date of optional allowance; and made minor changes in style. Amendment effective April 30, 1997.

1993 Amendment: Chapter 9 in (1), near beginning of second sentence, substituted "member" for "beneficiary"; deleted former (2)(d) and (2)(e) that read: "(d) Option D—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor.

(e) Option E—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor"; inserted (4) regarding reversion of full normal form of retirement allowance upon death of designated beneficiary; and made minor changes in style.

1985 Amendment: Inserted (3) allowing retired member to change options in case of divorce or death of contingent annuitant.

Administrative Rules

ARM 2.44.512 Change of beneficiary and/or change of retirement option.

ARM 2.44.525 Calculation of age.

19-20-703. Payments to be monthly.

Compiler's Comments

1999 Amendment: Chapter 111 inserted (3) describing when distribution of benefit must begin and procedure for distribution if member fails to apply for benefits by proper date; and inserted (4) prohibiting recalculation of life expectancy of member or beneficiary after benefits commence. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 at beginning of (1) substituted "All retirement allowances" for "All pensions and annuities"; inserted (2), (2)(a), and (2)(b) establishing commencement date of retirement allowance; and made minor changes in style. Amendment effective April 30, 1997.

Administrative Rules

ARM 2.44.506 Benefit payments.

19-20-705. Correction of errors.

Compiler's Comments

2003 Amendment: Chapter 174 inserted (3) requiring benefit to be corrected upon discovery of forged signature on application. Amendment effective March 31, 2003.

2001 Amendment: Chapter 45 inserted (2) authorizing board to reject payment or accept payment subject to any of listed arrangements to collect correct amount; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

19-20-706. Exemption from taxation and legal process.

Compiler's Comments

1997 Amendments: Chapter 442 at beginning of introductory clause, after "19-20-305", substituted "the retirement allowances" for "the pensions, annuities". Amendment effective April 30, 1997.

Chapter 552 in introductory clause inserted "and 19-20-306". Amendment effective July 1, 1997.

1995 Amendment: Chapter 111 near beginning substituted "19-20-305" for "19-2-907". Amendment effective March 10, 1995.

1993 Amendment: Chapter 259 at beginning inserted exception clause.

1991 Amendment: Inserted (1)(a) concerning adjusted retirement allowance or retirement allowance in excess of $3,600. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1989 Amendment: In (1) changed "refund" to "withdrawal".

1985 Amendment: In (1) near middle inserted exception clause; made minor changes in phraseology in (2) and (3); and in (3) at end, inserted "in this chapter".

Case Notes

No Private Contract Created by Statute — State Prohibited From Surrendering Power to Tax: After the Legislature enacted Ch. 823, L. 1991, to tax retirement pension benefits that had previously been untaxed, the retirees sued, claiming that they had a contractual right to a continued exemption from taxation. Citing Wage Appeal v. Bd. of Personnel Appeals, 208 M 33, 676 P2d 194 (1984), the Supreme Court held that the former tax exemption was only a policy statement that could be changed by the Legislature and that the Legislature did not clearly manifest an intention in the law in question to create a private contractual right. Additionally, the Supreme Court held that the state was prohibited by Art. VIII, sec. 2, Mont. Const., from promising any group of taxpayers that it would never tax them. Sheehy v. Pub. Employees Retirement Div., 262 M 129, 864 P2d 762, 50 St. Rep. 1477 (1993).

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

Collateral References

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings. 93 ALR 3d 711.

Distributions to employee from pensions or profit sharing plans as taxable under §402 of the Internal Revenue Code of 1954 as ordinary income or capital gain. 3 ALR Fed. 719.

19-20-710. Maximum benefit limitation.

Compiler's Comments

2003 Amendment: Chapter 174 in first sentence after "Code" inserted "as adjusted for cost-of-living increases"; in second sentence substituted "a qualified governmental excess" for "an excess" and at end substituted "19-20-212" for "19-20-718"; and made minor changes in style. Amendment effective March 31, 2003.

1999 Amendment: Chapter 111 in first sentence after "Code" deleted "of 1986 and adjusted annually by the commissioner of internal revenue service" and inserted second sentence authorizing benefits in excess of limits to be paid from excess benefit arrangement subject to 19-20-718; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Federal Statute: Section 415 of the Internal Revenue Code of 1986 referred to in this section may be found at 26 U.S.C. 415.

19-20-715. Compensation limit.

Compiler's Comments

2003 Amendment: Chapter 174 in first sentence in (1) after "Code" inserted "as adjusted for cost-of-living increases" and inserted fourth sentence requiring changes in maximum limits to be applied prospectively. Amendment effective March 31, 2003.

1997 Amendment: Chapter 442 inserted (2) limiting to 110% of prior year's compensation amount used in calculation of average final compensation; and inserted (3) requiring excess amount of earned compensation to be considered termination pay. Amendment effective April 30, 1997.

Effective Date: Section 13(2) provided that this section is effective July 1, 1995.

Administrative Rules

ARM 2.44.518 Limit on earned compensation.

ARM 2.44.528 Extra duty compensation.

19-20-716. Termination pay.

Compiler's Comments

2005 Amendment: Chapter 320 in (1) near middle inserted reference to subsection (5); in (3)(b) inserted exception clause; inserted (4) relating to excess member contributions; in (5) near middle after "subsection (1)" deleted "or if the member's contribution is greater than the total amount of termination pay"; and made minor changes in style. Amendment effective April 21, 2005.

2001 Amendment: Chapter 45 throughout section substituted references to sign for references to execute; in (2) in introduction near beginning before "election" inserted "written" and inserted "at least 90 days prior to the member's termination date"; in (2)(d) near middle after "is the date" substituted "that the irrevocable written election is signed" for "of execution of the binding, irrevocable election" and inserted second sentence requiring effective date to be at least 90 days before member's termination date; in (4) near beginning of first sentence substituted "and the member's employer fail to sign" for "fails to make"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 in (1) after "select" inserted "subject to subsection (4) and by executing a binding, irrevocable written election at least 90 days before the member's termination date"; at beginning of (1)(a) inserted "Option 1" and in first sentence substituted "the total termination pay" for "termination pay"; in (1)(b) inserted "Option 2", in first sentence substituted "the total termination pay" for "termination pay", and inserted fourth sentence requiring contributions to be made at time of termination; in (1)(c) inserted "Option 3" and in second sentence after "employer" deleted "and any contributions made under 19-20-602 and 19-20-605 must be refunded"; inserted (2) requiring binding, irrevocable election to be executed by member and employer and outlining the contributions statements required to be made by member; inserted (3) outlining contributions required to be deducted from termination pay and those picked up by the employer; inserted (4) providing contribution procedure for member who fails to make written election within time period or who contributes amount greater than termination pay amount, prohibiting employer from picking up contribution, and subjecting contribution to limits of federal tax code; and made minor changes in style. Amendment effective on later of occurrence of contingency or July 1, 1999.

Contingent Effective Date: Section 29(3), Ch. 111, L. 1999, provided: "The provisions in [sections 9, 13, and 18] [19-20-415, 19-20-602, and 19-20-716], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan." The contingency occurred on March 3, 1999, and the amendments to this section became effective July 1, 1999.

Effective Date: Section 33, Ch. 442, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

Administrative Rules

ARM 2.44.506 Benefit payments.

ARM 2.44.517 Formula for determining contributions due on termination pay.

19-20-717. Effect of no designation or no surviving beneficiary.

Compiler's Comments

Effective Date: Section 33, Ch. 442, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

19-20-718. Maximum contribution limitation.

Compiler's Comments

2005 Amendment: Chapter 320 in (1) near end after "system" inserted "required under part 4 or 6 of this chapter". Amendment effective April 21, 2005.

Removal of Contingent Effective Date: Section 17, Ch. 320, L. 2005, amended sec. 29(2), Ch. 111, L. 1999, by removing language related to a contingent effective date and replacing it with an effective date of July 1, 2005.

Contingent Effective Date: Section 29(2), Ch. 111, L. 1999, provided: "The provisions in [sections 4 and 19] [19-20-212 and 19-20-718], providing for the creation and use of an excess benefit arrangement, are effective on the later of July 1, 1999, or the date that the internal

revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan."

2003 Amendment: Chapter 174 at beginning of (1)(a) deleted "If the system's law requires a lump-sum payment for purchase of service credit"; in (1)(b) after "qualified" inserted "governmental" and at end inserted "if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212"; in (4) near end of first sentence after "125" inserted "132(f)" and inserted second sentence requiring changes in maximum limits to be applied prospectively; and made minor changes in style. Amendment effective March 31, 2003.

19-20-719. Guaranteed annual benefit adjustment — rulemaking.

Compiler's Comments

2003 Amendment: Chapter 174 near middle of (2) substituted "retiree has received at least 36 monthly retirement benefit payments prior to January 1" for "retiree's most recent retirement effective date is at least 36 months prior to January 1". Amendment effective March 31, 2003.

2001 Amendment: Chapter 149 in (1) at beginning inserted "Subject to subsection (3)"; inserted (3) allowing the board, subject to certain requirements, to increase the annual benefit adjustment until a maximum of 3% is guaranteed; and made minor changes in style. Amendment effective March 29, 2001.

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

Effective Date: Section 9, Ch. 360, L. 1999, provided: "[This act] is effective July 1, 1999."

19-20-720. Minimum monthly benefit allowance.

Compiler's Comments

2001 Amendment: Chapter 149 throughout section substituted "July 1, 2001" for "July 1, 1999" and changed "$500" to "$600". Amendment effective March 29, 2001.

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

Effective Date: Section 9, Ch. 360, L. 1999, provided: "[This act] is effective July 1, 1999."

19-20-721. Designation of beneficiary.

Compiler's Comments

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

Effective Date: Section 26, Ch. 45, L. 2001, provided that this section is effective on passage and approval. Approved March 16, 2001.

19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits.

Compiler's Comments

Effective Date: Section 19, Ch. 320, L. 2005, provided that this section is effective on passage and approval. Approved April 21, 2005.

Retroactive Applicability: Section 20, Ch. 320, L. 2005, provided: "[Section 14(4)(b)] [19-20-731(4)(b)] applies retroactively, within the meaning of 1-2-109, to benefits recalculated on and after July 1, 2002."

Part 8
Superannuation Retirement

Part Administrative Rules

ARM 2.44.509 Computation of average final compensation.

Part Collateral References

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 ALR 3d 176.

19-20-801. Eligibility for service retirement.

Compiler's Comments

1999 Amendment: Chapter 111 near beginning after "service" deleted "whose last 5 years of creditable service were in this state", after "part-time" inserted "creditable", and at end after "application" deleted "setting forth the fact of the member's retirement". Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 near end substituted "if the member has terminated employment in all positions from which the member is eligible to retire and files" for "if he files"; and made minor changes in style. Amendment effective April 30, 1997.

1983 Amendment: Reduced retirement period from 30 to 25 years.

Administrative Rules

ARM 2.44.412 Veterans called to active duty.

ARM 2.44.509 Computation of average final compensation.

ARM 2.44.527 Payment for service — calculation of retirement benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1643, 1644, 1646, 1647.

19-20-802. Early retirement.

Compiler's Comments

2005 Amendment: Chapter 320 in (2) deleted reference to subsection (1) of 19-20-804. Amendment effective April 21, 2005.

1999 Amendment: Chapter 111 in (1) at beginning after "who" inserted "is not eligible for service retirement but who", after "service" deleted "whose last 5 years of creditable service were in this state", and at end after "application" deleted "setting forth the fact of his retirement"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1983 Amendment: In (2)(a) and (2)(b), reduced number of years to be figured for full retirement from 30 to 25.

1981 Amendments: Chapter 396 decreased early retirement age from 55 to 50 in (1); inserted "up to a maximum of 60 months" after "number of months" in (2)(a); added (2)(b) providing method of reducing retirement allowance for up to 60 months in excess of 60 months of superannuation retirement date as calculated in subsection (2)(a); and made minor changes in phraseology.

Chapter 549 changed reference in (2) from "19-4-804(2)" to "section 5, Chapter 549, Laws of 1981".

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Administrative Rules

ARM 2.44.509 Computation of average final compensation.

Case Notes

Compulsory Retirement: Motion and rules adopted by school trustees requiring the retirement of all teachers upon arriving at the age of 65 years were void. Abshire v. School District, 124 M 244, 220 P2d 1058 (1950).

Collateral References

Mandatory retirement of public officer or employee based on age. 81 ALR 3d 811.

19-20-804. Allowance for service retirement.

Compiler's Comments

2005 Amendment: Chapter 320 deleted former (2) through (5) from both versions, but bracketed language in (4) appeared only in temporary version, that read: "(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) Each year on July 1 following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.

(4) (a) Except as provided in [19-20-806 and] subsection (5) of this section, the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated"; and made minor changes in style. Amendment effective April 21, 2005.

2003 Amendments — Composite Section: Chapter 120 at beginning of (1) inserted exception clause; in (4)(a) inserted reference to 19-20-806; and made minor changes in style. Amendment effective July 1, 2003, and terminates July 1, 2006.

Chapter 402 inserted (4)(d) exempting retired member elected or appointed as county superintendent of schools who elects not to become active member from statutorily specified employment and earnings limits. Amendment effective April 17, 2003.

Saving Clause: Section 4, Ch. 120, L. 2003, was a saving clause.

Effective Date — Applicability: Section 5, Ch. 120, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to teachers, specialists, and administrators who are employed for the school fiscal year beginning on or after [the effective date of this act] and who are earning more than one-third of the average final compensation provided for under 19-20-804."

2001 Amendment: Chapter 45 in (1) near beginning substituted "a member who has attained normal retirement age" for "an eligible member"; in (2)(a) after "average final compensation" deleted "plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement"; inserted (3) providing increase in maximum earning amount allowed under subsection (2)(a); and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 at end of (1) after "19-20-409" deleted "and additional service purchased under 19-20-412"; in (2) after "employed" substituted "part-time in a position specified in 19-20-302" for "as a part-time or substitute teacher in Montana"; inserted (3)(a) requiring cancellation of benefit of retired member employed full-time or earning more than allowed with exception; inserted (3)(b) regarding reinstatement of benefits; inserted (3)(c) regarding recalculation of benefits upon reemployment of previously retired member; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 in (1), at beginning, substituted "Upon termination, an eligible member" for "Upon superannuation retirement, a member", after "receive a retirement allowance" deleted "consisting of a pension which, together with an annuity, provides a retirement allowance", and after "average final compensation" inserted reference to 19-20-715; at beginning of (2) inserted exception clause; inserted (3) relating to reemployment of early-retired member with same employer and repayment of retirement allowance payments; and made minor changes in style. Amendment effective April 30, 1997.

1989 Amendment: At end of (1), after "multiplied by", substituted "the sum of the number of years of creditable service, service transferred under 19-4-409 [renumbered 19-20-409], and additional service purchased under 19-4-412 [renumbered 19-20-412]" for "the number of years of creditable service". Amendment effective July 1, 1989.

1983 Amendment: Increased and further defined amount a retired member can receive from "the greater of an amount not to exceed one-fourth of his average final compensation and one-fourth of the median of the average final compensation . . .".

1981 Amendment: Deleted subsection that provided a minimum annual retirement allowance of $2,400 for a member who has 30 or more years of service and a reduced allowance for a member with less than 30 years based on a ratio.

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Administrative Rules

ARM 2.44.509 Computation of average final compensation.

ARM 2.44.511 Reinstatement of benefits.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in this section, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

Attorney General's Opinions

Earned Compensation — Severance Payments — Unused Sick or Vacation Leave: Contractual severance payments and payments based on unused sick or vacation leave are earned compensation of a member for the year in which they are actually paid to the member provided they are properly reported to the system. Severance payments that are not provided for by contract and are unrelated to length of service or unused sick or vacation leave are not earned compensation. 37 A.G. Op. 176 (1978), clarifying 37 A.G. Op. 113 (1978).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §1692.

Right to unemployment compensation as affected by receipt of pension. 56 ALR 3d 520.

19-20-805. Earned compensation — part-time service.

Compiler's Comments

2003 Amendment: Chapter 174 in (1) near middle of first sentence after "5 years" inserted "immediately", after "member's" substituted "termination" for "retirement", and after "earned" substituted "in the 3 years used to calculate average final compensation" for "in the final 3 years"; inserted (2) outlining two options for calculating member's average final compensation when member transfers service without 3 consecutive years of full-time service and requiring average final compensation to be adjusted to exclude compensation considered termination pay; and made minor changes in style. Amendment effective March 31, 2003.

Effective Date: Section 33, Ch. 442, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

19-20-806. Reemployment of certain retired teachers, specialists, or administrators — limitations — employer defined.

Compiler's Comments

2005 Amendment: Chapter 320 in (3) substituted reference to 19-20-731 for reference to 19-20-804(2) through (5); and made minor changes in style. Amendment effective April 21, 2005.

Saving Clause: Section 4, Ch. 120, L. 2003, was a saving clause.

Effective Date — Applicability: Section 5, Ch. 120, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to teachers, specialists, and administrators who are employed for the school fiscal year beginning on or after [the effective date of this act] and who are earning more than one-third of the average final compensation provided for under 19-20-804."

Termination: Section 6, Ch. 120, L. 2003, provided: "[This act] terminates July 1, 2006."

Part 9
Disability Retirement

19-20-901. Eligibility for disability retirement — determination by board.

Compiler's Comments

1999 Amendment: Chapter 111 in (1) in second sentence after "board" inserted "or its representative" and inserted third sentence requiring board's representative to report to board findings and action taken by the representative for board approval; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1993 Amendment: Chapter 226 inserted (2) relating to exams ordered, hearings conducted, and subpoenas issued by the Board or its representative in making a determination; inserted (3) allowing the Board to secure and pay for professional services to carry out this part; and made minor changes in style. Amendment effective March 30, 1993.

1991 Amendment: Near beginning and near middle of first sentence, before "member", deleted "active", near middle, after "service", inserted "and who has become disabled while being an active member", and at end substituted "he terminates his employment" for "his disability caused his retirement"; and made minor changes in style. Amendment effective February 1, 1991.

Administrative Rules

ARM 2.44.412 Veterans called to active duty.

ARM 2.44.527 Payment for service — calculation of retirement benefits.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Eligibility for retirement as affected by mental, nervous, or psychological disorder. 1 ALR 4th 802.

Relationship between performance of official duties and subsequent disability or death for purpose of pension or survivorship benefits. 85 ALR 2d 1048.

19-20-902. Allowance for disability retirement.

Compiler's Comments

1999 Amendment: Chapter 111 in (1)(a) after "service" inserted "including" and after "19-20-409" deleted "and additional service purchased under 19-20-412". Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 at end of (1) inserted "the greater of"; at end of (1)(a), after "19-20-412", deleted "if the retirement allowance exceeds one-fourth of the member's average final compensation"; at beginning of (1)(b) deleted "a pension that, together with the member's annuity, provides a total retirement allowance equal to"; inserted (2) establishing amount of earned compensation for purposes of calculation of average final compensation of member awarded early disability retirement allowance and limiting termination pay; and made minor changes in style. Amendment effective April 30, 1997.

1993 Amendment: Chapter 226 deleted part of former (1) that provided that if eligible, a member must receive the superannuation allowance provided for under part 8 of this chapter; deleted (2)(a) that provided that a member not eligible for a superannuation allowance must receive an annuity that would be the actuarial equivalent of accumulated contributions at the time of retirement; deleted introductory provision of (2)(b) that provided that a member receive a pension, together with the annuity; deleted (3) that provided that the retirement allowance could not exceed one-sixtieth of the average final compensation multiplied by the number of years that would be creditable to the member if employment would have continued until the attainment of the minimum age for superannuation retirement; and made minor changes in style. Amendment effective March 30, 1993.

1989 Amendment: Near middle of (2)(b), after "multiplied by", substituted "the sum of the number of years of his creditable service, service transferred under 19-4-409 [renumbered

19-20-409], and additional service purchased under 19-4-412 [renumbered 19-20-412]" for "the number of years of his creditable service". Amendment effective July 1, 1989.

1987 Amendment: In (1), after "allowance", deleted "and other benefits"; and near beginning of (2), after "eligible for the", substituted "allowance" for "benefits".

Attorney General's Opinions

Earned Compensation — Severance Payments — Unused Sick or Vacation Leave: Contractual severance payments and payments based on unused sick or vacation leave are earned compensation of a member for the year in which they are actually paid to the member provided they are properly reported to the system. Severance payments that are not provided for by contract and are unrelated to length of service or unused sick or vacation leave are not earned compensation. 37 A.G. Op. 176 (1978), clarifying 37 A.G. Op. 113 (1978).

19-20-903. Medical examination of disability retiree.

Compiler's Comments

1997 Amendment: Chapter 442 in (1), in first sentence, substituted "board may require a disability benefit recipient" for "board may require and, upon the beneficiary's application, shall permit a disability beneficiary", in second sentence substituted "benefit recipient" for "beneficiary", and inserted third through sixth sentences providing for Board determination of disability based on examination and request for reconsideration; inserted (2) requiring former employer to grant preference to member whose disability retirement is canceled by Board; at beginning of (3) substituted "If a disability benefit recipient" for "Should a disability beneficiary"; and made minor changes in style. Amendment effective April 30, 1997.

1987 Amendment: In (1), near end of first sentence, deleted reference to the Medical Board before "a physician" and substituted "retirement board" for "medical board"; and in (2), after "submit to", substituted "a medical examination as required in subsection (1)" for "at least one medical examination in any year by the medical board or its representative".

19-20-904. Adjustment of allowance.

Compiler's Comments

1997 Amendment: Chapter 442 throughout section substituted references to retiree for references to beneficiary; in (1)(a), at beginning, inserted exception clause and after exception clause substituted "a retiree receiving a disability retirement allowance" for "a disability beneficiary"; inserted (1)(b) relating to reemployment of disabled member with same employer and repayment of retirement allowance payments; in (2), at beginning, substituted "If the disabled retiree's" for "If the beneficiary's" and substituted "the retirement allowance" for "the beneficiary's retirement allowance"; deleted (4) that read: "(4) A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the beneficiary was retired may not become a member of the retirement system while receiving a reduced benefit"; and made minor changes in style. Amendment effective April 30, 1997.

1995 Amendment: Chapter 111 near middle of (1), before "be reduced", substituted "retirement allowance" for "pension" and after "together with" deleted "his annuity and"; near beginning of (2) substituted "the beneficiary's retirement allowance" for "his pension", near middle substituted "the new allowance may not exceed the retirement allowance" for "the new pension may not exceeded the pension", and after "beneficiary" deleted "together with his annuity"; inserted (3) providing that the Board may require a recipient of a disability retirement allowance to submit an earning statement; and made minor changes in style. Amendment effective March 10, 1995.

1987 Amendment: In (1), at beginning after "If", deleted "the medical board reports and certifies to the retirement board that" and near middle deleted requirement that Retirement Board concur in such report.

1983 Amendment: Near middle and at end of (1), after "average final compensation" inserted provision relating to median salary of retirees during preceding year.

Administrative Rules

ARM 2.44.524 Adjustment of disability allowance for outside earnings.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1696, 1703, 1704, 1707, 1708.

19-20-905. Cancellation of allowance and restoration of membership.

Compiler's Comments

2003 Amendment: Chapter 174 in (1) near beginning of second sentence after "employed" inserted "full-time". Amendment effective March 31, 2003.

1997 Amendment: Chapter 442 in (1), in first sentence, substituted "If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302, the retiree's retirement allowance must cease" for "If a disability beneficiary under age 60 is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease and he" and at beginning of second sentence inserted "If the retiree is employed by an employer covered under this chapter, the retiree"; in (2), near beginning, substituted "restored to active membership" for "restored to active service", after "age of 55 years" substituted "the member's retirement allowance" for "his pension", after "may not exceed" substituted "the retirement allowance" for "the pension", after "the sum of" substituted "the retirement allowance that the member was receiving" for "the pension which he was receiving", and after "last restoration to service" substituted "and the retirement allowance" for "and the pension"; and made minor changes in style. Amendment effective April 30, 1997.

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1637, 1638, 1640, 1690.

Part 10
Death Benefits

Part Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR 3d 644.

19-20-1001. Allowances for death of member.

Compiler's Comments

2005 Amendment: Chapter 320 in (2) near middle deleted reference to subsection (1) of 19-20-804. Amendment effective April 21, 2005.

2001 Amendment: Chapter 45 in (1) near middle substituted "to the beneficiary that" for "to a person" and substituted "written application" for "written designation"; inserted (2)(b) providing for effective date of retirement allowance; in (2)(c) near beginning substituted "the beneficiary" for "a recipient" and at end substituted "beneficiary's estate" for "beneficiary"; inserted (5) concerning payment if member nominated more than one beneficiary; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1997 Amendment: Chapter 442 in (2)(a), at end of first sentence, substituted "the nominated beneficiary may elect to receive a retirement allowance" for "the beneficiary nominated by the deceased member may elect to receive a monthly life annuity" and at beginning of second sentence substituted "The retirement allowance must be" for "The monthly life annuity shall be"; in (2)(b), after "made", substituted "to a recipient" for "to an annuitant", after "accumulated contributions" substituted "before the member's death" for "prior to the annuitant's death", after "between" substituted "the total retirement allowance payments" for "the total annuity payments", and substituted "accumulated contributions at the time of the member's death must be paid" for "accumulated contributions shall be paid"; and made minor changes in style. Amendment effective April 30, 1997.

1989 Amendment: In second sentence of (2)(a) deleted reference to 19-4-802; and in (4) increased monthly sum payable to each minor child from $100 to $200. Amendment effective July 1, 1989.

Applicability — Code Commissioner Correction: Section 7, Ch. 56, L. 1989, provided in part that [section 3(4)] applies to minor children receiving benefits under 19-4-1001 (renumbered 19-20-1001) and 19-4-1002 (renumbered 19-20-1002] on or after July 1, 1989. As originally drafted, "[section 3(4)]" referred to subsection (4) of 19-4-1001 (renumbered 19-20-1001). A new section was added to House Bill No. 314 (Ch. 56, L. 1989), but the internal references in section 7 were not changed to reflect the renumbered sections. Therefore, the Code Commissioner has determined, pursuant to sec. 83, Ch. 83, L. 1989, that the applicable section referenced in sec. 7, Ch. 56, L. 1989, is "[section 4(4)]", codified as 19-4-1001(4) (renumbered 19-20-1001(4)).

1981 Amendment: Changed reference in (2)(a) from 19-4-804(2) to sec. 5, Ch. 549, L. 1981.

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Administrative Rules

ARM 2.44.412 Veterans called to active duty.

ARM 2.44.505 Eligibility for survivor benefits.

ARM 2.44.527 Payment for service — calculation of retirement benefits.

Case Notes

Beneficiary Designated in Writing — Takes Proceeds Over Surviving Widow: While married to his first wife, the decedent became a member of the Teachers' Retirement System. He designated in writing his first wife as beneficiary of the proceeds of the pension account; that designation remained unchanged. When the couple divorced, they executed a property settlement agreement whereby each waived rights in the other's estate. The decedent did not submit a change of beneficiary form after he remarried. After his death, his second wife brought the present action to recover proceeds contributed to the retirement system, a large portion of which was contributed during her marriage to the decedent. Pursuant to the provisions of this statute which controls, the proceeds of the account can be paid only to the one nominated by a written designation or, in the absence of such nomination, to the decedent's estate. The operation of the system is governed by statute, and the stability of the system depends upon adherence to the statutory scheme. The person nominated in the written designation is entitled to the proceeds. A number of jurisdictions would allow a deviation from the written nomination but only if there was an intent to change the designation, coupled with some affirmative action to show a desire to make the change. In the present case, the second wife would not prevail under even this more liberal view as there is no evidence the decedent took any step to change the beneficiary designation. The proceeds properly were awarded to the first wife even though she waived her rights in her former husband's estate. Sowell v. Teachers' Retirement System, 214 M 200, 693 P2d 1222, 41 St. Rep. 2413 (1984), distinguished in In re Marriage of Butler, 243 M 521, 795 P2d 467, 47 St. Rep. 1376 (1990).

Collateral References

60A Am. Jur. 2d Pensions and Retirement Funds §§1664, 1666.

Relationship between performance of official duties and subsequent disability or death for purpose of disability or survivorship benefits. 85 ALR 2d 1048.

19-20-1002. Payments upon death of retiree.

Compiler's Comments

1997 Amendment: Chapter 442 in (2), near beginning, substituted "a benefit recipient" for "an annuitant" and after first "accumulated contributions" substituted "before the member's retirement" for "prior to the annuitant's death"; in (3), near end, substituted "deceased retiree" for "deceased member"; and made minor changes in style. Amendment effective April 30, 1997.

1989 Amendment: In (3) increased monthly sum payable to each minor child from $100 to $200. Amendment effective July 1, 1989.

Applicability — Code Commissioner Correction: Section 7, Ch. 56, L. 1989, provided in part that [section 4] applies to minor children receiving benefits under 19-4-1001 (renumbered 19-20-1001) and 19-4-1002 (renumbered 19-20-1002) on or after July 1, 1989. As originally drafted, "[section 4]" referred to 19-4-1002 (renumbered 19-20-1002). A new section was added to House Bill No. 314 (Ch. 56, L. 1989), but the internal references in section 7 were not changed to reflect the renumbered sections. The Code Commissioner has determined, pursuant to sec. 83, Ch. 83, L. 1989, that the applicable section referenced in sec. 7, Ch. 56, L. 1989, is "[section 5]", codified as 19-4-1002 (renumbered 19-20-1002).

Section Not Codified: Section 75-6208(5)(d), R.C.M. 1947, was not codified in the MCA, as redundant with 19-4-1002(3)(f) (renumbered 19-20-1002(3)(f)). This section has not been repealed and is still valid law. Citation may be made to sec. 103, Ch. 5, L. 1971, as amended by sec. 2, Ch. 57, L. 1971 and sec. 2, Ch. 422, L. 1971.

Administrative Rules

ARM 2.44.507 Payment of children's benefits.

19-20-1003. Payment of death benefits.

Compiler's Comments

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Effective Date: Section 29(1), Ch. 111, L. 1999, provided that this section is effective July 1, 1999.

Part 11
Group Insurance

19-20-1101. Withholding of group insurance premium from retirement allowance.

Compiler's Comments

2003 Amendment: Chapter 174 inserted (2) allowing eligible beneficiary of retired member to elect continued withholding of monthly insurance premium from monthly retirement benefit for direct payment to employer or insurance carrier; and made minor changes in style. Amendment effective March 31, 2003.

Administrative Rules

ARM 2.44.513 Withholding of group insurance premium from retirement benefit.

CHAPTER 21
UNIVERSITY SYSTEM
OPTIONAL RETIREMENT PROGRAM

Chapter Law Review Articles

Faculty Choice of a Pension Plan: Defined Benefit Versus Defined Contribution, Clark & Pitts, 38 Indus. Rel. 18 (1999).

Part 1
General Provisions

19-21-101. Authority to establish optional retirement program.

Compiler's Comments

2001 Amendment: Chapter 490 inserted last sentence requiring compliance with Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

19-21-102. Definitions.

Compiler's Comments

1999 Amendment: Chapter 471 inserted definitions of program and public employees' retirement system; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-21-103. Duties of board of regents.

Compiler's Comments

2001 Amendment: Chapter 490 inserted (1) regarding action as fiduciary and exercise of fiduciary authority; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Part 2
Participation — Benefits

19-21-201. Participation in program.

Compiler's Comments

2001 Amendment: (Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Chapter 490 deleted former (6) that read: "(6) Subject to and as provided in 19-3-2112,

a university system employee in a position covered under the public employees' retirement system may elect to participate in the program."

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (1) in first sentence, in (1)(c), in (2) in introductory clause, and in (2)(b)(ii) before "program" deleted "optional retirement" or "optional retirement plan"; in (2)(b) in introductory clause substituted "An eligible person" for "A person"; inserted (2)(d) making a person ineligible to make an election under subsection (1) or (2) if the person previously elected to remain in the teachers' retirement system under subsection (1) or in the public employees' retirement system under subsection (2); in (3) near beginning substituted "irrevocable election" for "notice"; inserted (6) allowing certain university system employees to elect to participate in the program; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 178 in (1), at beginning, inserted exception clause; and inserted (2) requiring an eligible person hired after July 1, 1993, to become a member of the optional retirement plan unless on the date hired, the person is an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 4 (chapter 4 renumbered Title 19, chapter 20), and the person elects within 30 days of being hired to remain with the retirement system of which the person is a member on the date hired. Amendment effective July 1, 1993.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

19-21-202. Effect on rights under teachers' retirement system.

Compiler's Comments

2001 Amendment: Chapter 490 in (1) near beginning after "An election under" substituted "19-21-201" for "19-21-201(1) through (3) and (5)". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 throughout section before "program" deleted "optional retirement"; in (1) inserted reference to subsections (1) through (3) and (5) of 19-21-201; and in (2) in second and third sentences before "system" deleted "retirement". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under this section, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

19-21-203. Contributions — supplemental and plan choice rate contributions.

Compiler's Comments

2003 Amendment: Chapter 114 in (3) after "Code" substituted "26 U.S.C. 403(b), as amended" for "of 1954" and at end inserted "26 U.S.C. 414(h)(2), as amended". Amendment effective October 1, 2003.

2001 Amendment: (Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Chapter 490 inserted introductory clause regarding program participants; deleted former (5)(b) that read: "(b) For employees electing to become program members pursuant to 19-3-2112, the board of regents shall, in addition to other contributions required under this section, contribute to the public employees' retirement system the plan choice rate provided in 19-3-2117(2)(b) and adjusted pursuant to 19-3-2121"; and made minor changes in style.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (1) near beginning before "program" deleted "optional retirement"; inserted (5)(b) requiring that for employees electing to become program members under 19-3-2112, the board shall contribute to the public employees' retirement system the plan choice rate provided in 19-3-2117 and adjusted under 19-3-2121; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1997 Amendment: Chapter 419 in (5) substituted "make the supplemental contributions to the teachers' retirement system as provided in 19-20-621" for "contribute the amounts specified in subsection (5)(b) to the teachers' retirement system", after "incurred by" deleted "the employees of", after "university system" deleted "who elect or who are required to become members of the optional retirement plan. The contributions paid by the board are", and at end deleted "and must be consistent with the requirements of 19-21-111"; and deleted (5)(b) that read: "(b) (i) Beginning July 1, 1993, through June 30, 1997, the contributions to be made by

the board of regents must equal 2.503% of earned compensation attributable to optional retirement participants.

(ii) Beginning July 1, 1997, the contribution rate must be adjusted, pursuant to 19-20-201, based on the actual experience of the members of the Montana university system who are members of the teachers' retirement system, and must be set at a rate sufficient to amortize the past service liability of the university system members by July 1, 2033". Amendment effective July 1, 1997.

1993 Amendment: Chapter 178 at end of (1) substituted "an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation" for "an amount equal to the employer contribution required under 19-4-605"; in former (2), (2)(a), and (2)(a)(i) deleted requirement that the Board of Regents' contribution be apportioned and paid to the designated companies in an amount equal to the greater of the employer contribution to the Teachers' Retirement System not used to amortize past service unfunded liability or in an amount that, when added to the participant's contribution, is equal to 10% of the participant's contribution; deleted (2)(b) providing that the balance of the contribution went to the Teachers' Retirement System; inserted (2) allowing the Board to reduce the participant's contribution to an amount not less than 6% of the participant's earned compensation and to increase the employer's contribution rate to an amount not exceeding 6% and requiring the sum of the participant's and employer's contribution to remain at 12%; and inserted (5) pertaining to contributions by the Board of Regents to the Teachers' Retirement System for employees of the University System for past service liability incurred by active, inactive, and retired members of the Teachers' Retirement System. Amendment effective July 1, 1993.

Federal Statute: Section 403(b) of the Internal Revenue Code of 1954 and section 414(h)(2) of that code referred to in this section may be found at 26 U.S.C. 403(b) and 26 U.S.C. 414(h)(2).

19-21-212. Exemption from taxation, legal process, and assessments.

Compiler's Comments

1997 Amendment: Chapter 552 at beginning of introduction inserted exception clause and at end substituted "on the contributions" for "thereon". Amendment effective July 1, 1997.

1991 Amendment: Inserted (1) concerning adjusted retirement allowance or retirement allowance in excess of $3,600. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-21-213. Participation by employees in positions covered by public employees' retirement system.

Compiler's Comments

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 43(2), Ch. 490, L. 2001, provided: "(2) [Sections 34 and 37] [19-21-213 and 19-21-214] are effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system.

Compiler's Comments

2003 Amendment: Chapter 114 in (2)(c) substituted "19-3-112(1)(b)" for "19-3-112(1)(c)". Amendment effective October 1, 2003.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 43(2), Ch. 490, L. 2001, provided: "(2) [Sections 34 and 37] [19-21-213 and 19-21-214] are effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

CHAPTER 50
DEFERRED COMPENSATION

Chapter Administrative Rules

Title 2, chapter 43, subchapter 18, ARM Deferred compensation plan.

Part 1
General Provisions

19-50-101. Definitions.

Compiler's Comments

1999 Amendment: Chapter 471 in definition of administrator substituted "or "board" means the public employees' retirement board created in 2-15-1009" for "means the department of administration created by 2-15-1001"; deleted definition of advisory council that read: ""Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016"; deleted definition of department that read: ""Department" means the department of administration created by 2-15-1001"; and made minor changes in style. Amendment effective July 1, 1999.

1981 Amendment: Substituted the entire section (see 1981 Session Law for text) for "For the purposes of this chapter, "employee" means any person, whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision for which compensation is paid".

19-50-102. Deferred compensation programs permitted — rules.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 114 in (1) near middle after "Code" substituted "26 U.S.C. 457, as amended" for "of 1954 (26 U.S.C. 457), as amended or superseded". Amendment effective October 1, 2003.

Chapter 429 at end of (4)(d) and (4)(e) inserted language concerning exemption from commission's regulation; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 471 in (4) in four places and in (7) in one place substituted "board" for "department". Amendment effective July 1, 1999.

1997 Amendments: Chapter 37 in (2), near middle of first sentence after "compensation", inserted "to one or more of the investment options provided in subsection (4)"; in (4), at beginning of introductory clause after "The", substituted provisions regarding selection of investment options for "amount of compensation deferred under this chapter may be used to purchase"; in (4)(a), at beginning of first sentence, deleted "shares in" and at beginning of third sentence, after "These", inserted "state-invested", after "separate" substituted "accounting" for "accounts", and at end, after "maintained", deleted "for participants in the state deferred compensation investment fund"; inserted (4)(d) allowing investment of funds managed pursuant to investment services contracts; inserted (4)(e) allowing investment of mutual funds; in (4)(f) extended reference to exclude subsections (4)(d) and (4)(e) and deleted "as specified by the participant"; substituted language in (5) requiring that deferred compensation plan funds be held in a trust, custodial account, or insurance contract for former language that read: "The shares, accounts, or contracts so purchased are the exclusive property of and stand in the name of the state of Montana or a political subdivision until distributed to an employee in a manner provided in the plan agreement established by the administrator"; and made minor changes in style. Amendment effective February 24, 1997.

Chapter 42 in (1), after "Internal Revenue Code of 1954", inserted "(26 U.S.C. 457)"; in (4)(f) substituted "combination of the items in subsection (4)(a), (4)(b), or (4)(c)" (references changed by Ch. 37 amendment) for "combination of subsections (a), (b), or (c) above"; and made minor changes in style. Amendment effective March 12, 1997.

Retroactive Applicability: Section 2, Ch. 37, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to compensation deferred by employees, as defined in 19-50-101, and to deferred compensation plans established before [the effective date of this act]." Effective February 24, 1997.

1981 Amendment: All new language (see 1981 Session Law for text). See Sec. 1, Ch. 60, L. 1977, for prior language.

Federal Statute: Section 457 of the Internal Revenue Code referred to in this section may be found at 26 U.S.C. §457.

Statement of Intent: The statement of intent attached to SB 449 (Ch. 472, L. 1981) provided: "The Legislature intends that an administrator of a deferred compensation program in the State of Montana shall contract administrative and marketing services with private corporations, institutions, or individuals when eligible deferred compensation programs are established under this act, if these contracts result in the protection of participants' interests and the safeguarding of the plan's assets.

A statement of intent for this bill is necessary in that section 2 [19-2-102, renumbered 19-50-102] grants the Department of Administration [functions transferred to Public Employees' Retirement Board] or the appropriate officer of a political subdivision of the State of Montana the authority to promulgate rules for the proper administration of deferred compensation plans.

It is contemplated that the rules will address the following:

(1) procedures for enrolling employees in the plan;

(2) the content of the plan agreement that is consistent with section 457 of the Internal Revenue Code;

(3) rules for granting financial hardships due to unforeseen emergencies;

(4) rules regarding the participation of political subdivisions in the state deferred compensation plan; and

(5) rules governing the performance of marketing representatives or consultants who may be hired to present the plan to employees."

Administrative Rules

Title 2, chapter 43, subchapter 18, ARM Deferred compensation plan.

Case Notes

Dissolution of Marriage — Property Settlement: In a dissolution of marriage and property settlement case, the District Court did not err in finding that each party was entitled to his or her respective deferred compensation account when the parties were earning approximately the same income and were free to choose how much of their income they wished to defer. In re Marriage of Selsor/Mossman, 256 M 260, 846 P2d 972, 50 St. Rep. 80 (1993).

Qualified Plan: The language of the legislative act (prior to 1981 amendment of this section) clearly indicated the term "qualified plan" meant a plan qualifying for deferral of income taxation under federal laws and not only a plan under section 401(a) of the Internal Revenue Code. Mont. Ass'n of Underwriters v. Dept. of Administration, 172 M 211, 563 P2d 577 (1977).

19-50-103. No effect on other retirement programs — taxes deferred.

Compiler's Comments

2005 Amendment: Chapter 329 in second sentence near middle substituted "severance from employment" for "separation from service". Amendment effective July 1, 2005.

2003 Amendment: Chapter 114 near middle of first sentence after "Code" substituted "26 U.S.C. 403(b), as amended" for "of 1954"; and made minor changes in style. Amendment effective October 1, 2003.

1981 Amendment: Substituted "or a political subdivision" for "county, city, town, or other political subdivision" in the middle of the section; and substituted "participant or his beneficiary because of separation from service, retirement, or unforeseeable emergency" for "employee" at the end of the second sentence.

Federal Statute: Section 403 of the Internal Revenue Code referred to in this section may be found at 26 U.S.C. §403.

19-50-104. Eligibility to catch up — normal retirement age.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) at beginning inserted exception clause; in (1)(b) at beginning increased age from 60 to 65, after "plan or" inserted "system", and at end inserted "or is an independent contractor"; inserted (2) relating to an eligible plan with participants that include qualified police or firefighters; inserted (3) providing who qualified police and firefighters include; and made minor changes in style. Amendment effective July 1, 2005.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 2
Administration

19-50-201. Board authorized to make contracts with political subdivisions.

Compiler's Comments

1999 Amendment: Chapter 471 in (1) in one place, in (2)(a) in one place, and in (2)(b) in two places substituted "board" for "department". Amendment effective July 1, 1999.

1981 Amendment: All new language (see 1981 Session Law for text). For prior language see Sec. 2, Ch. 60, L. 1977.

19-50-202. Administration of program.

Compiler's Comments

1999 Amendment: Chapter 471 in first sentence substituted "board" for "department". Amendment effective July 1, 1999.

1981 Amendment: Completely rewritten (see 1981 Session Law for text). For prior language see Sec. 3, Ch. 264, L. 1974.

Collateral References

Employer's liability for action of trustees or similar body administering employer's pension plan. 54 ALR 3d 644.

19-50-203. Payments authorized.

Compiler's Comments

1999 Amendment: Chapter 471 in first sentence substituted "board" for "department". Amendment effective July 1, 1999.

1981 Amendment: Substituted "department or a political subdivision" in the first sentence for "department of administration or the appropriate officer of the county, city, town, or other political subdivision designated to coordinate the deferred compensation program"; substituted "eligible deferred compensation plans" for "qualified plans" in the first sentence; and substituted "state or a political subdivision" for "state, city, town, or other political subdivision" at the end of the section.

19-50-204. Public entity not to be liable.

Compiler's Comments

1981 Amendment: Substituted "state or a political subdivision" for "state, county, city, town, or other political subdivision"; inserted "investment" before "losses"; and inserted "eligible deferred compensation" before "plan".

TITLE 20
EDUCATION

Title Compiler's Comments

Preamble: The preamble attached to Ch. 548, L. 2003, provided: "WHEREAS, public schools are the foundation of Montana, providing citizens with the tools they need to strengthen our state's way of life and extending the principles of liberty; and

WHEREAS, approximately 16,000 full-time and part-time public school teachers guide over 149,000 students in the state of Montana; and

WHEREAS, as prescribed by Article X, section 1, of the Montana Constitution, a fundamental goal of the State of Montana is to establish a system of quality education that will develop the full educational potential of each person; and

WHEREAS, it is consistently proven on national assessments that Montana's excellent educators instruct superior students, and this fine system should be strengthened; and

WHEREAS, the Board of Public Education, of which the Superintendent of Public Instruction and the Governor are members, is constitutionally charged with general supervision over the public school system and other public educational institutions as may be assigned by law; and

WHEREAS, the first step in developing a competitive economy is a quality education system producing a qualified workforce; and

WHEREAS, due to repeated adjustments, revisions, and court decisions, the statutes governing the education system in Montana are plagued by inconsistent language, conflicting provisions, confusing funding mechanisms, and overlapping organizational structures that make it difficult for educators, parents, the legal community, and the general public to understand; and

WHEREAS, in order for the State of Montana to provide for an effective and efficient system of free quality public elementary and secondary education, a comprehensive renewal of education in Montana would be in the best interests of all of the state; and

WHEREAS, the Governor of Montana, the Board of Public Education, the Superintendent of Public Instruction, and the Montana Legislature should convene a commission to examine the various options available for the renewal of public education in Montana."

K-12 Public School Renewal Commission: Section 1, Ch. 548, L. 2003, provided: "(1) There is a K-12 public school renewal commission established to propose changes and new provisions regarding the several components of K-12 public education in Montana, including but not limited to:

(a) the revenue available for public education;

(b) the structure of school district governance;

(c) the methods of funding public education;

(d) the role of the state government in public education; and

(e) the role of the federal government in public education.

(2) Core membership of the renewal commission must include the governor, the presiding officer of the board of public education, the superintendent of public instruction, the speaker of the house of representatives, the president of the senate, the minority leader of the house of representatives, and the minority leader of the senate. Core members may select a designee to represent the core member on the renewal commission.

(3) The governor, in consultation with the core membership, shall:

(a) identify no less than 10 and no more than 25 entities who shall designate a representative to serve on the renewal commission;

(b) appoint a representative from the juvenile corrections division of the department of corrections to serve on the renewal commission;

(c) request assistance from other legislative and executive branch agencies; and

(d) in addition to any legislative appropriation, accept donations for the purposes of carrying out the duties of the renewal commission required in this section.

(4) The members of the renewal commission appointed pursuant to subsection (3)(a) may be reimbursed for expenses.

(5) (a) The renewal commission shall submit a final report of its findings and recommendations to the education and local government interim committee by September 15, 2004.

(b) The renewal commission may recommend legislation to the 59th legislature based on the commission's findings.

(6) As used in this section, the term "K-12 public education" includes a state youth correctional facility, as defined in 41-5-103."

CHAPTER 1
GENERAL PROVISIONS

Part 1
Definitions

20-1-101. Definitions.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 138 inserted definition of minimum aggregate hours; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 208 inserted definitions of accreditation standards, at-risk student, educational program, qualified and effective teacher or administrator, and student with limited English proficiency; and made minor changes in style. Amendment effective April 7, 2005.

Chapter 215 inserted definition of aggregate hours; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 570 in definition of average number belonging after "pupils" inserted "physically" and after "attending" inserted "or receiving educational services at an offsite instructional setting from"; inserted definition of offsite instructional setting; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

Effective Date — Applicability: Section 4, Ch. 215, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school budgets for the school fiscal years beginning on or after July 1, 2006."

Section 4, Ch. 570, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school fiscal years beginning on or after July 1, 2005."

2001 Amendment: Chapter 133 substituted definition of K-12 career and vocational/technical education for former definition that read: ""K-12 vocational education" means vocational education in public school kindergarten through grade 12"; deleted definition of vocational education that read: ""Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education includes guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment"; in definition of vocational-technical education inserted "or a tribally controlled community college"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1995 Amendment: Chapter 308 in definition of agricultural experiment station, after "Montana state university", inserted "-Bozeman"; in definition of state university substituted "Montana state university-Bozeman" for "Montana state university, located at Bozeman"; in definition of university substituted "university of Montana-Missoula" for "university of Montana, located at Missoula"; deleted definition of vocational-technical center that read: ""Vocational-technical center" means an institution used principally for the provision of vocational-technical education to persons who qualify as vocational-technical students. These centers are designated by the board of regents upon direction by the legislature. All other public or private institutions or schools are hereby prohibited from using this title"; in definition of

vocational-technical education, after "conducted by", deleted "a vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1987 Amendments: Chapter 388 in definition of pupil inserted last sentence referring to ANB calculation.

Chapter 658 inserted definitions of K-12 vocational education, vocational-technical center, and vocational-technical education; and deleted definitions of postsecondary vocational-technical center, postsecondary vocational-technical education, and postsecondary vocational-technical pupil.

Case Notes

Teacher Tenure Statute Not Ambiguous — Assistant Superintendent Considered Tenured Teacher: The school district board voted to terminate Small's employment as assistant superintendent at the end of the employment contract without a hearing or determination of good cause. Small appealed the board's determination on grounds that he had been continuously employed by the school district for 10 years in a position requiring teacher certification and thus was a tenured teacher whose employment could be terminated only after a hearing and a finding of good cause. The District Court agreed that Small was a tenured teacher and remanded to the board with instructions to provide Small with the appropriate termination process, but found that the issue of damages was premature. The school district appealed the decision that Small was a tenured teacher, and Small appealed the decision that damages were premature. The Supreme Court affirmed, finding that the teacher tenure statute is not ambiguous. The statute clearly grants tenure to teachers and denies tenure to District Superintendents. By definition in this section, a teacher is a person, except a District Superintendent, who holds a valid Montana teacher certificate and who is employed by a district as a member of its instructional, supervisory, or administrative staff. Small held a valid teacher certificate, was not a District Superintendent, and was employed by the district as a member of its supervisory and administrative staff and was thus entitled to tenure. The court also remanded to the County Superintendent for an evidentiary hearing on damages. Small v. Bd. of Trustees, Glacier County School District No. 9, 2001 MT 181, 306 M 199, 31 P3d 358 (2001).

Mountain View School Teachers as State Employees: Individuals employed to teach at Mountain View School are not employed by a school district and so do not meet the statutory definition of "teacher" in this section. Therefore, the instructors are considered state employees entitled to the leave benefits provided for other state employees. Mtn. View Educ. Ass'n v. Mtn. View School, 227 M 288, 738 P2d 1288, 44 St. Rep. 1089 (1987).

"Schoolteacher" — Higher Education Faculty Not Included: The plain and ordinary meaning of "schoolteacher" does not encompass higher education faculty, including community college faculty members, especially since community college faculty members are ultimately answerable to the Board of Regents. Community college faculty members are state employees for purposes of entitlement to payment for accumulated sick leave. Rippey v. Bd. of Trustees, 210 M 396, 682 P2d 1363, 41 St. Rep. 1117 (1984), followed, with regard to the fact that "teacher" does not include a community college instructor for tenure purposes, in Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

"Teacher" for Purposes of Tenure Laws:

The plaintiff was employed as a member of a school's administrative staff as a school psychologist from 1975 to 1981 under a "teacher contract" that required him to hold a valid teacher certificate. He was terminated from his job and subsequently appealed to the District Court a decision of the Office of Public Instruction (OPI) that he was not a tenured teacher at the time of his termination. The Supreme Court held that the District Court did not err in reversing the decision of the OPI. The distinction made by the Legislature, in the 1979 amendment of 20-4-203, between teachers and specialists for the purposes of tenure, did not retroactively affect tenure earned by the plaintiff prior to that amendment. By 1976, the plaintiff had met all three requirements for tenure under the old statute and was therefore a tenured teacher within the meaning of the law. Harris v. Bauer, 206 M 480, 672 P2d 26, 40 St. Rep. 1793 (1983).

Sorlie was an elementary teacher for 20 years prior to assuming an administrative position. In 1980, because a mill levy failed, the school board eliminated Sorlie's position and offered her a job as an elementary schoolteacher. Sorlie argued that she was demoted in violation of Montana's tenure laws. The Supreme Court considered, among other things, the definition of "teacher" and found the two positions to be comparable positions for purpose of tenure although they are functionally dissimilar. The court concluded that the reassignment, without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws. Sorlie was removed from her administrative position pursuant to the board's power to financially

manage the school district, and this action was in accordance with 39-31-303. Sorlie v. School District, 205 M 22, 667 P2d 400, 40 St. Rep. 1070 (1983).

Attorney General's Opinions

Vocational-Technical Center (Now College of Technology) Employee Status: There is no principled basis to distinguish a vocational-technical center (now college of technology) from any other school for purposes of determining the status of the employees who work there. 38 A.G. Op. 20 (1979).

Pupil-Instruction-Related Days Counted in ANB: Pupil-instruction-related days may be counted in computing the ANB number pursuant to administrative regulation interpreting 20-1-304. 37 A.G. Op. 160 (1978).

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a life certificate has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

20-1-102. Legislative goals for public elementary and secondary schools.

Compiler's Comments

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

Effective Date: Section 9, Ch. 208, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 7, 2005.

Part 2
Miscellaneous Provisions

Part Law Review Articles

Classroom v. Courtroom: Is the Right to Education Fundamental?, Harper, 51 Mont. L. Rev. 509 (1990).

Interpretations of the Montana Constitution: Education, Goetz, 51 Mont. L. Rev. 340 (1990).

Part Collateral References

Defining a Basic System of Education for Montana's Next Century, Interim Report, Mont. Leg. Council (Dec. 1988).

20-1-201. School officers not to act as agents.

Collateral References

Schools and School Districts *key* 47, 48(8), 63(3), 147.

78 C.J.S. Schools and School Districts §§90, 100, 127, 238.

20-1-202. Oath of office.

Collateral References

Oath *key* 1; Officers *key* 36(1).

67 C.J.S. Oaths and Affirmations §§1, 2; 67 C.J.S. Officers and Public Employees §38.

58 Am. Jur. 2d Oath and Affirmation §1, et seq.; 63C Am. Jur. 2d Public Officers and Employees §§4, 131.

Dismissal or rejection of public school teacher because of disloyalty. 27 ALR 2d 487.

Validity of governmental requirement of oath of allegiance or loyalty as applied to school officers. 18 ALR 2d 319.

20-1-204. County attorney's duties.

Collateral References

District and Prosecuting Attorneys *key* 7(1), 9.

27 C.J.S. District and Prosecuting Attorneys §§12(1), 12(2), 15(1).

63C Am. Jur. 2d Prosecuting Attorneys §§20 through 32.

20-1-205. Conflict of interest.

Case Notes

County Attorney — Conflict of Interests: The County Attorney should advise the school boards they should retain independent counsel to raise the privilege against self-incrimination as a defense to interrogatories propounded by the Human Rights Commission in an investigation of alleged violations of the antidiscrimination law since it is his duty to obtain the evidence and to prosecute if he determines there is a criminal violation. School District v. Human Rights Comm'n, 173 M 113, 566 P2d 799 (1977).

20-1-206. Disturbance of school — penalty.

Collateral References

Disturbance of Public Assemblage *key* 1, et seq.; Schools and School Districts *key* 173.

27 C.J.S. Disturbance of Public Meetings §1, et seq.; 78A C.J.S. Schools and School Districts §512.

24 Am. Jur. 2d Disturbing Meetings §1, et seq.

Breach of peace, disorderly conduct, etc.: participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense. 32 ALR 3d 551.

20-1-211. Expenses of officers or employees attending conventions — educational associations.

Collateral References

Counties *key* 46; Municipal Corporations *key* 163; Officers *key* 99; Schools and School Districts *key* 48(5), 54; States *key* 59.

20 C.J.S. Counties §79; 62 C.J.S. Municipal Corporations §535; 78 C.J.S. Schools and School Districts §§98, 118; 81A C.J.S. States §§61, 106 through 109.

63C Am. Jur. 2d Public Officers and Employees §462.

Public officer's rights and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him. 81 ALR 493.

20-1-212. Destruction of records by school officer.

Compiler's Comments

1997 Amendment: Chapter 323 in (1), after "Upon the order of the board of trustees", deleted "and with the written approval of the local government records destruction subcommittee provided for in 2-6-403" and near end inserted "and, with written approval of the local government records destruction subcommittee provided for in 2-6-403, any records not referenced in the retention and disposition schedule".

1993 Amendment: Chapter 420 in (1), at beginning, deleted "Unless destruction may be otherwise required by federal law, a school officer may destroy old worthless reports, papers, or records in his office: (a) that have served their purpose and that are substantiated by permanent records", before "approval" inserted "written", after "approval of the" substituted reference to local government records destruction subcommittee for "department of commerce", at end deleted "after a retention period of 5 years", and inserted remainder of subsection providing authority for school officer to destroy no longer needed records; substituted (2) concerning student records and employment records for "For the purposes of subsection (1), old worthless reports, papers, or records do not include student records and records of employment. Such records or copies of such records must be permanently kept"; and made minor changes in style. Amendment effective April 20, 1993.

1983 Amendments: Chapter 287, in (1)(a), substituted reference to Department of Commerce for reference to Department of Administration.

Chapter 543 inserted, in (1), before "a school officer", "Unless destruction may be otherwise required by federal law"; inserted (1)(b) relating to 5-year retention; and inserted (2) relating to student records and records of employment.

1981 Amendment: In (1)(a) substituted "department of administration" for "department of community affairs".

20-1-213. Transfer of school records.

Compiler's Comments

Effective Date: Section 3, Ch. 157, L. 1997, provided: "[This act] is effective July 1, 1997."

20-1-214. School crossing guards.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

20-1-220. Use of tobacco product in public school building or on public school property prohibited.

Compiler's Comments

2005 Amendment: Chapter 268 in (1) after "building or" inserted "on public school" and after "property" deleted "during school hours"; deleted former (2)(b) through (2)(d) that read: "(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member;

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or

(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district"; inserted (4) concerning penalties provided in 50-40-115; and in (5)(a) substituted public school building or public school property for public school building or property as defined term; and made minor changes in style. Amendment effective October 1, 2005.

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

20-1-225. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions.

Compiler's Comments

Preamble: The preamble attached to Ch. 320, L. 2001, provided: "WHEREAS, even in the time of voluntary membership in the armed services, Congress has chosen as part of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq., to maintain the military selective

service registration system as a means for rapid induction of individuals into the armed forces and, as part of that system, still requires adult men between the ages of 18 and 26 to register with the selective service system; and

WHEREAS, the Military Selective Service Act in 50 App. U.S.C. 462(f) requires compliance with the registration requirements of the Military Selective Service Act as a prerequisite to the receipt of federal student financial assistance; and

WHEREAS, 5 U.S.C. 3328(a) makes ineligible for employment by a federal executive agency an individual who has failed to comply with the registration requirements of the Military Selective Service Act; and

WHEREAS, Montana should do all that it can to require that those men subject to the selective service registration requirements fulfill their obligation to register with the selective service system; and

WHEREAS, it is therefore appropriate that Montana likewise require compliance with the registration requirements of the Military Selective Service Act as a prerequisite for payment of state student financial aid, enrollment in a postsecondary educational institution of a student receiving financial assistance provided by state funds, and employment with the Executive Branch of state government."

Saving Clause: Section 5, Ch. 320, L. 2001, was a saving clause.

Severability: Section 6, Ch. 320, L. 2001, was a severability clause.

Effective Date: Section 7, Ch. 320, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 21, 2001].

(2) [Sections 1(1) [2-15-130(1)] and 2(1) and (3) [20-1-225(1) and (3)]] are effective July 1, 2001."

Part 3
School Terms and Holidays — Released Time

20-1-301. School fiscal year.

Compiler's Comments

2005 Amendment: Chapter 138 in (1) in second sentence after "least" deleted "180 school days of pupil instruction and", before "1,050" deleted "175 days and", and before "360" deleted "90 days and"; deleted former (3) that read: "(3) To calculate the number of equivalent school days of pupil instruction when providing less than the minimum number of hours of instruction provided in subsections (1) and (2), a school district shall:

(a) determine the aggregate hours of pupil instruction by grade level;

(b) divide the aggregate hours of pupil instruction for each grade level by the minimum hours a day for that grade level provided in 20-1-302; and

(c) round the result down to the nearest whole number"; in (3) near beginning after "least" deleted "180 school days of pupil instruction and", substituted "as listed" for "as defined", and at end after "year" substituted "by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed" for "by 1/90th for each school day less than 180 school days as calculated in subsection (3) or by 1/90th for each calendar day less than the minimum school days required by subsection (1), whichever is greater"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

2001 Amendment: Chapter 237 in (1) near middle of second sentence after "sufficient" deleted "as provided in 20-9-313"; in (3) before "school days" inserted "equivalent" and after "instruction" inserted "when providing less than the minimum number of hours of instruction provided in subsections (1) and (2)"; in (4) near beginning inserted reference to subsection (1) and at end inserted "or by 1/90th for each calendar day less than the minimum school days required by subsection (1), whichever is greater"; and made minor changes in style. Amendment effective

July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1997 Amendments — Composite Section: Chapter 22 near middle of third sentence, after "reduce the", substituted "direct state aid" for "county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 42 in third sentence, after "state equalization", inserted "aid"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 430 in second sentence in (1) and in (4), after "instruction", inserted "and the minimum aggregate hours defined in subsection (2)"; in second sentence in (1), after "175 days", inserted "and 1,050 aggregate hours" and after "20-9-313" substituted language regarding minimum pupil- instruction days and aggregate hours required for kindergarten program for "or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title"; inserted (2) outlining required minimum aggregate hours by grade; inserted (3) concerning calculation of pupil-instruction days; at end of (4), after "days", inserted "as calculated in subsection (3)"; and made minor changes in style. Amendment effective July 1, 1997.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate text.

1983 Amendment: In last sentence, substituted "For any elementary or high school district" for "Any district" and "the superintendent of public instruction shall reduce the county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343 for the district for that school year by 1/90th for each school day less than 180 school days." for "shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county."

1981 Amendment: Inserted "except that 175 days of pupil instruction for graduating seniors may be sufficient as provided in 20-9-313, or" after "At least 180 school days of pupil instruction shall be conducted during each school fiscal year" in the first sentence.

Case Notes

Construction — Ambiguities: This section is ambiguous in that it provides that a high school district may provide 175 days of instruction for graduating seniors (see 2005 amendment) but states that if a district fails to provide at least 180 days of instruction it is not entitled to interest and income money (decided prior to 1983 amendment). Missoula High School Legal Defense Ass'n v. Supt. of Pub. Instruction, 196 M 106, 637 P2d 1188, 38 St. Rep. 2164 (1981).

Construction With Other Statutes — Conflicts: This section's provision that "Any district that fails to provide for at least 180 school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county" (quoted language amended 1983) is obviously ambiguous as to whether it applies to high school districts or only to elementary school districts. Since 20-9-805 provides that for each day short of the minimum school days required by law, for which a district is not entitled to apportionment credit, the equalization apportionment and entitlement of the district for that year shall be reduced by 1/180th, and since the interest and income funds referred to in this section are integrated with the equalization funds, the two sections are so conflicting that they require legislative review and revision; and in the meantime, since they are penal statutes, courts are powerless to apply them. Therefore, a high school that held 18 days less than the required 180-day minimum due to a teacher strike was entitled to its interest and income money regardless of the statutes. Missoula High School Legal Defense Ass'n v. Supt. of Pub. Instruction, 196 M 106, 637 P2d 1188, 38 St. Rep. 2164 (1981).

Collateral References

Schools and School Districts *key* 162.

78A C.J.S. Schools and School Districts §483.

20-1-302. School term, day, and week.

Compiler's Comments

2005 Amendment: Chapter 138 in (1) substituted current language requiring trustees, subject to 20-1-301, 20-1-308, and collective bargaining agreements covering employment, to set number of days in school term, length of day, and number of school days in school week and report them to superintendent of public instruction for former text that read: "Subject to

20-1-308, a school day of pupil instruction must be at least 2 hours for kindergartens, at least 4 hours for grades 1 through 3, and at least 6 hours for grades 4 through 12. The number of hours in 1 school day may be reduced at the discretion of the trustees if the total number of pupil-instruction hours in the school year is not less than the minimum aggregate hours required in 20-1-301"; inserted (2) requiring trustees when proposing changes to school term, week, or day to negotiate changes with recognized bargaining unit, solicit input from affected employees, and solicit input from people living in school district; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in first sentence, after "kindergartens", deleted "and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education"; in second sentence, after "day", substituted language authorizing reduction in hours by trustees if hours not less than minimum aggregate hours for "for grades 4 through 12 may be reduced by 1 hour if the total number of hours in the school week is not less than 30 hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education"; and made minor changes in style. Amendment effective July 1, 1997.

Attorney General's Opinions

Pupil Instruction Day Not to Include Teachers' Meetings: A school district which holds teachers' meetings while the pupils are excused for one-half day may not count that day as a pupil instruction day unless the requisite hours of pupil instruction required by 20-1-302 are provided. 34 A.G. Op. 56 (1972). (Opinion rendered prior to 1974 amendment.)

Collateral References

Schools and School Districts *key* 162.

78A C.J.S. Schools and School Districts §483.

20-1-303. Conduct of school on Saturday or Sunday prohibited — exception.

Compiler's Comments

2003 Amendment: Chapter 21 at beginning after "Except as provided" inserted "in this section" and near middle after "approved by the" substituted "trustees of the school district" for "superintendent of public instruction"; and made minor changes in style. Amendment effective February 13, 2003.

Collateral References

Schools and School Districts *key* 162.

78A C.J.S. Schools and School Districts §483.

20-1-304. Pupil-instruction-related day.

Compiler's Comments

2005 Amendment: Chapter 138 in fourth sentence after "part of the" deleted "required minimum of 180 days or the". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in third sentence, after "training", substituted "if the days are planned" for "provided that the days are approved by the superintendent of public instruction"; in fourth sentence after "180 days", inserted "or the required minimum aggregate hours"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: In middle of third sentence inserted "with a minimum of 3 of the days for instructional and professional development meetings or other appropriate in-service training"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Administrative Rules

Title 10, chapter 65, subchapter 1, ARM Pupil-instruction-related days.

Attorney General's Opinions

Pupil-Instruction-Related Days Counted in ANB: Pupil-instruction-related days may be counted in computing the ANB number pursuant to administrative regulation interpreting 20-1-304. 37 A.G. Op. 160 (1978).

20-1-305. School holidays.

Attorney General's Opinions

"School Holidays" and "Legal Holidays": School district employees, nonteaching and teaching alike, throughout the state of Montana, are entitled to days off on those holidays enumerated in 20-1-305, rather than the holidays of 1-1-216. School district employees are therefore entitled only to days off on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and state and national election days when the school building is a polling place and school functions will interfere with the election process. 37 A.G. Op. 150 (1978), overruling 37 A.G. Op. 96 (1977).

Nonteaching School Employees — Public Employees: Nonteaching school district employees are public employees and thus entitled to the legal holidays enumerated in 1-1-216 just as are all other public employees. They are not entitled to the school holidays enumerated in 20-1-305. 37 A.G. Op. 96 (1977), overruling, in part, 36 A.G. Op. 105 (1976).

Collateral References

Schools and School Districts *key* 162.

78A C.J.S. Schools and School Districts §483.

20-1-306. Commemorative exercises on certain days.

Compiler's Comments

1997 Amendment: Chapter 202 inserted (1)(f) designating American Indian Heritage Day; and made minor changes in style. Amendment effective April 4, 1997.

Preamble: The preamble attached to Ch. 202, L. 1997, provided: "WHEREAS, Article X, section 1(2), of the Montana Constitution recognizes the distinct and unique cultural heritage of American Indians and commits the state in its educational goals to the preservation of their cultural integrity; and

WHEREAS, the 1975 Legislature enacted House Joint Resolution No. 57, designating the fourth Friday in September of each year as "Native American Indian Day"; and

WHEREAS, despite the resolution, the knowledge of this important history and culture is gradually being lost to citizens of the State of Montana, to the detriment of both the American Indian and non-Indian citizens of the State of Montana; and

WHEREAS, the history and culture of American Indians are an integral part of the history of the nation and the State of Montana; and

WHEREAS, the Legislature recognizes that all Montanans have an invaluable opportunity for cultural enrichment through contact with the culture and philosophy of American Indians."

Attorney General's Opinions

"School Holidays" and "Legal Holidays": School district employees, nonteaching and teaching alike, throughout the state of Montana, are entitled to days off on those holidays enumerated in 20-1-305, rather than the holidays of 1-1-216. School district employees are therefore entitled only to days off on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and state and national election days when the school building is a polling place and school functions will interfere with the election process. 37 A.G. Op. 150 (1978).

20-1-307. Provisions of school code excepted.

Attorney General's Opinions

"School Holidays" and "Legal Holidays": School district employees, nonteaching and teaching alike, throughout the state of Montana, are entitled to days off on those holidays enumerated in 20-1-305, rather than the holidays of 1-1-216. School district employees are therefore entitled only to days off on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and state and national election days when the school building is a polling place and school functions will interfere with the election process. 37 A.G. Op. 150 (1978).

Collateral References

Schools and School Districts *key* 162.
78A C.J.S. Schools and School Districts §483.

20-1-308. Religious instruction released time program.

Compiler's Comments

2001 Amendment: Chapter 84 in (1) in first sentence near middle after "attendance" deleted "for a period not to exceed 2 hours per week" and inserted second sentence authorizing trustees to determine amount of time students may be released for religious instruction; and made minor changes in style. Amendment effective October 1, 2001.

Collateral References

78A C.J.S. Schools and School Districts §486.
68 Am. Jur. 2d Schools §§253, 321.

Part 4
Disaster Drills

20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks.

Compiler's Comments

1997 Amendment: Chapter 423 in (1) inserted first sentence relating to the definition of disaster and at beginning of second sentence substituted "Disaster drills" for "Fire exit drills"; inserted (2) relating to local hazards; and made minor changes in style.

Collateral References

78A C.J.S. Schools and School Districts §237.

20-1-402. Number of disaster drills required — time of drills to vary.

Compiler's Comments

1997 Amendment: Chapter 423 in first sentence substituted "disaster drills" for "fire exit drills", inserted second sentence relating to fire exit drills, deleted former second sentence that read: "In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils", and inserted last sentence relating to holding drills at different hours; and made minor changes in style.

20-1-404. Drill to sound on disaster evacuation system — recall signal to be distinct — control of signal.

Compiler's Comments

1997 Amendment: Chapter 423 in (1), at beginning, substituted "If a disaster drill is signaled, the signal must be sounded on the disaster alarm" for "All fire exit drill alarms shall be sounded on the fire alarm system"; and inserted (2) relating to the recall signal.

20-1-407. Inspection of exits — cooperation with local authorities having jurisdiction in drills.

Compiler's Comments

1997 Amendment: Chapter 423 in last sentence substituted "local authorities having jurisdiction in conducting disaster drills" for "local fire department authorities in conducting disaster drills"; and made minor changes in style.

Part 5
Indian Education for All

Part Compiler's Comments

Preamble: The preamble attached to Ch. 527, L. 1999, provided: "WHEREAS, as part of the state's educational guarantees, the people of Montana in 1972 included Article X, section 1(2), in the state constitution, recognizing the distinct and unique cultural heritage of American Indians and expressing the state's commitment to preserve that cultural integrity through education; and

WHEREAS, the Legislature recognizes that Article X, section 9(2), of the Montana Constitution provides the Board of Regents with full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana University System; and

WHEREAS, the Legislature also recognizes that Article X, section 9(3), of the Montana Constitution provides the Board of Public Education with general supervision over the public school system and that Article X, section 8, of the Montana Constitution vests the supervision and control of the schools in each school district to the local board of trustees; and

WHEREAS, a 1995 study conducted by the Committee on Indian Affairs [now Law and Justice Interim Committee], pursuant to Senate Joint Resolution No. 11, revealed that despite the constitution's educational guarantees, many school districts and schools, including those adjacent to Montana's seven Indian reservations, had no policy or information in their school curricula recognizing the cultural heritage of American Indians and that the small number of Indian teachers and administrators in public schools resulted in Indian students with no role models and in a lack of cultural awareness and sensitivity among non-Indian students; and

WHEREAS, the Legislature recognizes that the history of Montana and the current problems of the state cannot be adequately understood and the problems cannot be addressed unless both Indians and non-Indians have an understanding of the history, culture, and contemporary contributions of Montana's Indian people."

Effective Date: Section 7, Ch. 527, L. 1999, provided: "[This act] [20-1-501 through 20-1-503] is effective on passage and approval." Approved April 29, 1999.

Part Attorney General's Opinions

Indian Studies Requirement for Teachers a Local Matter: Prior to the 1979 amendments, 20-4-213 absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies. 39 A.G. Op. 11 (1981).

American Indian Studies Law Applicable to Tenured Teachers: The provisions of the Indian studies law are applicable to tenured teachers. 37 A.G. Op. 75 (1977).

Part Law Review Articles

The Challenge of "Differentiated Citizenship": Can State Constitutions Protect Tribal Rights? (analyzing in part Montana Indian education provisions), Tsosie, 64 Mont. L. Rev. 199 (2003).

CHAPTER 2
STATE BOARDS AND COMMISSIONS

Chapter Law Review Articles

Educational Malpractice—Does the Cause of Action Exist?, Magone, 49 Mont. L. Rev. 140 (1988).

Part 1
State Board of Education — Board of Public Education — Board of Regents

Part Administrative Rules

Title 10, chapter 51, through Title 10, chapter 68, ARM Rules of the Board of Public Education.

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.

Compiler's Comments

1985 Amendment: At end of (6) deleted "on any two of the dates specified in 20-2-112(1)".

20-2-111. Officers of boards — quorum.

Compiler's Comments

1985 Amendment: Near beginning of (2) and (4) changed "professional assistant" to "executive secretary".

Administrative Rules

ARM 10.51.105 Board staff.

20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.

Compiler's Comments

1985 Amendment: In (1) after "shall meet", substituted "at least quarterly" for "quarterly at the same location on the second Monday of April, July, September, and December".

20-2-113. Per diem of board members — expenses.

Compiler's Comments

1985 Amendment: After "board of regents" substituted "shall be compensated and receive travel expenses as provided for in 2-15-124" for "are entitled to $25 per day and travel expenses, as provided for in 2-18-501 through 2-18-503".

20-2-114. Adoption of rules — seal — record of proceedings.

Compiler's Comments

Sections Not Codified: Section 75-5617, R.C.M. 1947, reassigning certain duties of various education boards to the Board of Public Education and to the Board of Regents, and section 75-5618, R.C.M. 1947, providing for the transition of power from the Board of Education to the Board of Public Education and the Board of Regents, have not been codified in the MCA because both sections were of a temporary nature and the names of boards affected have since been changed by the Code Commissioner to reflect the new educational boards created by the 1972 Constitution. However, these sections have not been repealed and are still valid law. Citation may be made to sec. 9, Ch. 344, L. 1973, as amended by Ch. 434, L. 1975, and sec. 10, Ch. 344, L. 1973, respectively.

Grandfather Clause for Rules: Section 27, Ch. 285, L. 1977, read: "Rules and policies of the board of public education and the state superintendent of public instruction are subject to 82-4204(3) [R.C.M. 1947, now 2-4-305] on and after October 1, 1977. Any such rules and policies in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1) [R.C.M. 1947, now 2-4-302 and 2-4-305]." That section has not been codified in the MCA because action under that section is now complete. Citation may be made to Ch. 285, L. 1977.

Administrative Rules

Title 10, chapter 54, ARM Content and performance standards.
Title 10, chapter 57, ARM Educator licensure.
Title 10, chapter 58, ARM Standards for teacher education programs — teacher certification.
Title 10, chapter 61, ARM Montana School for the Deaf and Blind.
Title 10, chapter 66, ARM Adult secondary education credentials.
Title 10, chapter 67, ARM State aid distribution schedule.

20-2-121. Board of public education — powers and duties.

Compiler's Comments

2005 Amendment: Chapter 138 deleted former (5) that read: "(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1993 Amendment: Chapter 633 in (3) substituted "BASE" for "state equalization". Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 385, L. 1991, provided: "WHEREAS, the Legislature, not the Executive Branch, is the lawmaking branch of the state government under the Montana Constitution; and

WHEREAS, the Legislature may delegate its power to pass laws to the Executive Branch, which may then, within certain limits, adopt administrative rules that have the force and effect of law; and

WHEREAS, a rule may not conflict with a statute and is invalid if it does; and

WHEREAS, section 20-7-902(1), MCA, provides that "a school district may identify gifted and talented children and devise programs to serve them" and Rule 10.55.804, Administrative Rules of Montana, mandates a gifted and talented children program in each school, thereby directly and clearly conflicting with the statute; and

WHEREAS, the Legislature has made a gifted and talented children program discretionary, at the choice of each local school board, the Legislature nonetheless affirms its support of gifted and talented education and encourages local school districts to identify gifted and talented students and design and implement programs that meet the needs of those students."

1991 Repeal of Administrative Rule: Section 1, Ch. 385, L. 1991, repealed Rule 10.55.804, ARM, requiring each school to have a gifted and talented children program. Effective July 1, 1991. Chapter 385, L. 1991, was declared unconstitutional in Bd. of Pub. Educ. v. Administrative Code Comm., Cause No. BDV-91-1072 (1992), First Judicial District, Lewis & Clark County.

1987 Amendment: Inserted (12) relating to student assessment in public schools.

1987 Statement of Intent: Chapter 377, L. 1987, which amended this section, contained the following statement of intent: "A statement of intent is required for this bill because section 1 [20-2-121] provides that the board of public education shall adopt rules for student assessment in the public schools of Montana. The legislature intends for the board to adopt rules regarding:

(1) the types of student assessment tests that may be used;
(2) the grade levels to be tested;
(3) the time of testing;
(4) procurement of testing data;
(5) provisions for confidentiality of test results;
(6) responsibilities for the office of the superintendent of public instruction; and
(7) other provisions that the board considers vital to the student assessment program."

Exemption From Fiscal Note Process: Section 3, Ch. 377, L. 1987, provided: "For the purposes of this act, the board of public education is exempt from the fiscal note provisions of 20-2-115 [now repealed]." Chapter 377, L. 1987, authorized the Board to adopt student assessment rules.

Preamble: Chapter 377, L. 1987, which amended this section, contained the following preamble: "WHEREAS, the Legislature recognizes that the Board of Public Education has the duty, as provided in Article X, section 9, of the Montana Constitution to exercise general supervision over the public school system in Montana; and

WHEREAS, the Legislature recognizes the value of measuring the academic performance of Montana schools and of assessing student performance in comparison to: education costs per student; student performance levels in other states and the nation; and, most importantly, Montana education achievement goals."

1983 Amendments: Chapter 94 inserted (10) relating to issuance of documents certifying equivalency of completion of secondary education.

Chapter 312 inserted (11) relating to programs for the gifted and talented.

Gifted and Talented — 1983 Statement of Intent: The statement of intent attached to HB 196 (Ch. 312, L. 1983) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Public Education to adopt policies for programs serving gifted and talented children.

It is contemplated that the rules will address the following:

(a) a policy statement fostering development of programs serving the gifted and talented;

(b) acknowledgment of the provisions in 20-7-904, MCA, regarding review of programs by the Superintendent of Public Instruction; and

(c) an annual review of services to gifted and talented children by the Board of Public Education."

Administrative Rules

ARM 10.51.104 Responsibilities assigned to Board by statute.

ARM 10.52.101 Model procedural rules.

ARM 10.52.102 Additions for cases involving requests for revocation or suspension of teacher certificates.

Title 10, chapter 54, ARM Content and performance standards.

Title 10, chapter 55, ARM Standards of accreditation.

Title 10, chapters 57 and 58, ARM Educator licensure and standards for teacher education programs.

Title 10, chapter 60, ARM Special education.

Title 10, chapter 64, ARM Transportation.

Title 10, chapter 65, ARM Hours and days of instruction.

Title 10, chapter 66, ARM Adult secondary education credentials.

Title 10, chapter 67, ARM State aid distribution policy.

ARM 10.68.101 Educational media library.

Case Notes

Accreditation Standard Mandating Gifted and Talented Program Within Board's Constitutional Powers of "General Supervision": After the Board of Public Education refused to amend its rule requiring all districts to identify and provide programs for gifted and talented students, the Legislature, claiming the rule conflicted with 20-7-902, which authorized rather than mandated gifted and talented programs, enacted House Bill No. 116 (1991) at the request of the Administrative Code Committee (now appropriate administrative rule review committee) to repeal the rule. In invalidating House Bill No. 116, the District Court held that the Board, pursuant to its exercise of general supervision powers under Art. X, sec. 9(3), of the Montana Constitution, is vested with constitutional rulemaking authority that is self-executing and independent of any power delegated to the Board by the Legislature. Bd. of Pub. Educ. v. Administrative Code Comm., Cause No. BDV-91-1072 (1992), First Judicial District, Lewis & Clark County.

Clarification of Findings Regarding Statewide Accreditation Standards: The Supreme Court amended certain District Court findings and conclusions regarding statewide accreditation standards adopted by the Board of Public Education to clarify that: (1) the minimum standards do not fully define a quality education; (2) the Montana school accreditation standards are minimum standards upon which quality education must be built; and (3) the standards do not fully define either the constitutional rights of students or the constitutional responsibilities of the state for funding its public and elementary schools. School District v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Attorney General's Opinions

Small Transit-Type Bus Considered School Bus — National School Bus Standards Applicable: Under the definition in 20-10-101, a small, transit-type bus that is smaller than a Greyhound bus but larger than a nine-passenger van is a school bus and may not be used to transport students to extracurricular activities unless it meets the standards contained in the 1990 National Standards for School Buses, including paint requirements, adopted by the Board of Public Education. 45 A.G. Op. 30 (1994).

Rule Requiring Every School District to Provide Educational Services to Gifted and Talented Children Invalid: The adoption of this section did not provide a statutory grant of authority to the Board of Public Education to require the creation of gifted and talented children programs. Rather, 20-7-902 makes the creation of gifted and talented children programs optional for individual school districts. Therefore, ARM 10.55.804, promulgated pursuant to the Board's statutory authority to adopt accreditation standards and making the creation of such programs mandatory, conflicts with 20-7-902 and is thus invalid. 44 A.G. Op. 4 (1991). (See case note Bd. of Pub. Educ. v. Administrative Code Comm. at this section.)

Indian Studies Requirement for Teachers a Local Matter: Prior to the 1979 amendments, 20-4-213 (now repealed) absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local

board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies. 39 A.G. Op. 11 (1981).

Collateral References

Schools and School Districts *key* 47.
78 C.J.S. Schools and School Districts §90.
68 Am. Jur. 2d Schools §59, et seq.
Montana School Finance, Interim Report, Montana Legislative Council (1982).

20-2-122. Executive secretary to board of public education — staff.

Compiler's Comments

1983 Amendment: In (1), substituted "appoint an executive secretary" for "employ a professional assistant" and substituted final clause relating to employment of other persons for "a secretary to perform the duties required of it"; in (2) changed "professional assistant" to "executive secretary"; in (3) changed "professional assistant" to "staff" and "his" to "its".

Administrative Rules

ARM 10.51.105 Board staff.
ARM 10.51.106 Agency functional chart.

Part 5
Compact for Education

Part Compiler's Comments

Effective Date: Section 7, Ch. 273, L. 2001, provided: "[This act] is effective July 1, 2001."

CHAPTER 3
ELECTED OFFICIALS

Part 1
Superintendent of Public Instruction

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-3-101. Election and qualifications.

Collateral References

Schools and School Districts *key* 47.
78 C.J.S. Schools and School Districts §86.
68 Am. Jur. 2d Schools §§42 through 44.

20-3-103. Deputy superintendent — staff.

Compiler's Comments

2001 Amendment: Chapter 133 in (2)(b) substituted language regarding professional staff membership for "a professional staff for the state supervision and administration of K-12 vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1991 Amendment: In (1), in first sentence, substituted "superintendent" for "principal"; in (2)(c) substituted "persons with disabilities" for "the mentally retarded or physically handicapped"; and made minor changes in style. Amendment effective July 1, 1991.

1987 Amendments: Chapter 436 in second sentence of (2) substituted "shall" for "may". Chapter 658 in (2)(b) inserted "K-12".

Administrative Rules

ARM 10.1.101 Organizational rule.

Collateral References

States *key* 50.
81A C.J.S. States §85.
Assertion of immunity as grounds for removing or discharging public officer or employee. 44 ALR 2d 789.

20-3-104. Discretionary staff.

Compiler's Comments

2001 Amendment: Chapter 133 at end of (1) substituted "K-12 career and vocational/technical education" for "vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

Administrative Rules

ARM 10.1.101 Organizational rule.

20-3-105. Administrative powers and duties.

Compiler's Comments

1987 Amendment: In (5), at beginning, substituted "if he deems necessary" for "whenever he deems necessary but not more than once every 4 years".

1983 Amendment: Deleted former (7), which read: "submit a written report to the governor of his activities during the immediately preceding fiscal biennium in accordance with the provisions of 2-7-102"; at end of (7), deleted "as prescribed by 2-7-102".

Collateral References

Schools and School Districts *key* 47.

78 C.J.S. Schools and School Districts §90.

68 Am. Jur. 2d Schools §57.

20-3-106. Supervision of schools — powers and duties.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 21 deleted former (17) that read: "(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303"; and made minor changes in style. Amendment effective February 13, 2003.

Chapter 374 deleted former (27) that read: "(27) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 133 in (22) substituted "K-12 career and vocational/technical education" for "K-12 vocational education". Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

K-12 Public School Funding Study: Section 1, Ch. 580, L. 2001, provided: "Section 1. K-12 public school funding study — duties — hearings. (1) The governor and the superintendent of public instruction shall, within the provisions of the Montana constitution, conduct a study of funding for K-12 public schools, including but not limited to:

(a) analyzing the factors currently in law that are used to compute budget authority for schools to determine if additional factors or changes in those factors are necessary to equitably provide budget authority to public schools;

(b) determining the appropriate allocation of funding to adequately fund elementary, middle school, seventh and eighth grade, and high school programs;

(c) determining if a statewide salary schedule for school staff is possible under the constitutional provision for trustee management of school districts;

(d) determining if the current budget computations are prohibiting or discouraging local decisions to consolidate school districts;

(e) determining the adequacy and equity of the current statutory authority for public schools to access the funds necessary to provide facilities for school districts and state support for school facility costs;

(f) determining the adequacy and equity of current funding for pupil transportation;

(g) determining if appropriate disparity exists in the current local tax effort necessary to fund school districts;

(h) analyzing the current allocation of state funds to public schools to determine its equity;

(i) analyzing the relationship between increasing staffing levels in the classroom in the face of declining enrollment and the resulting financial impacts to school districts and the state;

(j) analyzing appropriate means for school districts to calculate ANB regarding nontraditional, part-time, or distance-learning students;

(k) determining if issues not listed in this section are affecting the equity of school funding in Montana and analyzing those issues;

(l) analyzing the school district structure that currently exists and determining if reducing the number of districts could provide efficiency in the operations of the districts and make existing resources available for classroom activities; and

(m) determining if the existence of 25 budgeted and nonbudgeted funds unreasonably restricts local decisionmakers.

(2) The governor, after consultation with the superintendent of public instruction, shall prepare and submit a preliminary report by December 31, 2001, on the findings and recommendations of the study to the education interim committee.

(3) (a) The education interim committee shall hold hearings and take public comment on the preliminary report prepared and submitted by the governor. The hearings may be held at various locations around the state to facilitate public comment on the governor's report.

(b) by August 1, 2002, the education interim committee shall provide to the governor for the governor's consideration a summary of the hearings and recommendations for changes to the report.

(c) The education interim committee may make any other recommendations on school funding that the committee considers appropriate. The education interim committee shall submit its recommendations and, if appropriate, prepare legislation for consideration by the 2003 legislature.

(4) Upon receipt of the summary and recommendations from the education interim committee, the governor shall issue a final report and, if appropriate, prepare legislation for consideration by the 2003 legislature.

(5) The governor may:

(a) appoint one or more advisory councils pursuant to 2-15-122 to assist in conducting the study;

(b) coordinate with any other legislative interim committee, as appropriate;

(c) request assistance from other legislative and executive branch agencies; and

(d) in addition to any legislative appropriation, accept donations for purposes of the study required in this section."

1999 Amendment: Chapter 343 in (10) substituted "20-9-213(6)" for "20-9-213(5)"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendments: Chapter 219 deleted former (5) that read: "approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 311 inserted (29) providing: "upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for any test required by the board of public education"; and made minor changes in style.

Chapter 388 deleted former (4) that read: "serve on the teachers' retirement board in accordance with the provisions of 2-15-1010"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 430 deleted former (16) that required Superintendent of Public Instruction to "approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705"; in (17), after "Saturday", deleted "or on pupil-instruction-related days" and after "20-1-303" deleted "and 20-1-304"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1993 Amendments: Chapter 325 deleted former (15) that read: "distribute state impact aid in accordance with the provisions of 20-9-304". Amendment effective July 1, 1993.

Chapter 633 in (10), before "state", inserted "direct"; in (14) substituted "BASE aid and special education allowable cost payments in support of the BASE funding program" for "state equalization aid in support of the foundation program and guaranteed tax base aid"; in (32), after "aid", deleted "for county retirement levy obligations"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (10), in two places, substituted reference to budget amendment for reference to emergency budget and near middle, before "rules", substituted "adopt" for "publish". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: In (14), after "foundation program", inserted "and guaranteed tax base aid" and inserted references to 20-9-331, 20-9-333, and 20-9-366 through 20-9-369; in (33) substituted "guaranteed tax base aid for county retirement levy obligations in accordance with 20-9-366 through 20-9-369" for "state retirement equalization aid in accordance with 20-9-532"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendments: Chapter 377 inserted (32) relating to compliance with assessment rules.

Chapter 635 inserted (33) relating to distribution of retirement equalization aid.

Chapter 658 in (26), relating to vocational education, inserted "K-12"; and deleted former (27) and (28) requiring Superintendent to consider applications for designation of a postsecondary vocational-technical center and to establish a fund for a center's fees.

Exemption From Fiscal Note Process: Section 3, Ch. 377, L. 1987, provided: "For the purposes of this act, the board of public education is exempt from the fiscal note provisions of 20-2-115 [now repealed]." Chapter 377, L. 1987, authorized the Board to adopt student assessment rules.

1985 Amendment: Deleted former (15) that read: "estimate the statewide equalization level for the foundation program in accordance with the provisions of 20-9-348".

Transition: Section 404, Ch. 571, L. 1979, was a transition section, the text of which may be found in the compiler's comment to 13-1-104.

Administrative Rules

Title 10, chapter 7, subchapter 1, ARM Pupil transportation.

Title 10, chapter 13, subchapter 3, ARM Program standards and course requirements for traffic education.

Title 10, chapter 30, subchapter 1, ARM Isolation classification.

ARM 10.30.101 Application information.

Title 10, chapter 30, subchapter 4, ARM K-12 districts.

ARM 10.64.701 Criteria for establishing transportation areas.

Collateral References

Schools and School Districts *key* 47.

78 C.J.S. Schools and School Districts §90.

68 Am. Jur. 2d Schools §§57, 105.

Montana School Finance, Interim Report, Montana Legislative Council (1982).

20-3-107. Controversy appeal.

Compiler's Comments

1997 Amendment: Chapter 438 at end of (1)(a) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

Administrative Rules

Title 10, chapter 6, ARM Rules of procedure for all school controversy contested cases before the County Superintendents of the State of Montana.

Case Notes

Teaching Contract Precluding Property Interest in Employment: Talley contended that he had a property right in his position as a part-time instructor at Flathead Valley Community College and that the property interest required that he be given notice and a hearing before termination. The Supreme Court has recognized that a property interest in one's position must be created by existing rules and regulations, state laws, or understandings between employer and employee, but in Talley's case, the employment contract specifically precluded any property right by stating that acceptance of the contract conferred no right to or credit toward tenure or other permanent faculty status. Talley's subjective belief that he had a property interest in his job did not create such an interest because a subjective expectancy can create no constitutionally protected interest. Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

"At-Will" Employee — Notice Not Necessary — Due Process Protections Not Necessary: Plaintiff, a school janitor, provided no evidence that his employment had any specified term. Therefore, he was an "at-will" employee, had no property interest in his job, and was not entitled to notice prior to termination under 39-2-503 (now repealed) or under school policy. Medicine

Horse v. Trustees, Big Horn County School District No. 27, 251 M 65, 823 P2d 230, 48 St. Rep. 1074 (1991), overruled, to the extent that the Wrongful Discharge From Employment Act has superseded and impliedly repealed the at-will employment provisions for nonprobationary employees, in Whidden v. John S. Nerison, Inc., 1999 MT 110, 294 M 346, 981 P2d 271, 56 St. Rep. 456 (1999), and distinguished in Boreen v. Christensen, 267 M 405, 884 P2d 761, 51 St. Rep. 1014 (1994).

School Controversy — MAPA Statute of Limitations Not Applicable: After the Superintendent of Public Instruction issued an order to reinstate plaintiff to her teaching position, trustees filed a petition for judicial review after expiration of the 30-day period allowed under 2-4-702 for judicial review following a final agency decision but prior to expiration of the 60-day period allowed for judicial review of a decision to terminate a tenured teacher made pursuant to subsection (2) of this section. The Supreme Court reversed and remanded the District Court's order granting a motion to dismiss plaintiff's petition for judicial review, holding that MAPA did not expressly or impliedly repeal the statute of limitations provided pursuant to this section and that the 60-day rule applied to a school controversy. Carbon County School District Trustees v. Spivey, 247 M 33, 805 P2d 61, 48 St. Rep. 79 (1991).

Failure to Request Reasons for Termination — Loss of Appeal Rights: Plaintiff was one of four nontenured teachers informed in writing in mid-April that her contract would not be renewed. The letter gave no reason for termination, but school board minutes reflected that the reason was financial, and allegedly all nontenured teachers were released in anticipation that the upcoming mill levy would not pass. Plaintiff therefore did not request reasons for termination within 10 days as required under 20-4-206. However, in June the levy did pass and all nontenured teachers were rehired except plaintiff, who appealed in July. Even in cases where financial conditions are the alleged reason for termination, nontenured teachers cannot assume this is the reason unless they request and receive written confirmation from the district trustees. Because plaintiff did not request confirmation, her chance for appeal passed while she waited to be rehired after the mill levy vote. Keller v. School District, 237 M 481, 774 P2d 409, 46 St. Rep. 986 (1989).

Additional Evidence Denied: In an appeal by a school district from an administrative order reinstating and compensating a discharged school principal, the District Court did not err in denying the school district's motion to order receipt of additional evidence. The court had properly determined that the Superintendent of Public Instruction correctly used his discretion when previously denying the school district's request to submit additional evidence. The affidavits in question were not subject to cross-examination and were of questionable quality. The county-level hearing was a thorough hearing, and the evidence supports the county-level decision. Pryor School District v. Supt. of Pub. Instruction, 218 M 73, 707 P2d 1094, 42 St. Rep. 1405 (1985).

Nonrenewal of Tenured Teacher's Contract — Scope of Review: A tenured teacher's contract was not renewed. A hearing was held by the board of trustees, which affirmed its decision not to renew the contract. The teacher appealed to the County Superintendent where he was given a trial de novo with witnesses and record evidence. The teacher then appealed to the State Superintendent based upon the record, and the State Superintendent upheld the decision. The teacher appealed to District Court based upon the record. The District Court reversed the administrative decision, and an appeal to the Supreme Court was made upon the record. The Supreme Court reversed the District Court, saying that the procedure to be used in this instance was identical to that for any other District Court decision involving an administrative decision. The District Court was not a trier of fact. The Supreme Court should not substitute its judgment for that of the County Superintendent as to the weight of the evidence on questions of fact. The Supreme Court may reverse or modify if the substantial rights of the appellant have been prejudiced because the administrative findings and conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982), followed in Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Failure to File Timely Appeal: Having failed to pursue his statutory administrative remedies within the time allowed by law, plaintiff's right to contest the termination of his employment as a tenured teacher was at an end. Gallup v. Supt. of Pub. Instruction, 172 M 400, 563 P2d 1139 (1977).

Constitutionality: This section violated neither Art. VII, sec. 4(2), nor Art. X, sec. 8, Mont. Const. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Decision Subject to Judicial Review: While the Superintendent of Public Instruction has the power to "decide all appeals from the decisions of the county superintendent", his decision is

subject to "adjudication or proper legal remedies in the state courts". Potter v. Miller, 145 M 197, 399 P2d 994 (1965).

Undue Hardship on Parents as Basis for Appeal: Where Superintendent of Public Instruction approved County Superintendent's attachment of abandoned territory to a contiguous district rather than to another more convenient one, thus requiring children to travel 14 miles farther each way to get to more overcrowded schools and working an "undue hardship" on both parents and children, this constituted sufficient facts for appeal from Superintendent of Public Instruction's decision. Potter v. Miller, 145 M 197, 399 P2d 994 (1965).

Dismissal Decision Void for Want of Jurisdiction — Certiorari Granted: Where an order of a board of trustees dismissing a District School Superintendent for cause was void because he had not been granted a hearing (a well-defined public policy declared by decisions of the Supreme Court), which order was reversed on appeal to the County Superintendent, whereupon the board appealed to the Superintendent of Public Instruction who found in favor of the board, the action of the board and the decision of the Superintendent were void for want of jurisdiction and certiorari would be granted. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Exhaustion of Administrative Remedy Required: Where plaintiff teacher was dismissed by the board of school trustees and appealed the action of the board to the County Superintendent but failed to appeal the County Superintendent's unfavorable decision to the Superintendent of Public Instruction, plaintiff failed to exhaust remedies afforded by law, and since there was nothing in the record to show abuse of discretion on the part of school authorities, plaintiff was barred from court action against the school district for breach of contract. Kelsey v. School District, 84 M 453, 276 P 26 (1929), distinguished in McBride v. School District, 88 M 110, 290 P 252 (1930), explained in State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Appeal Not Barred by Correspondence With County Superintendent: An informal letter written by the Superintendent of Public Instruction to a County Superintendent based on correspondence between them relative to an order of the latter abolishing a school district and approving his action did not bar the State Superintendent from thereafter passing upon the same question when presented upon a formal appeal from the County Superintendent's decision. State ex rel. School District v. Trumper, 69 M 468, 222 P 1064 (1924).

Jurisdiction of Superintendent Presumed: In the absence of an affirmative showing of want of jurisdiction in the Superintendent of Public Instruction on appeal from a decision of a County Superintendent, jurisdiction and regularity of the proceedings will be presumed; and so long as the former acts legally and within the powers expressly conferred, courts will not interfere by certiorari. State ex rel. School District v. Trumper, 69 M 468, 222 P 1064 (1924).

Attorney General's Opinions

Transcript Not Waivable: The parties to a controversy before a county school transportation committee may not waive the making of a transcript in the absence of rules providing for appeal without a transcript promulgated by the Superintendent of Public Instruction as a transcript, although not necessarily a verbatim stenographic report, is required by 20-3-107 and 20-10-132 on an appeal to the Superintendent from a decision of a county school transportation committee. 35 A.G. Op. 53 (1973).

Collateral References

Estoppel doctrine as applicable against government and its governmental agencies. 1 ALR 2d 338.

20-3-108. Division of resources and assessment funds.

Compiler's Comments

1997 Amendment: Chapter 422 deleted former first sentence that read: "There is a resources and assessment account in the state special revenue fund"; at end substituted "state general fund" for "resources and assessment account"; deleted last sentence that read: "In addition to other available funds, the superintendent of public instruction shall use these funds for the operation and maintenance of the division of resources and assessment as authorized by 20-3-106"; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendments: Chapter 370 at end of section changed "20-3-106(25)" to "20-3-106(23)" (not codified due to amendment by Ch. 470—see below).

Chapter 470 substituted first sentence establishing a resources and assessment account for "The superintendent of public instruction shall establish an enterprise fund within the office of public instruction for the division of resources and assessment", at end of second sentence substituted "account" for "enterprise fund", and at end deleted reference to subsection of 20-3-106.

1983 Amendment: Substituted references to enterprise fund for references to revolving fund.

20-3-109. Honorary high school diploma for certain veterans.

Compiler's Comments

Effective Date: Section 3, Ch. 171, L. 2003, provided: "[This act] is effective on passage and approval." Approved March 28, 2003.

Part 2
County Superintendent of Schools

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-3-201. Election and qualifications — part-time office allowed.

Compiler's Comments

1993 Amendment: Chapter 146 in (2), at beginning, inserted "Upon verification by the county clerk and recorder" and after "qualified to" inserted "file for and"; in (2)(b), near beginning after "valid", substituted "current class 1 professional certificate, class 2 standard certificate, or class 3 administrative and supervisory" for "teacher"; and inserted (4) allowing establishment of the County Superintendent's office as a part-time office. Amendment effective March 24, 1993.

Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

1991 Amendment: Inserted (3)(a)(i) through (3)(a)(iii) allowing a county that consolidates the Office of County Superintendent of Schools with another office to contract for full performance of the Superintendent's duties with a person who meets certain qualifications; inserted (3)(b) providing that the contract be for at least 1 school fiscal year; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment — Transition: In (3) substituted requirement that the officeholder shall either possess the qualifications of office or contract for the services of another County Superintendent for "When the office of county superintendent of schools is consolidated with another county office within the county, the requirements of subsection (2) shall be waived. Unless the officeholder has the qualifications of subsection (2), he shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties required of county superintendents in counties where the office has not been consolidated."

Section 2, Ch. 550, provided that the 1985 amendment would be effective in each county in which, prior to October 1, 1985, the office of county superintendent of schools had been consolidated with another office upon:

(1) The beginning of the next term of office after October 1, 1985, of the county officer with which the office of the county superintendent of schools has been consolidated; or

(2) If a contract was entered into under the provisions of this section, as it read prior to the 1985 amendment, and the contract extends into the next term of the officer set forth in subsection (1), then upon the expiration of such contract.

Attorney General's Opinions

County Superintendent Under Contract With Another County — Entitled to Additional Compensation: Unless specifically prohibited by law, a public officer is entitled to additional compensation for the rendition of services beyond those required by the duties associated with his office. Therefore, a qualified County Superintendent who enters into a contractual agreement pursuant to subsection (3) of this section, to provide services in a county lacking a qualified County Superintendent, is entitled to additional compensation. Section 20-3-212 is limited by its terms to instances in which an otherwise qualified County Superintendent is disqualified from hearing or deciding contested matters and has no application to contracts under this section. 43 A.G. Op. 69 (1990).

Former County Superintendent Not to Conduct Hearings: A former County Superintendent of Schools may not be hired by a county to conduct hearings involving disputes of teachers and school boards. 41 A.G. Op. 71 (1986).

Valid Teacher Certificate Required of County Superintendent Candidate: A candidate for County Superintendent of Schools may not assume office unless at the time he assumes office he holds a valid teacher certificate. 41 A.G. Op. 71 (1986).

Deputy County Superintendent — Qualifications: A Deputy County Superintendent of Schools need not possess the qualifications required by statute of a County Superintendent of Schools. 39 A.G. Op. 49 (1982).

Collateral References
Schools and School Districts *key* 48(1), (2).
78 C.J.S. Schools and School Districts §§93, 94.
68 Am. Jur. 2d Schools §§42 through 46.

20-3-202. Term, oath, and vacancy.

Collateral References
Schools and School Districts *key* 48(2), (3).
78 C.J.S. Schools and School Districts §§96, 97.
68 Am. Jur. 2d Schools §§45, 49, 50.

20-3-203. Office costs and staff.

Attorney General's Opinions
Deputy County Superintendent — Qualifications: A Deputy County Superintendent of Schools need not possess the qualifications required by statute of a County Superintendent of Schools. 39 A.G. Op. 49 (1982).

Collateral References
Schools and School Districts *key* 48(5), (6).
78 C.J.S. Schools and School Districts §§98, 99.

20-3-204. Office hours.

Compiler's Comments
1995 Amendment: Chapter 216 in (1), near middle of first sentence, inserted "during the office hours determined by the governing body", after "open" deleted "from 8 a.m. until 5 p.m.", and before "holidays" inserted "legal", in second sentence substituted "during the hours determined by the governing body by resolution after a public hearing and consented to by the county superintendent" for "from 8 a.m. until 5 p.m.", and deleted last sentence that read: "The office must be kept open at all times as business may require"; and made minor changes in style.
1993 Amendment: Chapter 146 in (1), at beginning, inserted exception clause; and made minor changes in style. Amendment effective March 24, 1993.
Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

Collateral References
Counties *key* 89, 90.
20 C.J.S. Counties §§141, 143.

20-3-205. Powers and duties.

Compiler's Comments
2005 Amendments — Composite Section: Chapter 463 deleted former (4) that read: "(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324"; and made minor changes in style. Amendment effective July 1, 2005.
Chapter 510 inserted (2) providing that when a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section and that when two or more districts in more than one county consolidate, the duties must be performed by the county superintendent designated in the same manner as other county officials; and made minor changes in style. Amendment effective July 1, 2005.
Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and
WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and
WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."
2003 Amendment: Chapter 151 in (7) after "transcript" deleted "and reconcile" and after "county" deleted "in accordance with the provisions of 20-6-103"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

2001 Amendments — Composite Section: Chapter 220 near beginning of (17) after "revenue and" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective April 11, 2001.

Chapter 237 in (14) deleted "20-9-335"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

1999 Amendment: Chapter 584 in (17) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 22 in (14), in list of statutory references, deleted "20-9-334" and inserted "20-9-335". Amendment effective July 1, 1997.

1993 Amendments: Chapter 563 in (4), after "tuition", substituted "and transportation obligation" for "application" and at end substituted "20-5-323 and 20-5-324" for "20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312"; and made minor changes in style.

Chapter 633 in (16), before "general fund", deleted "provisions of 20-9-348 and the other". Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (12), after "final", inserted "budgets" and substituted "budget amendments" for "emergency budgets"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: In (14) substituted monthly apportionment for quarterly apportionment; and made minor changes in phraseology. Amendment effective July 1, 1990.

1989 Amendment: In (12), after "tax levies", deleted "give notices of the budget meetings". Amendment effective July 1, 1989.

1981 Amendment: Deleted the reference to "20-9-351" in (14).

Case Notes

Restraining or Enforcing Actions of School Boards by County Superintendent: A County Superintendent may restrain the improper exercise of ministerial powers by school boards by injunction or enforce their proper exercise through mandamus even though he is not a taxpayer within the particular district involved, and he need not, as a private citizen must, show a personal interest in the controversy. State ex rel. Hoagland v. School District, 116 M 294, 151 P2d 168 (1944).

Authority of County Superintendent to Change District Boundaries: There was no authority on the part of the County Superintendent or Board of County Commissioners, under the guise of defining boundaries, to reach out and include in an existing district noncontiguous tracts of land not included therein. The County Superintendent was authorized to make minor changes as necessary to make the boundaries definite and certain but not to change the boundaries of the existing district by attaching lands wherever situated in the county not a part of any school district. State ex rel. Lantz v. Morris, 113 M 187, 126 P2d 1101 (1942).

Collateral References

Schools and School Districts *key* 48(6).

78 C.J.S. Schools and School Districts §99.

68 Am. Jur. 2d Schools §57.

20-3-206. Additional positions.

Compiler's Comments

1997 Amendment: Chapter 219 deleted former (2) that read: "a member of the high school boundary commission of the county, as prescribed by 20-6-304"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-209. Annual report.

Compiler's Comments

2003 Amendment: Chapter 276 inserted (2) requiring that the annual report include the revenue amounts used to establish levy amounts for the county school fund supporting school district transportation schedules and elementary and high school district retirement obligations; and made minor changes in style. Amendment effective April 9, 2003.

Effective Date — Applicability: Section 5, Ch. 276, L. 2003, provided: "[This act] is effective on passage and approval [approved April 9, 2003] and applies to school fiscal years beginning on or after July 1, 2003."

1999 Amendment: Chapter 343 in first sentence of introduction substituted "the second Monday in September" for "September 1"; in (2) substituted "20-9-213(6)" for "20-9-213(5)"; deleted former (3) that read: "(3) the pupil information for each district provided the county superintendent under the provisions of 20-4-402(7)"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 22 in (3), after "provisions of", deleted "20-4-301(1)(d)"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1989 Amendment: Deleted former (2) that read: "(2) When the superintendent of public instruction receives a complete annual report from the county superintendent, he shall immediately issue a receipt for the annual report to such county superintendent. The county superintendent shall present the receipt to the board of county commissioners, and if the county commissioners do not receive the receipt, they shall not pay the county superintendent's salary for the last 2 months of the calendar year until the receipt is presented to them"; and made minor changes in form. Amendment effective July 1, 1989.

20-3-210. Controversy appeals and hearings.

Compiler's Comments

1997 Amendment: Chapter 438 in (1), at beginning, inserted reference to collective bargaining disputes and reference to 20-4-208, inserted second sentence related to qualification required of superintendent who may hear teacher termination matters, in fifth sentence substituted "may appeal to the district court of the county in which the teacher was employed" for "may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title", and inserted sixth sentence establishing deadline for commencement of appeal; deleted former (1)(b) that read: "(b) 20-4-206(4)"; in (4), at beginning, inserted exception clause and inserted last two sentences relating to teacher termination cases and record on appeal; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 563 substituted present (1)(a) regarding approval of out-of-district attendance agreements for former language that read: "20-5-304 or 20-5-311 relating to the approval of tuition applications"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendments: Chapter 252 in (1) inserted second sentence requiring exhaustion of administrative remedies prior to filing a District Court action concerning a decision of the

trustees, except under certain circumstances; and inserted (2) establishing when exhaustion of administrative remedies is not a prerequisite.

Chapter 439 inserted (1)(b) referring to 20-4-206(4).

Applicability: Section 4, Ch. 439, L. 1991, provided: "[This act] does not apply to nontenure teachers who are considered temporary or substitute teachers."

Administrative Rules

Title 10, chapter 6, ARM Rules of procedure for all school controversy contested cases before county superintendents.

Case Notes

County Superintendent Review De Novo — Consideration of Other Evidence Allowed: Phillips, a tenured teacher in English and art in the Madison School District, was terminated by the trustees upon recommendation of the District Superintendent. Phillips appealed the decision to the County Superintendent and introduced evidence that the termination was based upon a personality conflict with the District Superintendent. Phillips also introduced financial evidence that the district's reserve held enough money to maintain her employment. The State Superintendent held that the financial information was improperly considered. The Supreme Court held that because the hearing before the County Superintendent was a de novo hearing, the County Superintendent could consider any relevant evidence. The Supreme Court affirmed the District Court's findings. Phillips v. Madison School District No. 7, 263 M 336, 867 P2d 1104, 51 St. Rep. 29 (1994).

Concurrent Proceedings Not Precluded: A terminated teacher filed an appeal pursuant to this section. The teacher's union filed a grievance, alleging that the termination was a violation of the collective bargaining agreement. The school superintendent refused to process the grievance pending the teacher's statutory appeal. When the teacher dismissed the statutory appeal, the union filed an action to compel arbitration of the grievance pursuant to the Uniform Arbitration Act and the collective bargaining agreement. On appeal, the Supreme Court held that nothing in the teacher's collective bargaining agreement or in the election of remedies law precludes concurrent proceedings on the termination. Frazer Educ. Ass'n v. Valley County School District No. 2, 256 M 223, 846 P2d 267, 50 St. Rep. 41 (1993).

Estoppel Barring Issue of Teacher and Union Pursuing Separate Claims in Separate Forums: A terminated tenured union teacher filed an appeal under this section at the same time the teacher's union filed a grievance alleging violation of the collective bargaining agreement. Unsatisfied with results at prior steps of the grievance procedure, the union requested arbitration, to which the school district refused to submit. Instead, the school district petitioned for an injunction to compel the union and the teacher to elect one forum in which to pursue their legal claims. The District Court denied the injunction, allowing both forums to proceed, and the school district did not appeal. Because these circumstances fulfilled the elements of the doctrine of collateral estoppel, namely that the issue had been decided in a prior adjudication, a final judgment was issued. Because the party against whom the plea was asserted was a party in the prior adjudication, the school district was estopped from further litigation on the issue of separate forums. Colstrip Faculty Ass'n, MEA/NEA v. Trustees, School District No. 19, 251 M 309, 824 P2d 1008, 49 St. Rep. 43 (1992).

Breach of Contract Disputes to Be Handled Administratively: The plaintiff brought an action in District Court alleging breach of the collective bargaining agreement. The Supreme Court ruled that the issue had to be submitted for administrative review before it could be filed in the lower court. The court overruled its holding in McBride v. School District No. 1, 88 M 110, 290 P 252 (1930). Canyon Creek Educ. Ass'n v. Bd. of Trustees, 241 M 73, 785 P2d 201, 47 St. Rep. 93 (1990).

Consideration of Written and Videotaped Testimony at De Novo Hearing: A dismissed teacher claimed he was wrongfully deprived of his right to a de novo hearing because the County Superintendent considered transcripts and videotaped testimony taken during the school board hearing. However, the testimony was admissible under 20-4-612(2) because it expedited disposition of the issue without substantial prejudice to the teacher. Johnson v. Bd. of Trustees, 236 M 532, 771 P2d 137, 46 St. Rep. 598 (1989).

Seeking of Money Judgment Not Dispositive of Agency Jurisdiction: A County Superintendent of Schools improperly dismissed a district board of trustees' decision denying a claim for retirement benefits by a contract administrator after determining that a Superintendent did not have jurisdiction because it was a claim for breach of contract and not a controversy intended to be heard under this section. The Supreme Court remanded, holding that the seeking of a money judgment was not the dispositive factor in determining the educational

agency's jurisdiction over a matter and that this section fully contemplated a hearing on the controversy. Throssell v. Bd. of Trustees, 232 M 497, 757 P2d 348, 45 St. Rep. 1228 (1988).

Nonrenewal of Tenured Teacher's Contract — Scope of Review: A tenured teacher's contract was not renewed. A hearing was held by the board of trustees, which affirmed its decision not to renew the contract. The teacher appealed to the County Superintendent where he was given a trial de novo with witnesses and record evidence. The teacher then appealed to the State Superintendent based upon the record, and the State Superintendent upheld the decision. The teacher appealed to District Court based upon the record. The District Court reversed the administrative decision, and an appeal to the Supreme Court was made upon the record. The Supreme Court reversed the District Court, saying that the procedure to be used in this instance was identical to that for any other District Court decision involving an administrative decision. The District Court was not a trier of fact. The Supreme Court should not substitute its judgment for that of the County Superintendent as to the weight of the evidence on questions of fact. The Supreme Court may reverse or modify if the substantial rights of the appellant have been prejudiced because the administrative findings and conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982), followed in Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Constitutionality: This section violated neither Art. VII, sec. 4(2), nor Art. X, sec. 8, Mont. Const. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Attorney General's Opinions

Disqualification Peremptory — County Superintendent's Control of Timeliness: The affidavit of disqualification of a County School Superintendent in a school controversy is peremptory. Requirements regarding timeliness and sufficiency of the affidavit under the Montana Administrative Procedure Act do not apply to proceedings conducted by the County Superintendent of Schools under Title 20; however, the timeliness of the affidavit may be controlled by the officer presiding over the hearing. 42 A.G. Op. 86 (1988).

Former County Superintendent Not to Conduct Hearings: A former County Superintendent of Schools may not be hired by a county to conduct hearings involving disputes of teachers and school boards. 41 A.G. Op. 71 (1986).

Transcript Not Waivable: The parties to a controversy before a county school transportation committee may not waive the making of a transcript in the absence of rules providing for appeal without a transcript promulgated by the Superintendent of Public Instruction as a transcript, although not necessarily a verbatim stenographic report, is required by 20-3-107 and 20-10-132 on an appeal to the Superintendent from a decision of a county school transportation committee. 35 A.G. Op. 53 (1973).

"Hearing" Synonymous With "Trial": An appeal before the County Superintendent of Schools is an original proceeding and de novo consideration of a controversy and not merely a review of a decision by a school board. 35 A.G. Op. 42 (1973).

20-3-211. Disqualification of county superintendent.

Compiler's Comments

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (4) at end the code commissioner changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1991 Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

1987 Amendment: Inserted (4) relating to a handicapped child.

Attorney General's Opinions

Disqualification Peremptory — County Superintendent's Control of Timeliness: The affidavit of disqualification of a County School Superintendent in a school controversy is peremptory. Requirements regarding timeliness and sufficiency of the affidavit under the Montana Administrative Procedure Act do not apply to proceedings conducted by the County Superintendent of Schools under Title 20; however, the timeliness of the affidavit may be controlled by the officer presiding over the hearing. 42 A.G. Op. 86 (1988).

20-3-212. The county superintendent to appoint another county superintendent.

Attorney General's Opinions

County Superintendent Under Contract With Another County — Entitled to Additional Compensation: Unless specifically prohibited by law, a public officer is entitled to additional compensation for the rendition of services beyond those required by the duties associated with his office. Therefore, a qualified County Superintendent who enters into a contractual agreement pursuant to 20-3-201(3), to provide services in a county lacking a qualified County Superintendent, is entitled to additional compensation. This section is limited by its terms to instances in which an otherwise qualified County Superintendent is disqualified from hearing or deciding contested matters and has no application to contracts under 20-3-201. 43 A.G. Op. 69 (1990).

20-3-213. Part-time office — establishment — restrictions.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

Part 3
School District Trustees

Part Compiler's Comments

Student Representation on Board of Trustees: HJR 26 of the 49th Legislature provided: "WHEREAS, the Legislature and the Montana education community recognize that the most valuable resource for achieving "excellence in education" in Montana is the student; and

WHEREAS, student representation on local school boards has never been implemented on a statewide basis, although the Board of Public Education and the Board of Regents currently have active student members on their respective boards; and

WHEREAS, the educational process dominates a large part of the life of a school-age person, and as a citizen, that person should be allowed representation in the major decisions governing the educational process; and

WHEREAS, when students feel that they have influence over their environment and that their opinions are respected, the result is an atmosphere of greater trust, civility, and mutual respect; and

WHEREAS, through involvement in the decisionmaking process of a school district, the student is not only contributing valuable input not otherwise available, but is also receiving first-hand knowledge of the governmental process and the educational process; and

WHEREAS, students are deeply concerned about the education they are receiving and wish to present their views on educational reform.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature stands strongly in favor of student representation on each school district board of trustees.

(2) That the Legislature urges each school district board of trustees in the state to appoint a nonvoting student member to the board to represent the student body of the school district.

(3) That the executive secretary of the Board of Public Education, the executive secretary of the Montana Association of Student Councils, and a member of the Office of Public Instruction meet and confer to define the role of the student member by using as a guideline the existing policy set by the Board of Public Education regarding student representation.

(4) That copies of this resolution be sent by the Secretary of State to:

(a) each local school board chairman in the State of Montana;

(b) each accredited public high school in the State of Montana; and

(c) the Montana Congressional Delegation."

Part Attorney General's Opinions

Office of County Commissioner Incompatible With Office of School Trustee: The current nature and duties of the offices of County Commissioner and county high school trustee could give rise to possible conflicts of governmental interest if one person were to retain both offices simultaneously. The Attorney General affirmed the decision in 8 A.G. Op. at 402 (1920), holding that the offices are incompatible in light of the fact that under state law a County Commissioner has certain supervisory powers over a school trustee. However, nothing in state law prohibits an individual from holding one of these offices while seeking the other. 42 A.G. Op. 94 (1988).

Part Law Review Articles

Educational Malpractice—Does the Cause of Action Exist?, Magone, 49 Mont. L. Rev. 140 (1988).

Educational Malpractice: A Lesson in Professional Accountability, Jamieson, 32 B.C.L. Rev. 899 (1991).

Part Collateral References

Right of one governmental subdivision to sue another such subdivision for damages. 11 ALR 5th 630.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher. 60 ALR 4th 260.

20-3-301. Election and term of office.

Case Notes

Constitutionality of Designation of Trustees: Section designating trustees of districts established under act relating to participation in public works programs by high school districts was not a denial of due process for failure to provide for election of trustees. Unless the state constitution provides otherwise, the Legislature may provide for the choosing of the board of trustees of a school district as it sees fit. Lorang v. High School District, 126 M 204, 247 P2d 477 (1952).

Attorney General's Opinions

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

Collateral References

Schools and School Districts *key* 52, 53.

78 C.J.S. Schools and School Districts §§105, 108, 114.

68 Am. Jur. 2d Schools §§43, 44.

20-3-302. Legislative intent to elect less than majority of trustees.

Compiler's Comments

2005 Amendment: Chapter 510 in (2)(a) at beginning after "consolidation" inserted "under the provisions of 20-6-423", after "elementary district" deleted "under the provisions of 20-6-203 or the consolidation", and at end after "high school district" substituted "or of two or more K-12 districts to form a K-12 district" for "under the provisions of 20-6-315"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 219 in (1), at beginning of fourth sentence, deleted "high school districts operating a" and after "county high school" inserted "districts"; in (2) deleted former (a) that read: "the creation of a new elementary district under the provisions of 20-6-217"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1993 Amendment: Chapter 137 in (2) substituted introductory clause concerning newly created trustee positions for former language that read: "While it is the intention of the legislature that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation, or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time"; in (2)(b), after "20-6-203", inserted "or

the consolidation of two or more high school districts to form a high school district under the provisions of 20-6-315"; in (2)(d) substituted "or" for "and"; deleted former (2)(e) that read: "(e) the filling of a trustee position that has become vacant under the provisions of 20-3-308 or any other provision of law"; substituted (2)(f) concerning establishment of additional positions under 20-6-313 for former subsection that read: "(g) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election"; inserted (3) requiring the elimination of positions to comply with subsection (1); inserted (4) clarifying legislative intent; and made minor changes in style.

1991 Amendment: At end of (2)(c), after "20-3-354", inserted "or new trustee positions under the provisions of 20-3-352(3)"; and made minor changes in style.

Case Notes

Conflicting Provisions: Section 1001, Revised Codes of 1921 (now repealed), apparently in conflict with section 998, Revised Codes of 1921 (now repealed), providing for appointment of trustee to fill vacancy, was intended to adjust the terms of school trustees so that the terms of a majority thereof should not expire at the same time, after which it had no further application to such district. State ex rel. Kuhl v. Kaiser, 95 M 550, 27 P2d 1113 (1933).

Ballot for Transitional Election Held Misleading: In a school district of the third class, the members of the board of trustees had been holding over for many years for failure to hold elections to choose their successors. An election was called, and the board, instead of pursuing the method of procedure under such circumstances prescribed by this section, i.e., selecting by lot one of its members to hold over for 1 year and one for 2 years and providing for the election of the third for the term of 3 years, furnished ballots providing for the election of three trustees for terms of 1, 2, and 3 years, respectively. Since there was only one trustee to be elected, the ballots furnished were so misleading as to render the election void. Jersey v. Peacock, 70 M 46, 223 P 903 (1924), distinguished in State ex rel. Kuhl v. Kaiser, 95 M 550, 27 P2d 1113 (1933).

20-3-303. Term of vacated trustee position after election.

Case Notes

Writ of Mandate Properly Issued to Compel Certification of Elected Trustees: Under this section, a school trustee appointed to fill a vacancy shall hold office only until the next annual school election at which a trustee shall be elected for the unexpired term. Two of three trustees for a district of the third class elected for 3-year terms expiring in 1934 and 1935 resigned. The board of trustees declined to call an election in the spring of 1933 to choose successors to the appointees on the theory that they held over for the respective terms. However, by the use of stickers, successors were elected at such election. The District Court properly granted a Writ of Mandate compelling the board of trustees to issue certificates of election to the persons elected to succeed the appointees. State ex rel. Kuhl v. Kaiser, 95 M 550, 27 P2d 1113 (1933).

Collateral References

Schools and School Districts *key* 53(4).
78 C.J.S. Schools and School Districts §117.
68 Am. Jur. 2d Schools §§45, 50.

20-3-304. Annual election.

Compiler's Comments

1999 Amendment: Chapter 514 substituted "first Tuesday after the first Monday of May" for "first Tuesday of April"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

Transition: Section 404, Ch. 571, L. 1979, was a transition section, the text of which may be found in the compiler's comment to 13-1-104.

Collateral References

Elections *key* 38.
29 C.J.S. Elections §§142, 143.
68 Am. Jur. 2d Schools §§43, 44.

20-3-305. Candidate qualification and nomination.

Compiler's Comments

1999 Purported Amendment: Although sec. 3, Ch. 514, L. 1999, purported to amend this section, the final version of the text remained unamended except for minor style changes.

1987 Amendments: Chapter 372 in (2) increased time for submission of a nomination from 20 days to 40 days.

Chapter 539 in (1) and (2), at beginning, inserted exception clause referencing 20-3-338.

Attorney General's Opinions

Voter Registration Required of Elector Nominating School Trustee: An elector nominating a candidate for a school trustee position under subsection (2) of this section must be registered to vote at the time the nominating petition is filed. 43 A.G. Op. 24 (1989).

Office of County Commissioner Incompatible With Office of School Trustee: The current nature and duties of the offices of County Commissioner and county high school trustee could give rise to possible conflicts of governmental interest if one person were to retain both offices simultaneously. The Attorney General affirmed the decision in 8 A.G. Op. at 402 (1920), holding that the offices are incompatible in light of the fact that under state law a County Commissioner has certain supervisory powers over a school trustee. However, nothing in state law prohibits an individual from holding one of these offices while seeking the other. 42 A.G. Op. 94 (1988).

Eligibility as Trustee — Registered Voter: A person must be registered to vote in the school district to be eligible for the office of school trustee. "Eligibility", as used in 20-3-305, refers to the qualifications required of a school trustee to hold the office, not the qualifications to be elected. 37 A.G. Op. 145 (1978). See also 35 A.G. Op. 91 (1974).

Collateral References

Schools and School Districts *key* 53(2).

78 C.J.S. Schools and School Districts §106.

68 Am. Jur. 2d Schools §46.

20-3-306. Conduct of election.

Compiler's Comments

1999 Amendment: Chapter 132 in (1) inserted reference to 20-3-313; and made minor changes in style. Amendment effective March 23, 1999.

Case Notes

Sticker With Premarked "X" Not a Legal Marked Ballot: District Court erred in finding ballots valid where electors marked ballot with a printed sticker containing name of write-in candidate and premarked "x", without elector marking an "x" before the name of the printed sticker, as the statute calls for the voter to make his mark. An affirmative act is called for to signify his selection, not a premarked ballot mark of a printer. The provisions of Montana's election laws as to the marking of the ballot and use of stickers are mandatory and not directory. State ex rel. Browne v. District Court, 167 M 477, 539 P2d 1182 (1975).

Attorney General's Opinions

Marking of Ballot by Elector: The ballot of a qualified elector who writes in a name on the ballot but neglects to mark an "X" before that name must not be counted toward the election of the person whose name is written in. An elector may write in the blank spaces of a ballot the name of any person for whom he wishes to vote, but he only votes for that person by actually marking the square before that person's name. A mark other than an "X" within the square before a candidate's name, or an election issue, may be used to express an elector's choice on an election ballot if his intention is clear to the election officers. 35 A.G. Op. 87 (1974).

Collateral References

Elections *key* 34, 60, 172.

29 C.J.S. Elections §§28, 29, 132 through 135, 273.

25 Am. Jur. 2d Elections §57, et seq.; 26 Am. Jur. 2d Elections §§184, 212.

20-3-307. Qualification and oath.

Compiler's Comments

1999 Amendment: Chapter 132 in (1) in first sentence inserted reference to 20-3-313; and made minor changes in style. Amendment effective March 23, 1999.

Collateral References

Schools and School Districts *key* 53(2).

78 C.J.S. Schools and School Districts §111.

20-3-308. Vacancy of trustee position.

Attorney General's Opinions

Tie Vote — Special Election Required: When an election for school trustee results in a tie vote, the school district board of trustees should conduct a special school election to fill the trustee position. 35 A.G. Op. 81 (1974).

Collateral References

Schools and School Districts *key* 53(4).
78 C.J.S. Schools and School Districts §117.
68 Am. Jur. 2d Schools §§45, 50.

20-3-310. Trustee removal.

Collateral References

Schools and School Districts *key* 53(5).
78 C.J.S. Schools and School Districts §116.
68 Am. Jur. 2d Schools §§45, 50.

20-3-312. Trustees of district affected by boundary change.

Compiler's Comments

2005 Amendment: Chapter 510 in first sentence near beginning after "abandonment" deleted "joint district dissolution" and in second sentence at and substituted "20-6-423" for "20-6-203"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 219 in first sentence, after "elementary districts", and in second sentence, after "district consolidation", deleted references to creation of new elementary district; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-313. Election by acclamation — notice.

Compiler's Comments

2001 Amendment: Chapter 15 in middle of second sentence of (1) increased notice period from 14 days to 25 days. Amendment effective February 14, 2001.

Effective Date: Section 6, Ch. 132, L. 1999, provided that this section is effective on passage and approval. Approved March 23, 1999.

20-3-321. Organization and officers.

Compiler's Comments

1999 Amendment: Chapter 514 at end of first sentence in (1) substituted "third Saturday of May" for "third Saturday of April"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

20-3-322. Meetings and quorum.

Compiler's Comments

2005 Amendment: Chapter 438 in (2) in second sentence inserted "upon the unanimous vote of the trustees" and substituted "accessible" for "owned". Amendment effective October 1, 2005.

2003 Amendment: Chapter 86 at end of (1)(d) substituted "at least quarterly" for "during the months of April, August, October, and January". Amendment effective July 1, 2003.

1999 Amendment: Chapter 467 in (1)(d) substituted "August" for "July". Amendment effective April 26, 1999.

1997 Amendment: Chapter 211 in (1)(b), at beginning, substituted "final budget" for "preliminary budget" and at end substituted "20-9-131" for "20-9-113"; and made minor changes in style. Amendment effective April 7, 1997.

1993 Amendment: Chapter 50 in (2), near end of second sentence, substituted "in a publicly owned building located within the district" for "on other property belonging to the district"; and made minor changes in style. Amendment effective February 18, 1993.

1991 Amendment: In (2), at beginning of second sentence, inserted exception clause; at end of (3) inserted exception clause; inserted (5) defining unforeseen emergency; and made minor changes in style. Amendment effective March 25, 1991.

Case Notes

Open Meeting Law Applied — Collective Bargaining Exception Construed: Plaintiff was negotiating his salary with the school board. The board closed its meeting to discuss plaintiff's salary request. Plaintiff contacted counsel and began proceedings against the board for violating the open meeting law. The board met at another closed meeting and withdrew its offer of employment. The board contended it closed the meetings to discuss collective bargaining strategy under 2-3-203(3). In construing the term "collective bargaining", the court relied on the identical technical and legal definitions of the phrase. Collective bargaining is an activity involving the settling of disputes by negotiation between the employer and the representative of the employees. The board improperly closed the meetings since plaintiff was not acting on behalf of anyone else and the board's decision would not affect anyone else. Plaintiff had the right to be present at deliberations regarding his future. Jarussi v. Bd. of Trustees, 204 M 131, 664 P2d 316, 40 St. Rep. 720 (1983). The collective bargaining exception was declared unconstitutional in Great Falls Tribune Co., Inc. v. Great Falls Public Schools, 255 M 125, 841 P2d 502 (1992). See 1993 amendment to 2-3-203.

Special Meeting — Publication Not Mandated Under Open Meeting Law: At their regular meeting on March 10, 1981, the trustees announced that they had until April 1 to issue tenure contracts but that they had not yet made their final decisions. On March 12, the chairman contacted the clerk to tell her there would be a special meeting at 9 a.m. on March 14. The clerk contacted the local radio stations, which announced the meeting. The Board met and went into executive session. When plaintiff's contract was not renewed, she claimed the Board had violated the notice provisions of the open meeting law. The court held that the Montana open meeting law does not specifically mandate notice by publication. Publication is a method of proving notice. The obligation of the Montana open meeting law is to ensure that the public has ample opportunity to participate in decisions before final action is taken. The evidence in this case indicated that the opportunity was given. Sonstelie v. Bd. of Trustees, 202 M 414, 658 P2d 413, 40 St. Rep. 179 (1983).

Unlawful Rescission of Contract: The school board did not succeed in its attempt to rescind a consulting contract entered into with a retiring administrator because there was no regularly scheduled or special meeting held to discharge him. School District v. Driscoll, 173 M 492, 568 P2d 149 (1977).

Amendment of Letter of Dismissal: A letter amending a letter of dismissal need not be transacted at a meeting of the trustees but may instead be ratified and adopted at a meeting. Lindgren v. Bd. of Trustees, 171 M 360, 558 P2d 468 (1976).

Failure to Meet — Teacher's Discharge Unlawful: Where no meeting of the school board, either special or regular, was held prior to summary discharge of schoolteacher on ground of incompetency, board's dismissal was void for want of jurisdiction. Wyatt v. School District, 148 M 83, 417 P2d 221, 22 ALR 3d 1039 (1966).

Dismissal of Teacher Based Upon Informal Meeting Held Unlawful: The notice of dismissal which must be given a tenured teacher is one based upon action by a majority of the board of trustees taken at a meeting thereof. Hence, where two of the three members of the board decided in casual conversations at their homes to dispense with the services of the teacher and notified her to that effect in writing, the notice was not the legal notice required and was insufficient to effect her dismissal. To give validity to the business of the board it must be transacted at a regular or special meeting, and the trustees must then act as a board. Day v. School District, 98 M 207, 38 P2d 595 (1934).

Attorney General's Opinions

Right to Know Salaries: The salaries of teachers and administrators of a public school district are subject to inspection by the public. 36 A.G. Op. 28 (1975).

Collateral References

Schools and School Districts *key* 57.

78 C.J.S. Schools and School Districts §123.
68 Am. Jur. 2d Schools §53, et seq.
Necessity, sufficiency, and effect of minutes or record of meeting of school board. 12 ALR 235.

20-3-323. District policy and record of acts.

Case Notes

No School District Immunity for Entering Exclusive Commercial Contract for Sale of Products in School Facilities: The Great Falls school district adopted policies to enhance revenue from nontax sources and subsequently entered exclusive agreements with Coke and Pepsi to provide soft drinks in school facilities in exchange for $500,000 over a 10-year period. Plaintiff, which had supplied soft drinks to the district for almost 20 years, sued the school district, Coke, and Pepsi. The school district claimed immunity from suit pursuant to 2-9-111, asserting that adopting exclusive contracts constituted legislative actions resulting in the adoption of school board policies under this section. The Supreme Court agreed that 2-9-111 insulated the school district from legal challenge for its decision to enhance revenue from nontax sources by way of commercial engagements because the adoption of policies is a legislative act. However, administrative acts undertaken in the execution of the policies are not immunized under 2-9-111, so the school district was not immune from suit for entering the exclusive contracts. Mont. Vending, Inc. v. Coca-Cola Bottling Co. of Mont., 2003 MT 282, 318 M 1, 78 P3d 499 (2003).

General Powers — Prescription of Books for District: Where the Legislature failed to make provision for a uniform series of textbooks throughout the state or to devolve the duty of doing so upon some officer or board, the trustees of a school district, under the general powers vested in them, and particularly the statutory power of the board "to prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction, for their own government of schools under their supervision", could prescribe books for the schools of the district. Campana v. Calderhead, 17 M 548, 44 P 83 (1896).

Attorney General's Opinions

Right to Know Salaries: The salaries of teachers and administrators of a public school district are subject to inspection by the public. 36 A.G. Op. 28 (1975).

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

Collateral References

Schools and School Districts *key* 55, 58.
78 C.J.S. Schools and School Districts §119, et seq.
68 Am. Jur. 2d Schools §57.

20-3-324. Powers and duties.

Compiler's Comments

2005 Amendment: Chapter 138 inserted (17) requiring trustees to set length of school term, school day, and school week; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

2003 Amendments — Composite Section: Chapter 21 inserted (27) allowing the district trustees to approve or disapprove the conduct of school on a Saturday in accordance with 20-1-303; and made minor changes in style. Amendment effective February 13, 2003.

Chapter 340 inserted (28) authorizing establishment of student financial institution; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 7, Ch. 340, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to a school financial institution opened on or after July 1, 2003."

2001 Amendments — Composite Section: Chapter 133 in (17) substituted "K-12 career and vocational/technical education" for "K-12 vocational education". Amendment effective July 1, 2001.

Chapter 377 inserted (26) authorizing interlocal agreements with postsecondary institutions for classes for 11th and 12th graders; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

Section 5, Ch. 377, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to interlocal agreements entered into on or after July 1, 2001."

1999 Amendment: Chapter 584 in (10) inserted reference to 15-10-420. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 22 in (13), near middle after "miscellaneous", deleted "federal" and after "cooperative agreement fund" inserted "and other funds as authorized by the state superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 311 inserted (25) providing: "upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education"; and made minor changes in style.

1993 Amendments: Chapter 402 in (22), after "weather", inserted "on school days"; inserted (23) requiring an American flag provided by a civic group to be displayed in each classroom except a room in which the flag may get soiled; and made minor changes in style.

Chapter 633 in (10), after "ANB", substituted "BASE budget levy, over-BASE budget levy" for "foundation program, permissive"; in (13), near end, inserted "impact aid fund"; and made minor changes in style. Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 402, L. 1993, provided: "WHEREAS, the Board of Public Education, on January 26, 1989, passed and approved a resolution encouraging teachers to begin the school day with the Pledge of Allegiance; and

WHEREAS, the Board of Public Education stated in the resolution that it believes that Montana schools should increase their efforts to educate students in the American values of patriotism and love of country; and

WHEREAS, this Legislature supports the resolution of the Board of Public Education and recognizes that an American flag needs to be displayed in each classroom in order for students to give the Pledge of Allegiance; and

WHEREAS, veteran groups in Montana have demonstrated a willingness to donate flags to any school requesting flags."

1991 Amendment: In (8) substituted reference to budget amendment for reference to emergency budget; in (10), after "program", inserted "permissive" and before "reserve" substituted "operating" for "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: In (10) deleted reference to permissive levy. Amendment effective July 1, 1990.

1989 Amendment: Inserted (23) relating to assessment for placement of child from nonpublic, nonaccredited schools; and made minor changes in grammar, style, and phraseology.

1987 Amendments: Chapter 135 in (13) changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

Chapter 145 at end of (21) inserted exception clause.

1981 Amendment: Substituted "Title 20, chapter 4" for "the school personnel part of this title" at the end of (1).

Case Notes

No School District Immunity for Entering Exclusive Commercial Contract for Sale of Products in School Facilities: The Great Falls school district adopted policies to enhance revenue from

nontax sources and subsequently entered exclusive agreements with Coke and Pepsi to provide soft drinks in school facilities in exchange for $500,000 over a 10-year period. Plaintiff, which had supplied soft drinks to the district for almost 20 years, sued the school district, Coke, and Pepsi. The school district claimed immunity from suit pursuant to 2-9-111, asserting that adopting exclusive contracts constituted legislative actions resulting in the adoption of school board policies under 20-3-323. The Supreme Court agreed that 2-9-111 insulated the school district from legal challenge for its decision to enhance revenue from nontax sources by way of commercial engagements because the adoption of policies is a legislative act. However, administrative acts undertaken in the execution of the policies are not immunized under 2-9-111, so the school district was not immune from suit for entering the exclusive contracts. Mont. Vending, Inc. v. Coca-Cola Bottling Co. of Mont., 2003 MT 282, 318 M 1, 78 P3d 499 (2003).

Dissemination of Incomplete Document Used to Make Decision — Right to Participate Entails Complying With Right to Know: A school district assembled a group of people to research and advise the district on the closure of schools, and a member of the group summarized the closure research information on a computer-generated spreadsheet and delivered various versions of the spreadsheet to various people and groups. The version given the school district contained a system rating the schools and explaining the rating system, but the group of parents that plaintiff belonged to was given a version not containing the rating system when a member of the group requested a copy. The school district told the group that a spreadsheet comparing the schools did not exist. The spreadsheet was a document of a public body subject to public inspection prior to the time that the school district's board met and used the spreadsheet to help determine which schools to close. The school district violated plaintiff's right to examine public documents. At a minimum, the "reasonable opportunity" standard articulated in Art. II, sec. 8, Mont. Const., and 2-3-111 for the right to participate demands compliance with the right to know contained in Art. II, sec. 9, Mont. Const. When the school district violated plaintiff's right to know, it reduced what should have been a genuine interchange into a mere formality. Bryan could and did voice her opinion to the school district, but did so without the ratings information contained on the version of the spreadsheet used by the school district. Therefore, the school district also violated her Art. II, sec. 8, Mont. Const., right of participation. The Supreme Court stated that this violation tainted the entire process from start to finish and ruled that the school district's closure decision was void. The court stated that on remand, the school district should allow plaintiff an opportunity to rebut the closure decision and should then reexamine the decision and affirm or modify it. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

School District Advisory Group as Public or Governmental Body: A school district assembled a group of people to research and advise the district on the closure of schools. The Legislature has given a school district the power to close schools. Therefore, the advisory group assumed the identity of the district with respect to the closure question and performed a legislatively designated governmental function that served a clear public and governmental purpose, and the advisory group was a public or governmental body subject to Art. II, sec. 9, Mont. Const. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

Standing of Parent Who Did Not Request Information on Proposed School Closure but Belonged to Group Another Member of Which Did: School district parents, including Bryan, worked in concert to rebut a school closure recommendation, delegating duties among themselves. Schroeder, but not Bryan, requested information from the school authorities, which was not received. Bryan sued as a result of the school closure. That Bryan did not personally request the information did not prevent her from having standing to claim a violation of Art. II, sec. 9, Mont. Const. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

Voluntary Membership in High School Athletic Association Not Unconstitutional Delegation of Trustee Authority: A Livingston high school student, after being informed by the Montana High School Association (MHSA) that he could not participate in basketball because of the MHSA's rule limiting student participation in MHSA events to eight consecutive semesters, filed an action alleging that the board of trustees' consent to be bound by the MHSA rules violated Art. X, sec. 8, Mont. Const., which vests school board trustees with power to supervise and control schools in their district. The Supreme Court held that the MHSA is merely acting as a neutral arbiter to fill the breach caused by the nonexistence of legislative authority and that becoming a member of the MHSA is not an unconstitutional delegation of the district's authority because membership is voluntary. The court noted that although a district's decision to withdraw from membership in the MHSA would undoubtedly cause the district to have a difficult time in finding

other schools against which to compete, membership remains voluntary, and by participating, each district is electing to make the rules of the MHSA its own. Grabow v. Mont. High School Ass'n, 2002 MT 242, 312 M 92, 59 P3d 14 (2002).

Wrongful Firing of Tenured Teacher as Violation of Rights — Not Breach of Contract: The school district fired a tenured teacher on the grounds of incompetence. Subsequently, the Supreme Court ruled that the firing was not legal and the district entered into a money settlement with the teacher. The district's insurer refused to cover the settlement on the basis that the policy contained an exclusion for damages due to breaches of contract. The Supreme Court ruled that coverage under the policy was based upon the act giving rise to the claim and not the language of the complaint. The court held that tenure was a right, that the wrongful discharge was negligence, that the fact that the statute required damages based on contracted salary did not change the fact that the district's negligent conduct was not a breach of contract, and that therefore the wrongful discharge was covered under the policy. Missoula County School District No. 1 v. Pac. Employer's Ins. Co., 263 M 121, 866 P2d 1118, 50 St. Rep. 1741 (1993).

Spending Disparities Not Allowed: Article X, sec. 8, Mont. Const., does not require that spending disparities between the school districts of the state be allowed to exist because the disparities cannot be described as the result of local control. School District v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Resignation of Tenured Teacher — Formal Board Acceptance Not Required: A tenured teacher was charged with misdemeanor theft and pleaded guilty. The Board of Education of District No. 1 voted to authorize the Superintendent of Schools to request the teacher's immediate resignation and grant 30 days' severance pay. The same day the teacher signed a letter of immediate resignation. The guilty plea was later withdrawn, the theft case was dismissed, and the teacher sought to withdraw her resignation. Withdrawal was denied by the Board, County and State Superintendents of Schools, and the District Court. The Supreme Court affirmed, holding that the Board did not need to formally accept a resignation which it had already decided to request and that it was not a delegation of authority for the Board to make a decision and direct an employee to carry an offer to a teacher. The resignation was effective and the district's contractual obligation was satisfied upon the teacher's acceptance of the severance pay. Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Arbitrator's Award Granting Reinstatement to Teachers Upheld: The Supreme Court rejected school district's contention that the arbitrator of a teacher termination case exceeded his authority by determining that the remedy for firing, in violation of union contract procedures, was to offer full reinstatement, which would thereby confer tenured status to the teachers. The school district, contrary to its assertion, had the statutory and constitutional authority to enter into collective bargaining agreements, and the provisions at issue were proper subjects of bargaining. The trustees, having entered into the agreement in good faith, were bound by it. When parties agree to binding arbitration, the role of a court in reviewing the arbitrator's findings is a narrow one. Savage Educ. Ass'n v. Trustees, 214 M 289, 692 P2d 1237, 41 St. Rep. 2479 (1984).

Reassignment From Administrator to Teacher Within Financial Management Power of School Board — Tenure Laws Not Violated: Sorlie was an elementary teacher for 20 years prior to assuming an administrative position. In 1980, because a mill levy failed, the school board eliminated Sorlie's position and offered her a job as an elementary schoolteacher. Sorlie argued that she was demoted in violation of Montana's tenure laws. The Supreme Court found the two positions to be comparable positions for purpose of tenure although they are functionally dissimilar. The court concluded that the reassignment, without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws. Sorlie was removed from her administrative position pursuant to the board's power to financially manage the school district, and this action was in accordance with 39-31-303. Sorlie v. School District, 205 M 22, 667 P2d 400, 40 St. Rep. 1070 (1983).

Power of School District Trustees to Terminate Tenured Teachers: A tenured teacher was not offered a new contract because he cohabited with a female teacher, discussed abortion, and displayed fetuses in the classroom. The decision of the board of trustees not to rehire was upheld by the County Superintendent and the State Superintendent. The District Court overturned the decision, and an appeal was taken to the Supreme Court. The Supreme Court found that a board of trustees has wide discretion. The Supreme Court said that trustees have the power and duty to both employ a teacher and terminate him under the appropriate circumstances. In doing this the rights of the teacher must also be kept in mind. The tenure of a teacher is clearly both a valuable and substantial right that cannot be taken away except for good cause. In addition, the conduct of a teacher, including a characterization of immorality, must be such as to directly affect the

performance by the teacher of his duties as a teacher. Good cause was found in this instance. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Photographing Students — Contracts: The school board's jurisdiction clearly covers the photographing of students on school grounds during school hours. Knox v. School District, 171 M 521, 559 P2d 1179, 34 St. Rep. 11 (1977).

Athletics — Regulation of Married Student Unauthorized and Unconstitutional: Where a married high school student had been held ineligible for varsity athletics on the basis of a school district policy prohibiting participation by married students, a temporary injunction was issued to prevent the school district from enforcing the policy, which was not authorized by statute and was also discriminatory as a violation of the student's right to equal protection of the law. Moran v. School District, 350 F. Supp. 1180 (D.C. Mont. 1972), distinguished in State ex rel. Bartmess v. Bd. of Trustees, 223 M 269, 726 P2d 801, 43 St. Rep. 1713 (1986).

Athletic Training and Facilities: Since the board of trustees had provided for athletic training under provision of 1921 Revised Codes (now repealed) authorizing additions to prescribed courses of study, outdoor gymnasium and athletic field were a necessary part of school plant, and bond issue therefor would not be enjoined. McNair v. School District, 87 M 423, 288 P 188, 69 ALR 866 (1930).

Trustees Not Electors to Select Building Site: Under predecessor to subsection (15) of this section, the selection and purchase of a site for a school building in districts of the first and second classes were not entrusted to the electors of the districts but lodged in the trustees under directions of the electors. Nichols v. School District, 87 M 181, 287 P 624 (1930).

Mandamus to Force Location of Schoolhouse: Mandamus is the proper remedy to require the trustees of a school district to redetermine the location of a site for a schoolhouse, where they arbitrarily remove a school to a site selected by themselves, without consulting the electors. A resident and taxpayer of the school district is a party beneficially interested and entitled in such case to make the application. State ex rel. Bean v. Lyons, 37 M 354, 96 P 922 (1908).

Statute as Grant and Limitation of Power: The provision of section 1719 of the Political Code of 1895, in regard to the removal of schoolhouse and the purchase or sale of school lots when directed by vote of the district, was not only a grant of power to school boards but also a limitation upon their power, both as to its extent and as to the mode of its exercise, so that they could not do any of the acts referred to without first obtaining the consent of the electors. State ex rel. Bean v. Lyons, 37 M 354, 96 P 922 (1908).

"Schoolhouse" as Including Equipment and Personnel: The term "schoolhouse" as used in somewhat similar provision in the Compiled Statutes of 1887 (Comp. Stat. 1887, div. 5, sec. 1885) did not mean simply the house but referred to the school plant, including the general equipment, pupils, and teachers, so that the board had no authority to remove the school properties and equipment to another district without being directed to do so by a vote of the people. State ex rel. Jay v. Marshall, 13 M 136, 32 P 648 (1893).

Attorney General's Opinions

Advancement of Annual Annuity Premium — Method of Recovery: A school district may advance the annual premium for a tax-sheltered annuity on behalf of its participating employees and then recover the amount advanced by means of salary withholding. 44 A.G. Op. 26 (1992).

District Residency Requirements of School Employees: A school board may, as a condition of employment, require that school district employees be residents of the school district. Nothing in the U.S. or Montana Constitution prohibits the establishment of a continuous residency requirement as long as the policy has a rational basis. 43 A.G. Op. 54 (1990).

State Nepotism Law Applicable to School Districts on Reservations — Prosecution of Tribal Members — Contracts Voidable: Montana's nepotism statutes apply to members of public school boards for districts lying wholly or partially within an Indian reservation. Criminal prosecution of Indian members for nepotism law violations with respect to decisions made and implemented wholly on-reservation may be initiated only in federal court by the United States pursuant to 18 U.S.C. 13, except for violations occurring on the Flathead Indian Reservation. Furthermore, contracts entered into in contravention of the nepotism statutes are voidable. 43 A.G. Op. 23 (1989).

Disclosure of Merit Pay of School District Administrators: The administrators of a school district do not have a constitutionally protected right to privacy regarding the amount of merit pay awarded to them pursuant to the district's Leadership Evaluation and Compensation Plan. Therefore, the amounts should be disclosed to the public. 41 A.G. Op. 35 (1985).

School Boards — Employment of Principals: A school district board of trustees may not delegate its duty to employ or dismiss principals and vice-principals to the school district Superintendent. 37 A.G. Op. 133 (1978).

Severance Pay: Provision for severance pay in a collective bargaining agreement between a school district and its employees, based on number of years' service of employees, is deferred compensation and is considered wages earned throughout the period of employment. 37 A.G. Op. 113 (1978). This rationale was applied to compensatory advances of the annual premium for tax-sheltered annuities in 44 A.G. Op. 26 (1992). See 34 A.G. Op. 29 (1971).

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

Collateral References

Schools and School Districts *key* 55.

78 C.J.S. Schools and School Districts §119, et seq.

68 Am. Jur. 2d Schools §57.

Propriety, under First Amendment, of school board's censorship of public school library or coursebooks. 64 ALR Fed 771.

20-3-325. Clerk of district.

Compiler's Comments

2005 Amendment: Chapter 196 inserted (2) requiring at least 30 hours' notice in advance of cash demands by a clerk of the district to meet certain transactions in excess of $50,000 and requiring assessment of a late fee for failure to meet the notice requirement; and made minor changes in style. Amendment effective October 1, 2005.

Case Notes

Minutes Held Accurate: School bond election was not invalid for failure of clerk to set out resolution in full in minute books, in absence of showing that resolution itself was defective, since minute books need not reflect exact contents of resolution. Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

Nature of Position — Quo Warranto Not Available: The clerk of a school district board of trustees does not perform any of the sovereign functions of government. Consequently, he is an employee rather than a public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, 140 M 221, 370 P2d 483 (1962).

Collateral Action Attaching Title Prohibited: Title of acting clerk to office could not be tried in collateral suit on contract with school district. Mintener Lumber Co. v. School District, 84 M 461, 277 P 9 (1929).

Presentation of Claims to Clerk Ineffective: The presentation of a claim to a clerk of a district is nugatory, and his assurance that the same would be paid does not bind the board. Kenyon-Noble Lumber Co. v. School District, 40 M 123, 105 P 551 (1909).

Collateral References

Schools and School Districts *key* 63(3).

78 C.J.S. Schools and School Districts §127.

20-3-331. Purchase of insurance — self-insurance plan.

Compiler's Comments

1991 Amendment: In (1), in first sentence after "coverage", inserted "or establish a self-insurance plan" and after "liability" substituted "as provided in 2-9-211 and for group health and life insurance as provided in 2-18-702" for "for the death, injury, or disability of any person or damage to property" and at end of second sentence, after "district", inserted "and as authorized for the district transportation program in 20-10-143(1)(d)"; inserted (2) requiring trustees establishing a self-insurance plan to provide an internal service fund to account for activities of plan; and made minor changes in style. Amendment effective April 23, 1991.

1989 Special Session Amendment: Inserted last sentence requiring inclusion of insurance cost in general fund budget. Amendment effective July 1, 1990.

1985 Amendments: Chapter 15 deleted last sentence (see below).

Chapter 299 deleted last two sentences that read: "If such insurance is purchased, the trustees shall pay the insurance premium cost from the general fund. The provisions of 2-9-104 shall apply to the provisions of this section."

1981 Amendment: Deleted "33-23-102 and" before "2-9-104" in the last sentence.

Attorney General's Opinions

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

Collateral References

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity. 68 ALR 4th 228.

Tort liability of public schools and institutions of higher learning for educational malpractice. 1 ALR 4th 1139.

Liability of university, college, or other school for failure to protect student from crime. 1 ALR 4th 1099.

20-3-332. Personal immunity and liability of trustees.

Compiler's Comments

1999 Amendment: Chapter 310 in (2) in substituted third sentence regarding determination of liability of trustees for violations for former language that read: "Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails"; and made minor changes in style. Amendment effective April 15, 1999.

1983 Amendment: Inserted (1) relating to individual immunity when acting in official capacity.

Case Notes

Injunction to Prevent Unlawful Payment: Under section 1205, Rev. Codes 1921 (now repealed), authorizing suit by taxpayers against school trustees for restitution of illegally expended funds, injunction did not lie to restrain payment of an alleged illegal claim unless the trustees were insolvent, in which event the complaint was to allege their insolvency. Peterson v. Fugle, 96 M 537, 31 P2d 1030 (1934).

Law Review Articles

Educational Malpractice—Does the Cause of Action Exist?, Magone, 49 Mont. L. Rev. 140 (1988).

Collateral References

Schools and School Districts *key* 62.

78 C.J.S. Schools and School Districts §129.

57 Am. Jur. 2d Municipal, County, School, and State Tort Liability §§53 through 55; 68 Am. Jur. 2d Schools §§19, 62, 70.

Liability, under state law claims, of public and private schools and institutions of higher learning for teacher's, other employee's, or student's sexual relationship with, or sexual harassment or abuse of, student. 86 ALR 5th 1.

Tort liability of public schools and institutions of higher learning for accident involving motor vehicle operated by student. 85 ALR 5th 301.

Tort liability of public schools and institutions of higher learning for injury to student walking to or from school. 72 ALR 5th 469.

20-3-336. Single-member trustee districts — legislative intent — minority defined.

Compiler's Comments

2001 Amendment: Chapter 548 inserted (1)(b)(ii) concerning petition for single-member districts; and made minor changes in style. Amendment effective May 1, 2001.

20-3-337. Plan for creating single-member trustee districts — petition election.

Compiler's Comments

2001 Amendment: Chapter 548 in (1) at beginning inserted exception clause; inserted (8) concerning requirements for petition; inserted (9) concerning calling election upon receipt of proper petition; inserted (10) concerning results of election; inserted (11) concerning filling of vacancies; and made minor changes in style. Amendment effective May 1, 2001.

20-3-341. Number of trustee positions in elementary districts — transition.

Compiler's Comments

1993 Amendment: Chapter 45 in (2), near beginning after "district", inserted remainder of subsection regarding increase and decrease in board membership; and inserted (4)(a) regarding timing of reductions in board membership if number of trustee positions is decreased.

1989 Amendment: Inserted last sentence of (3) regarding reduction in number of trustee positions; and made minor changes in phraseology. Section 2, Ch. 591, L. 1989, enacted (4) relating to transition of trustee positions when number of positions is reduced.

Case Notes

Constitutionality of Designation of Trustees: Section designating trustees of districts established under act relating to participation in public works programs by high school districts was not a denial of due process for failure to provide for election of trustees; unless the constitution provides otherwise, the Legislature may provide for the choosing of the board of trustees of a school district as it sees fit. Lorang v. High School District, 126 M 204, 247 P2d 477 (1952).

Collateral References

Schools and School Districts *key* 52.
78 C.J.S. Schools and School Districts §105.
68 Am. Jur. 2d Schools §42.

20-3-342. Determination of terms after consolidation of elementary districts.

Compiler's Comments

1997 Amendment: Chapter 219 in first sentence, after "described in", substituted "20-3-302(2)(a)" for "subsections (2)(a) and (2)(b) of 20-3-302"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-343. Determination of terms after change of district classification.

Compiler's Comments

1997 Amendment: Chapter 219 near middle substituted "20-3-302(2)(c)" for "20-3-302(2)(d)"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-344. Nomination of candidates by petition in first-class elementary district.

Compiler's Comments

1987 Amendment: At beginning inserted exception clause referencing 20-3-338.

20-3-351. Number of trustee positions in high school districts.

Compiler's Comments

2005 Amendment: Chapter 91 in (1)(a) near middle after "in which" inserted "the operating" and at end after "district" substituted "in which the operating high school building that was first constructed is located" for "designated by the high school boundary commission". Amendment effective March 24, 2005.

The amendment to this section made by sec. 26, Ch. 130, L. 2005, was rendered void by sec. 3, Ch. 91, L. 2005, a coordination section.

1997 Amendment: Chapter 219 in (1) inserted reference to subsection (2) and after "school district" deleted "except a high school district operating a county high school"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1991 Amendment: At beginning of (1) inserted exception clause; at end of (1)(b) inserted reference to subsection (2) of 20-3-352; and made minor changes in style.

Case Notes

Constitutionality of Designation of Trustees: Section designating trustees of districts established under act relating to participation in public works programs by high school districts was not a denial of due process for failure to provide for election of trustees; unless the state constitution provides otherwise, the Legislature may provide for the choosing of the board of

trustees of a school district as it sees fit. Lorang v. High School District, 126 M 204, 247 P2d 477 (1952).

Collateral References

Schools and School Districts *key* 52.
78 C.J.S. Schools and School Districts §105.
68 Am. Jur. 2d Schools §42.

20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee.

Compiler's Comments

2001 Amendment: Chapter 151 inserted (3)(a)(ii) providing an alternative method of electing members to a high school district board of trustees when more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located and requiring elementary trustees to serve on both boards; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 219 in (1), near beginning after "except a", inserted "county" and after "high school district" deleted "operating a county high school". Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1991 Amendment: Near middle of (1), before "representation", inserted "equitable" and at end, after "positions", inserted language concerning establishment of additional trustee positions by request of elementary district trustees under provisions of subsection (2) or by electors under provisions of subsection (3); at end of (2)(c), after "number", inserted exception for establishment of at least one nonvoting trustee position when the quotient is less than 0.5; at beginning of (2)(d) inserted exception clause concerning nonvoting trustee position; inserted (3) concerning number of electors needed on petition for alternative method of electing trustees, specifying makeup of board of trustees under alternative method of election, establishing action to be taken by County Superintendent upon receiving petition and upon approval of alternative election method by electors, determining terms for trustees, and restricting frequency for submission of petition to one time in each 5-year period; and made minor changes in style.

20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions.

Compiler's Comments

1997 Amendment: Chapter 219 in (1) substituted "20-3-302(2)(b)" for "20-3-302(2)(c)"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-356. Membership of elected trustees of county high school district and nomination of candidates.

Compiler's Comments

1997 Amendment: Chapter 219 in (1), after "trustees of a", substituted "county high school district" for "high school district operating a county high school" and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-361. Joint board of trustees organization and voting membership.

Compiler's Comments

1987 Amendment: At beginning of (1) substituted language relating to trustees of two or more districts for former language that read: "Whenever the trustees of a high school district operating a county high school and the trustees of the elementary district where the county high school building is located deem it to be within the best interests of the two districts, they" and near end of first sentence, after "program", inserted "or support service"; at end of (1) inserted second sentence relating to which programs and services may be coordinated; in (4)(a) substituted "board of trustees of the smallest class of district" for "elementary district trustees" and after "district" inserted "according to 20-6-201 or 20-6-301"; in (4)(b) substituted "board of trustees of the other district or districts" for "high school district trustees", after "voting members of the" substituted "district" for "elementary district trustees", changed reference to subsection

(3)(a) to subsection (4)(a), in second sentence, before "trustees shall", deleted "high school", and at end deleted "high school" before "trustees"; inserted (6) relating to existence and dissolution of a joint Board of Trustees; and made minor changes in phraseology.

20-3-362. Powers of joint board of trustees.

Compiler's Comments

1989 Amendment: At end of (1)(e) inserted "including any joint provision of special education services as provided in 20-7-457". Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 343, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [20-7-457] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] [20-7-458, repealed 1994] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4] [20-7-457]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board."

1987 Amendment: At end of (1)(c), after "20-6-505", inserted last clause relating to a joint Board of Trustees; inserted (1)(e) relating to joint provision of programs or services; in (1)(f), before "school districts", deleted "elementary and high"; and made minor changes in phraseology.

Collateral References

Schools and School Districts *key* 48(6), 55.
78 C.J.S. Schools and School Districts §§99, 119.
68 Am. Jur. 2d Schools §57.

20-3-363. Interdistrict agreements — fund transfers.

Compiler's Comments

Effective Date: Section 24(2), Ch. 462, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

CHAPTER 4
TEACHERS, SUPERINTENDENTS, AND PRINCIPALS

Part 1
Certification of Teaching and Supervisory Personnel

Part Administrative Rules

Title 10, chapter 57, ARM Educator licensure.

Part Attorney General's Opinions

State Nepotism Law Applicable to School Districts on Reservations — Prosecution of Tribal Members — Contracts Voidable: Montana's nepotism statutes apply to members of public school boards for districts lying wholly or partially within an Indian reservation. Criminal prosecution of Indian members for nepotism law violations with respect to decisions made and implemented wholly on-reservation may be initiated only in federal court by the United States pursuant to 18 U.S.C. 13, except for violations occurring on the Flathead Indian Reservation. Furthermore, contracts entered into in contravention of the nepotism statutes are voidable. 43 A.G. Op. 23 (1989).

Part Law Review Articles

An Alternative Avenue to Teacher Certification: A Cost Analysis of the Pathways to Teaching Careers Program, Rice & Brent, 27 J. Educ. Fin. 1029 (2002).

The Use of Competency Testing in the Evaluation of Public School Teachers, Parkinson, 39 U. Kan. L. Rev. 845 (1991).

Legal Challenges to Testing for Teacher Certification: History, Impact and Future Trends, Cohen, 18 J.L. & Educ. 229 (1989).

Part Collateral References

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees. 75 ALR 4th 272.

Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers. 64 ALR 4th 642.

20-4-101. System and definitions of teacher and specialist certification — student teacher exception.

Compiler's Comments

1987 Amendment: Inserted (2) defining teacher or specialist certificate.

Administrative Rules

Title 10, chapters 57 and 58, ARM Educator licensure and standards for teacher education programs.

Case Notes

Statutory Tenure Inapplicable to Community College Instructor: Under the rationale of Rippey v. Flathead Valley Community College, 210 M 396, 682 P2d 1363 (1984), and the plain wording of this section, 20-4-203 does not control tenure for instructors at any community college in Montana. Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

Attorney General's Opinions

Teaching Certificates Not Required at Private Institutions: Teachers at private institutions need not hold Montana teaching certificates. The statute requiring certification for teachers applies exclusively to persons wishing to teach in public schools. 38 A.G. Op. 95 (1980).

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a "life certificate" has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

Collateral References

Schools and School Districts *key* 129 through 131.

78 C.J.S. Schools and School Districts §159, et seq.

68 Am. Jur. 2d Schools §§174, 175, 181, 185 through 187.

20-4-102. Board of public education policies.

Administrative Rules

ARM 10.52.101 Model procedural rules.

ARM 10.52.102 Additions for cases involving requests for revocation or suspension of teacher certificates.

ARM 10.55.716 Substitute teachers.

Title 10, chapters 57 and 58, ARM Teacher certification.

Attorney General's Opinions

Indian Studies Requirement for Teachers a Local Matter: Prior to the 1979 amendments, 20-4-213 (now repealed) absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies. 39 A.G. Op. 11 (1981).

Collateral References

Schools and School Districts *key* 130, 132.

78 C.J.S. Schools and School Districts §§163, 165.

20-4-103. Issuance of teacher or specialist certificates.

Administrative Rules

ARM 10.57.110 Area of permissive specialized competency.

ARM 10.57.201 General provisions to issue certificates.
ARM 10.57.204 Experience verification.
ARM 10.57.220 Recency of credit.
ARM 10.57.301 Endorsement information.
ARM 10.57.436 Class 7 American Indian language and culture specialist.

Collateral References

Schools and School Districts *key* 130.
78 C.J.S. Schools and School Districts §163.

20-4-104. Qualifications.

Compiler's Comments

1991 Amendment: In (1)(a), after "older", deleted "but is not more than 70 years of age"; deleted former (1)(b) that read: "(b) He has a certificate of a licensed physician attesting to his satisfactory health"; in (2) changed internal reference; and made minor changes in style.

1983 Amendment: In (1)(e), deleted from the end of the oath "and the laws of the United States and the state of Montana and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order, and undivided allegiance to the government of the United States of America".

1981 Amendment: Deleted the requirement that a person must be a citizen of the United States to be a certified teacher from (1); made minor changes in phraseology.

Case Notes

Admissibility of Expert Testimony in Administrative Proceeding Regarding Sexual Conduct by Teacher: Allegations were made to a school board regarding sexual conduct by a teacher toward students and former students, triggering criminal charges that were later dismissed. The District Court found that conclusions by a hearings examiner denying renewal of the teacher's certificate were based on inadmissible testimony by a drug and alcohol counselor who testified as an expert on sexual abuse. The Supreme Court, examining the issue of expert testimony in administrative proceedings, noted that agencies are bound by common law and statutory rules of evidence and that while the rules of evidence are generally more relaxed in an administrative proceeding than they are in a court of law, they are not to be relaxed to the point of disregarding due process of law and fundamental individual rights. In a criminal case, the question of whether a child is a victim of sexual abuse is a question that may be clarified by expert testimony. However, expert testimony evaluating the credibility of witnesses is generally not admissible, except when the witness is a child victim who testifies at trial and credibility is brought into question. In this case, neither victim was a child, nothing in the record established that any of the witnesses were incompetent or were under any form of mental or physical disability, and the expert's general statements that the victims' conduct was consistent with that of sexually abused children prejudiced the accused because the trier of fact deferred to the expertise of the expert and inferred that the expert believed the witness to be credible. Failure to establish a foundation for the use of any of the expert testimony constituted reversible error. In re Renewal of Teaching Certificate of Thompson, 270 M 419, 893 P2d 301, 52 St. Rep. 200 (1995).

Court Review and Reversal of School Board Decision Revoking Teacher's Certificate Proper: The District Court reviewed the entire record of proceedings by a hearings examiner that was relied on by a school board to revoke the certificate of a teacher accused of sexual misconduct and properly reversed the certificate revocation because: (1) the hearings examiner improperly allowed testimony of an expert concerning general statements about the behavior of victims of sexual abuse; (2) the hearings examiner's findings of sexual abuse were not supported by substantial evidence; (3) when the expert's testimony was properly disregarded, other findings by the hearings examiner did not support a conclusion that the teacher was not of good moral and professional character; and (4) the hearings examiner's findings and conclusions contained sufficient independent statements from which the court could reverse the school board's decision without requiring new findings and conclusions from the record. In re Renewal of Teaching Certificate of Thompson, 270 M 419, 893 P2d 301, 52 St. Rep. 200 (1995).

Attorney General's Opinions

Responsibility for Cost of Required Medical Certificate: The medical certificate for teachers mandated by this section (see 1991 amendment) is a requirement of certification established by the Legislature rather than a requirement for employment imposed by the employer school district. Therefore, under 39-2-301, school districts are not responsible for paying the cost of the physician's certificate required for certification of teachers; rather, the cost is the responsibility of the teacher. 41 A.G. Op. 69 (1986).

Age Limitation for Certification Repealed by Implication: The age limitation established in 20-4-104(1)(a) as a qualification for certification to teach is repealed by implication by 49-2-308 and 49-3-204. Age alone is not reasonable grounds to deny a teaching certificate to an otherwise qualified teacher. Based on the holding in Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), 20-4-104(1)(a) is impliedly repealed by the human rights statutes, Title 49 (see 1991 amendment). 39 A.G. Op. 54 (1982).

Collateral References

Schools and School Districts *key* 127.

78 C.J.S. Schools and School Districts §154, et seq.

68 Am. Jur. 2d Schools §§170 through 175, 181, 185 through 187.

Tests of moral character or fitness as requisite to issuance of teacher's license or certificate. 96 ALR 2d 536.

Rejection of public schoolteacher because of disloyalty. 27 ALR 2d 487.

Oath of allegiance, validity of governmental requirement of. 18 ALR 2d 319.

Power of school authorities to transfer teacher from one school or district to another. 103 ALR 1382.

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

Right of school authorities to make membership or nonmembership in teachers' association or other organization a condition of employment as a teacher. 72 ALR 1225.

20-4-106. Classifications of teacher and specialist certificates.

Compiler's Comments

1983 Amendment: In (1)(c), substituted "eligible for a teacher certificate" for "the holder of a teacher certificate".

Statement of Intent: The statement of intent adopted with HB 864 (Ch. 511, L. 1979) provided: "A statement of intent is required for House Bill No. 864 in that it delegates rulemaking and licensing authority to the Board of Public Education in Section 9.

The intent of this bill is to establish a certification category for non-teaching school personnel. It is not intended to restrict or authorize the practice of any profession outside of the public school system.

Specialist certificates may be developed in areas such as school psychology or school nursing.

Experience requirements for certification should range from 0 to 3 years depending upon the profession involved and the needs of the public schools. Education and training equivalencies may be considered for purposes of compliance with experience requirements.

Education and training standards should require no less than a bachelor's degree with some additional specialized training. Specialized training may include an appropriate internship or college-based training program.

The standards should require some degree of training or experience that is directly related to the practice of the profession in a school setting.

A state licensing board license may be made a Board of Education requirement for specialist certification."

Administrative Rules

ARM 10.57.102 Definitions.

ARM 10.57.220 Recency of credit.

ARM 10.57.301 Endorsement information.

Title 10, chapter 57, subchapter 4, ARM Classes of licensure.

Case Notes

School Psychologist a "Teacher" for Purposes of Tenure Laws: The plaintiff was employed as a member of a school's administrative staff as a school psychologist from 1975 to 1981 under a "teacher contract" that required him to hold a valid teacher certificate. He was terminated from his job and subsequently appealed to the District Court a decision of the Office of Public Instruction (OPI) that he was not a tenured teacher at the time of his termination. The Supreme Court held that the District Court did not err in reversing the decision of the OPI. The distinction made by the Legislature, in the 1979 amendment of 20-4-203, between teachers and specialists for the purposes of tenure, did not retroactively affect tenure earned by the plaintiff prior to that amendment. By 1976, the plaintiff had met all three requirements for tenure under the old statute and was therefore a tenured teacher within the meaning of the law. Harris v. Bauer, 206 M 480, 672 P2d 26, 40 St. Rep. 1793 (1983).

20-4-107. Outstanding teacher certificates.

Attorney General's Opinions

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a "life certificate" has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

20-4-108. Term of teacher and specialist certificates — renewal.

Compiler's Comments

1995 Amendment: Chapter 58 in (1), in second sentence, substituted January 1 for March 1 as the date on which a teacher or specialist may begin applying for certification; and made minor changes in style. Amendment effective February 13, 1995.

1983 Amendment: At end of (1), inserted "except that a teacher or specialist who applies for certification after March 1 may, upon request, have the period of validity of the certificate begin on July 1 following the date of application".

Administrative Rules

Title 10, chapter 57, subchapter 2, ARM Issuance of licenses.

Title 10, chapter 57, subchapter 4, ARM Classes of licensure.

Attorney General's Opinions

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a "life certificate" has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

Collateral References

Schools and School Districts *key* 130.

78 C.J.S. Schools and School Districts §166.

20-4-109. Fees for teacher and specialist certificates.

Compiler's Comments

2003 Amendment: Chapter 173 in (2)(b) after "education" substituted "and" for "to be used by", after "council" substituted "for activities in support of the constitutional and statutory duties" for "for research in accordance with the duties", near end before "council" inserted "board of public education and the certification standards and practices advisory", and at end after "council" deleted "provided for in 20-4-133". Amendment effective October 1, 2003.

1999 Amendment: Chapter 165 in (1)(a) at beginning substituted "$4" for "$3"; and in (1)(b) at beginning substituted "$2" for "$3". Amendment effective July 1, 1999.

1995 Amendment: Chapter 509 in (2) deleted second sentence that read: "The money in the account to be used for the purposes of subsection (1)(b) is statutorily appropriated, as provided in 17-7-502, to the board of public education for use by the certification standards and practices advisory council." Amendment effective July 1, 1995.

1991 Amendment: In (1), in introductory clause, increased maximum fee for certificate from $5 to $6, increased filing fee from $5 to $6, and near end, after "treasurer", inserted "to the credit of the state special revenue fund account, created in subsection (2), to be used"; substituted present (1)(a) allocating $3 for expenses of Certification Standards and Practices Advisory Council for former $3 allocation to the state special revenue fund; substituted (1)(b) allocating $3 to Board of Public Education for former $2 allocation to the general fund; in (2), in second sentence after "account", inserted requirement for statutory appropriation to Board of Public Education and at end deleted reference to 2-15-1522; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendments: Chapter 103 in (1), in first and second sentences, increased fee from $4 to $5; and in (1)(a) increased amount credited to special revenue fund from $2 to $3. Amendment effective July 1, 1989.

Chapter 628 in (2), after "The money in the account", deleted "is statutorily appropriated, as provided in 17-7-502, to the board of public education" and inserted "must be used"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendment: In (1) in first sentence, following "fee", substituted "not to exceed $4" for "of $2", at end of second sentence substituted "$4" for "$2", and in third sentence, after "state treasurer", inserted "in the following manner"; in (1)(a) and (1)(b) allocated fee; and inserted (2) establishing and statutorily appropriating the account.

20-4-110. Letter of reprimand, suspension, revocation, and denial of certificate.

Compiler's Comments

1995 Amendment: Chapter 486 in (1), near beginning after "education may", inserted "issue a letter of reprimand or may"; in (4), in first sentence after "consider", inserted "a letter of reprimand or" and inserted second sentence regarding service of notice; in (6), in first sentence after "may", inserted "place a written reprimand in the person's certification file or may" and after "teacher" inserted "administrator" and inserted second sentence allowing the Board to make known the existence of a letter of reprimand but not provide a copy of the letter without consideration of the right to know and the right to privacy; in (7), after "teacher", inserted "administrator"; and made minor changes in style. Amendment effective April 15, 1995.

1993 Amendment: Chapter 382 throughout section, after "teacher", inserted "administrator"; in (1)(g) and near middle of (2)(a) substituted "school or school district" for "district"; near beginning of (3)(a), after "renewed", inserted "or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal" and at end substituted "or resignation" for "of the employment relationship"; in first sentence of (3)(b), after "report", inserted "and any supporting evidence included in the report" and at end of second sentence substituted "subsection (1)" for "subsection (2)(b)"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (1) substituted "may" for "shall have the power and authority to"; in (1)(e), after "conviction", deleted "in this state or any other state or country", inserted "entry of a guilty verdict, a plea of guilty, or a plea of no contest to", and after "turpitude" inserted "in this state or any other state or country"; inserted (1)(f) concerning immoral conduct related to the teaching profession; near beginning of (2) substituted "may" for "shall"; at end of (2)(b) deleted "as to a teacher or specialist not employed by any district within the 12 months immediately preceding receipt of the request by the board"; inserted (3) relating to termination based upon conduct proscribed in subsection (1) and the procedures relating to such termination; near beginning of (5), before "hearing", deleted "full investigation and proper"; and made minor changes in phraseology.

Special Vote Requirement — 1987 Amendment: Section 4, Ch. 227, L. 1987, provided: "Because proposed subsection (3)(d) of 20-4-110 grants immunity to the superintendent of public instruction and school district trustees, a vote of two-thirds of the members of each house is required for the enactment of proposed subsection (3)(d). If the bill passes but fails to receive a vote of two-thirds of the members of each house, then proposed subsection (3)(d) of 20-4-110 is deleted and the remaining parts of this act are valid." Chapter 227 was passed by a vote of 94-0 in the House of Representatives and 48-2 in the Senate.

Composite Section: This section was amended by Ch. 240 and Ch. 511, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Since Ch. 240 and Ch. 511 did not conflict conceptually, additions were made to incorporate the concepts of both chapters.

Administrative Rules

ARM 10.52.101 Model procedural rules.

ARM 10.52.102 Additions for cases involving requests for revocation or suspension of teacher certificates.

ARM 10.52.103 Model rules.

Title 10, chapter 57, subchapter 6, ARM Educator licensure disciplinary procedures.

Collateral References

Schools and School Districts *key* 132.

78 C.J.S. Schools and School Districts §165.

68 Am. Jur. 2d Schools §§181, 185 through 187.

Running of limitations against action for civil damages for sexual abuse of child. 9 ALR 5th 321.

Bias of members of license revocation board. 97 ALR 2d 1210.

Moral unfitness, revocation of teacher's certificate for. 97 ALR 2d 827.

20-4-111. Emergency authorization of employment.

Compiler's Comments

1991 Amendment: In (2), in second sentence, increased maximum fee for emergency authorization from $5 to $6 and increased filing fee from $5 to $6; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendments: Chapter 83 in (2), at beginning of second sentence, substituted "A fee not to exceed $4" for "A fee of $2" and near end substituted "a filing fee of $4" for "a filing fee of $2".

Chapter 103 in (2), at beginning of second sentence, substituted "A fee of $5" for "A fee of $2" and near end substituted "a filing fee of $5" for "a filing fee of $2". Amendment effective July 1, 1989.

Administrative Rules

ARM 10.57.107 Emergency authorization of employment.

ARM 10.57.611 Substantial and material nonperformance.

Attorney General's Opinions

Indian Studies Requirement for Teachers a Local Matter: Prior to the 1979 amendments, 20-4-213 (now repealed) absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies. 39 A.G. Op. 11 (1981).

20-4-112. Access to materials — superintendent of public instruction.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-113. Access to criminal justice information.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-114. Penalty for failure to report.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-121. Interstate agreement on qualification of educational personnel.

Administrative Rules

Title 10, chapter 58, ARM Teacher certification.

20-4-131. Definitions.

Compiler's Comments

1991 Amendment: In introductory clause, after "20-4-133", deleted "unless the context clearly indicates otherwise"; inserted definition of K-12 specialist; and at end of definition of specialist substituted "as a school psychologist" for "in a profession other than the teaching profession". Amendment effective March 20, 1991.

20-4-133. Duties of the council.

Compiler's Comments

1989 Amendment: In (1)(f) substituted "teacher, administrator, and specialist certification" for "teaching certification".

20-4-134. Professional stipends for teachers certified by national board for professional teaching standards.

Compiler's Comments

Effective Date: Section 3, Ch. 555, L. 2001, provided: "[This act] is effective July 1, 2001."

Part 2
Teacher Employment — Tenure

Part Collateral References

Services included in computing period of service for purpose of teachers' seniority, salary, tenure, or retirement benefits. 56 ALR 5th 493.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees. 75 ALR 4th 272.

Teacher Tenure in Montana, Interim Report, Montana Legislative Council (1984).

20-4-201. Employment of teachers and specialists by contract.

Compiler's Comments

2001 Amendment: Chapter 318 in (3) in first sentence inserted references to use of an interlocal agreement by the boards of trustees of two or more school districts to employ a teacher or specialist; and made minor changes in style. Amendment effective April 21, 2001.

1987 Amendment: Near beginning of (3), before "trustees", inserted "board of" and after "of" substituted "two or more school district" for "a county high school and the trustees of the elementary district where the county high school is located"; and made minor changes in phraseology.

Case Notes

Liquidated Damages Clause in Personal Services Contract — Conscionability of Liquidated Damages Clause in Teacher's Form Contract: In determining the enforceability of a 20% liquidated damages clause in defendant's teaching contract, the Supreme Court examined the conscionability of the clause. The court first held that the clause constituted a contract of adhesion because defendant, as the weaker bargaining party, had no meaningful choice regarding acceptance of the contract provisions. The court also noted that the contract was a form contract that provided no negotiation between the parties. However, the court held that unconscionability does not render all form contracts unacceptable and that form contracts are only unconscionable if the terms are not within the reasonable expectation of the party who had no opportunity to negotiate. Although the liquidated damages clause in defendant's contract was harsher than most, as a teacher, defendant knew that teachers are typically employed for an entire year and how difficult it is to replace equivalent services at small rural schools, so it was within defendant's reasonable expectations to agree to a contract with a 20% liquidated damages provision for departing so close to the start of the school year, even though defendant had no meaningful choice regarding the provision. The enforceability of the liquidated damages clause was affirmed. Arrowhead School District No. 75 v. Klyap, 2003 MT 294, 318 M 103, 79 P3d 250 (2003).

Use of Individual Contracts as Leverage to End Strike: The board of trustees' contention that this section authorizes the issuance of individual contracts after negotiations on a master contract have reached an impasse misses the point. The decision here does not concern that authority in and of itself but only the board's use of individual contracts as leverage to end its teachers' participation in a lawful strike. Bd. of Trustees v. State ex rel. Bd. of Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2311 (1979).

Union Membership — Salary Discrimination Unlawful: School trustees have no authority or power to discriminate between teachers as to the amount of salary because of their membership or lack of membership in a labor union. Therefore, a union security clause in a contract offered schoolteachers was void and mandamus, not suit in contract, was appropriate form of relief for teachers. Benson v. School District, 136 M 77, 344 P2d 117 (1959).

Ratification of Informal Contract: Where teacher had taught school in same district for 3 consecutive years under an informal contract, although statute required such contracts to be in writing, the board of trustees, by accepting the benefits of the teacher's services and issuing warrants to her in payment thereof, ratified the contract. Ratification was equivalent to full compliance with the necessary formalities, and the contract was considered as valid from its inception. Day v. School District, 98 M 207, 38 P2d 595 (1934).

Twelve-Month Compensation Held Unlawful: A school board had no power to allow compensation to a teacher for the full period of 12 months, during 2 ½ months of which time no schoolwork was required and she was left free to engage in other pursuits, a donation of public funds under the pretext of compensation being unlawful. Finley v. School District, 51 M 411, 153 P 1010 (1915), distinguished in State ex rel. Priestly v. Croff, 95 M 498, 27 P2d 540 (1933).

Attorney General's Opinions

Advancement of Annual Annuity Premium — Method of Recovery: A school district may advance the annual premium for a tax-sheltered annuity on behalf of its participating employees and then recover the amount advanced by means of salary withholding. 44 A.G. Op. 26 (1992).

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. 41 A.G. Op. 57 (1986).

Severance Pay as Wages: Provision for severance pay in a collective bargaining agreement between a school district and its employees, based on number of years' service of employees, is deferred compensation and is considered wages earned throughout the period of employment. 37

A.G. Op. 113 (1978). This rationale was applied to compensatory advances of the annual premium for tax-sheltered annuities in 44 A.G. Op. 26 (1992). See 34 A.G. Op. 29 (1971).

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a "life certificate" has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

Collateral References

Schools and School Districts *key* 131, 134, et seq., 143, 144.

78 C.J.S. Schools and School Districts §§161, 183, et seq., 218, et seq.

68 Am. Jur. 2d Schools §§199, 200, 233.

Unfair labor practice: what constitutes unfair labor practice under state public employee relations acts. 9 ALR 4th 20.

Salary: services included in computing period of service for purpose of. 2 ALR 2d 1033.

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

20-4-202. Teacher and specialist certification registration.

Compiler's Comments

1987 Amendment: In (2) inserted second sentence relating to special education cooperatives.

20-4-203. Teacher tenure.

Compiler's Comments

1997 Amendments: Chapter 259 inserted (3) defining same salary for purposes of teacher tenure; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 438 inserted (4) allowing termination of teacher employment after tenure for good cause; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 2, Ch. 259, L. 1997, was a saving clause.

Section 9, Ch. 438, L. 1997, was a saving clause.

Effective Date — Applicability: Section 3, Ch. 259, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to contracts executed for the school fiscal year beginning July 1, 1998."

Repealer: Section 2, Ch. 114, L. 1993, repealed sec. 4, Ch. 204, L. 1991, which provided that the 1991 act, amending 20-4-203 and enacting 20-4-208, did not apply to a person who was employed in an administrative position before October 1, 1991. Repealer effective March 18, 1993.

1991 Amendment: At beginning of (1) inserted exception clause.

Applicability: Section 4, Ch. 204, L. 1991, provided: "[This act] does not apply to a person who was employed in an administrative position before October 1, 1991."

1989 Amendment: Inserted (2) providing tenure of teacher is not impaired upon termination of teacher's services if teacher terminated because district's financial condition requires reduction and if continued employment rights are provided in collectively bargained contract; and made minor changes in form and phraseology.

1983 Amendment: Deleted former (2), which read: "the teacher will attain the age of 65 years before the ensuing September 1 and the trustees have notified the teacher in writing by April 1 that his services will not be needed in the ensuing school fiscal year, except that the trustees may continue to employ such a teacher from year to year until the school fiscal year following his 70th birthday."

Study Resolution: House Joint Resolution 43, 1983, requested a legislative interim subcommittee study of public school teacher tenure laws in Montana. The study was conducted by Joint Interim Subcommittee No. 4. The subcommittee's report to the 49th Legislature is entitled "Teacher Tenure in Montana: An Investigation of the Laws and Issues". Mont. Leg. Council (Dec. 1984).

Case Notes

Teacher Tenure Statute Not Ambiguous — Assistant Superintendent Considered Tenured Teacher: The school district board voted to terminate Small's employment as assistant superintendent at the end of the employment contract without a hearing or determination of good cause. Small appealed the board's determination on grounds that he had been continuously employed by the school district for 10 years in a position requiring teacher certification and thus was a tenured teacher whose employment could be terminated only after a hearing and a finding of good cause. The District Court agreed that Small was a tenured teacher and remanded to the board with instructions to provide Small with the appropriate termination process, but found that the issue of damages was premature. The school district appealed the decision that Small

was a tenured teacher, and Small appealed the decision that damages were premature. The Supreme Court affirmed, finding that the teacher tenure statute is not ambiguous. The statute clearly grants tenure to teachers and denies tenure to District Superintendents. By definition in 20-1-101, a teacher is a person, except a District Superintendent, who holds a valid Montana teacher certificate and who is employed by a district as a member of its instructional, supervisory, or administrative staff. Small held a valid teacher certificate, was not a District Superintendent, and was employed by the district as a member of its supervisory and administrative staff and was thus entitled to tenure. The court also remanded to the County Superintendent for an evidentiary hearing on damages. Small v. Bd. of Trustees, Glacier County School District No. 9, 2001 MT 181, 306 M 199, 31 P3d 358 (2001).

Statutory Tenure Inapplicable to Community College Instructor: Under the rationale of Rippey v. Flathead Valley Community College, 210 M 396, 682 P2d 1363 (1984), and the plain wording of 20-4-101, this section does not control tenure for instructors at any community college in Montana. Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

Tenured and Qualified Principal Allowed to "Bump" Nontenured Teacher Upon Elimination of Position: A school board voted to eliminate the position of high school principal and combine it with the position of district superintendent, based on declining enrollment and economic considerations. The principal had been employed in that capacity for 7 years and had over 14 years of previous classroom experience in subject areas in which nontenured teachers held positions. Under the rationale of Massey v. Argenbright, 211 M 331, 683 P2d 1332, 41 St. Rep. 1393 (1984), and in accordance with this section, the district was obligated to offer the principal a comparable teaching position by allowing him to "bump" a nontenured teacher. The fact that he did not hold any teaching endorsements at the time of his termination did not affect his tenure rights because certification only memorialized the qualifications he was known to possess. Holmes v. Bd. of Trustees, 243 M 263, 792 P2d 10, 47 St. Rep. 914 (1990).

Right of Terminated Teacher to Part-Time Position: The school trustees eliminated a tenured teacher's full-time position due to economic reasons and subsequently hired another teacher for a half-time position teaching the same subject. The Supreme Court held that eliminating a full-time position and then creating a part-time position identical in every respect except for hours could not be used as a method to circumvent the protection afforded tenured teachers. The court ruled that the trustees were required to hire the terminated teacher for the part-time position. Harris v. Trustees, 241 M 274, 786 P2d 1164, 47 St. Rep. 260 (1990).

District-Union Contract for Tenure: Given the public policy of providing for teacher tenure, a school district may contract with a teachers' union to allow retention of tenure without violating this section. Beck v. Bd. of Trustees, 233 M 319, 760 P2d 83, 45 St. Rep. 1520 (1988).

Resignation of Tenured Teacher — Formal Board Acceptance Not Required: A tenured teacher was charged with misdemeanor theft and pleaded guilty. The Board of Education of District No. 1 voted to authorize the Superintendent of Schools to request the teacher's immediate resignation and grant 30 days' severance pay. The same day the teacher signed a letter of immediate resignation. The guilty plea was later withdrawn, the theft case was dismissed, and the teacher sought to withdraw her resignation. Withdrawal was denied by the Board, County and State Superintendents of Schools, and the District Court. The Supreme Court affirmed, holding that the Board did not need to formally accept a resignation which it had already decided to request and that it was not a delegation of authority for the Board to make a decision and direct an employee to carry an offer to a teacher. The resignation was effective and the district's contractual obligation was satisfied upon the teacher's acceptance of the severance pay. Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Tenure Acquired in All Areas in Which Teacher Certified: For purposes of tenure, teaching business education is comparable to teaching physical education. Thus, failure to renew a business education teacher's contract because of a reduction in that department's student enrollment was a violation of this section when the teacher was also certified to teach physical education and there were nontenured teachers retained to teach physical education. A teacher acquires tenure in all areas in which he is certified, even though he has teaching experience within the district in only one certification area. To the extent that Smith v. School District, 115 M 102, 139 P2d 518 (1943), contradicts the holding in this case, it is expressly overruled. Massey v. Argenbright, 211 M 331, 683 P2d 1332, 41 St. Rep. 1393 (1984).

School Psychologist a "Teacher" for Purposes of Tenure Laws: The plaintiff was employed as a member of a school's administrative staff as a school psychologist from 1975 to 1981 under a "teacher contract" that required him to hold a valid teacher certificate. He was terminated from his job and subsequently appealed to the District Court a decision of the Office of Public

Instruction (OPI) that he was not a tenured teacher at the time of his termination. The Supreme Court held that the District Court did not err in reversing the decision of the OPI. The distinction made by the Legislature, in the 1979 amendment of 20-4-203, between teachers and specialists for the purposes of tenure, did not retroactively affect tenure earned by the plaintiff prior to that amendment. By 1976, the plaintiff had met all three requirements for tenure under the old statute and was therefore a tenured teacher within the meaning of the law. Harris v. Bauer, 206 M 480, 672 P2d 26, 40 St. Rep. 1793 (1983).

Reassignment From Administrator to Teacher — Tenure Laws Not Violated: Sorlie was an elementary teacher for 20 years prior to assuming an administrative position. In 1980, because a mill levy failed, the school board eliminated Sorlie's position and offered her a job as an elementary schoolteacher. Sorlie argued that she was demoted in violation of Montana's tenure laws. The Supreme Court found the two positions to be comparable positions for purpose of tenure although they are functionally dissimilar. The court concluded that the reassignment, without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws. Sorlie was removed from her administrative position pursuant to the board's power to financially manage the school district, and this action was in accordance with 39-31-303. Sorlie v. School District, 205 M 22, 667 P2d 400, 40 St. Rep. 1070 (1983).

Standards Applying to Termination of Tenured Teacher: A tenured teacher was not offered a new contract because he cohabited with a female teacher, discussed abortion in the classroom, and displayed fetuses to his class. The decision of the board of trustees not to rehire was upheld by the County Superintendent and the State Superintendent. The District Court overturned the decision, and an appeal was taken to the Supreme Court. Counsel for the teacher contended that 20-4-207 contains the standards which apply in the event of termination of the services of a tenured teacher. The Supreme Court held that, by its terms, that section applies where the trustees seek to dismiss a teacher before the expiration of his employment contract, i.e., during the course of a normal school year. The court held that 20-4-207 is not applicable to the termination of the services of a tenured teacher under this section and 20-4-204. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Mandatory Teacher Retirement Impliedly Repealed: Plaintiff was a tenured elementary school principal who received notification that because she was 65 years of age her contract would not be renewed. This termination was accomplished by a majority vote of the board of trustees for the school district in accordance with 20-4-203(2) (deleted by 1983 amendment) and board policy. Plaintiff filed a discrimination complaint with the Commission for Human Rights. The Commission found 20-4-203(2) to be a statutory exception to the antidiscrimination provisions of Title 49, ch. 2 and 3. The District Court held that 20-4-203(2) was impliedly repealed by the adoption of 49-2-303(1) and 49-3-201. The Supreme Court affirmed, saying that the manner in which the Legislature enacted Title 49 clearly depicted the legislative intent that there be no discrimination in the lives of Montana citizens in certain areas, including employment. Section 20-4-203(2) permitted discrimination based solely on age with no qualifications or justifications bringing it within the limited exceptions of Title 49. Because the mandatory retirement provision bore no relationship to job performance, it was held impliedly repealed. Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), followed in Kenny v. Bd. of Trustees, 543 F. Supp. 1194, 39 St. Rep. 1377 (D.C. Mont. 1982).

Administrative Tenure Not Contemplated: A community college may not grant continuing contract status (tenure) except to those persons specifically authorized to receive such status. Tenure for teachers is unique in public contracts of employment; its basis is academic freedom. It does not apply to an administrative position not requiring teacher certification. Sibert v. Community College, 179 M 188, 587 P2d 26, 35 St. Rep. 1780 (1978).

Nature of Right: A teacher's tenure is a substantial, valuable, and beneficial right that cannot be taken away except for good cause, and the number of hours a teacher may teach in a day is not a factor in determining her right to tenure. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P2d 209 (1954).

Tenure Law Applicable to Demotion of Teacher: Where teacher after 7 years of teaching in town school was assigned to a rural ungraded school having five pupils and plaintiff refused assignment, the new assignment in effect was a demotion which required the same procedure as a removal or dismissal under this section, and plaintiff properly refused to accept it, the purpose of the teacher tenure law being not merely to insure teaching employment but also security to teachers in the position, rank, grade, or status they have attained. Smith v. School District, 115 M 102, 139 P2d 518 (1943), partially overruled in Massey v. Argenbright, 211 M 331, 683 P2d 1332, 41 St. Rep. 1393 (1984).

Conditions of Automatic Reemployment: The term "automatic reemployment" used by section 1075, 1935 Rev. Codes of Montana (now repealed), meant reemployment under the same terms and conditions as the preceding year's employment. Moses v. School District, 107 M 300, 86 P2d 407 (1938).

Retroactivity of General School Code of 1913: The General School Code of 1913 was not retroactive, and a schoolteacher was not entitled to take advantage of the provisions of the tenure law where her complaint was based on a contract made prior to the passage of the Code of 1913. Falligan v. School District, 54 M 177, 169 P 803 (1917).

Attorney General's Opinions

Employment "at the Same Salary" — Fringe Benefits Not Included: Employment "at the same salary" provided to tenured teachers by this section means employment at the same basic pay, but does not include fringe benefits (see 1997 amendment). However, provision of fringe benefits by a collective bargaining agreement is not affected by this opinion. 42 A.G. Op. 49 (1987).

American Indian Studies Law Applicable to Tenured Teachers: The provisions of the Indian studies law are applicable to tenured teachers. 37 A.G. Op. 75 (1977).

Teachers Paid by Federally Funded Programs: Teachers who are employed by a school district in federally funded programs are eligible for tenure upon satisfying the provisions of this section but are subject to dismissal in cases of genuine economic necessity, as where federal funds are terminated by the United States government. 36 A.G. Op. 77 (1976).

Tenure of Teacher Holding "Life Certificate": A public school teacher who holds a "life certificate" (as provided under prior law) has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

Law Review Articles

Baldridge v. Board of Trustees: A Case for Reform of Montana's Tenured Teacher Dismissal Process, Bryan, 61 Mont. L. Rev. 251 (2000).

Collateral References

Schools and School Districts *key* 133.6 through 133.13.

78 C.J.S. Schools and School Districts §§180, 181, 197.

68 Am. Jur. 2d Schools §210, et seq.

Services included in computing period of service for purpose of teachers' seniority. 2 ALR 2d 1033.

Right of teacher to compensation while school is closed. 21 ALR 741; 17 ALR 1224; 6 ALR 742.

Application to tenured positions in educational institutions of provisions of Civil Rights Act of 1964, as amended (42 U.S.C.S. §2000e, et seq.) prohibiting discrimination on basis of sex. 55 ALR Fed. 842.

20-4-204. Termination of tenure teacher services.

Compiler's Comments

1997 Amendment: Chapter 438 in (2), in first sentence, substituted "shall notify" for "shall, before May 1 of the current school fiscal year, notify"; in (5), near beginning of first sentence after "terminate", inserted "an employment contract" and near middle, after "county superintendent", inserted "if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31" and inserted second, third, and fourth sentences relating to termination of employment of teacher covered by collective bargaining agreement; inserted (6) allowing appeal to District Court of county in which teacher was employed and establishing deadline for commencement of appeal; deleted former (6) that read: "(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title"; inserted (7) establishing deadline for request for arbitration; inserted (8) making arbitrator's decision final and allocating payment of arbitrator's charges; inserted (9) allowing reinstatement and compensation and providing for calculation of award for lost wages; inserted (10) prohibiting award for certain forms of damages; inserted (11) prohibiting lawsuit against district after submission of termination decision to arbitrator; inserted (12) defining fringe benefits and lost wages; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1987 Amendment: In (2) changed "April 1" to "May 1".

1985 Amendment: Substituted (1) through (4) (see 1985 Session Law for text) for former (1), (2), and part of (3) that read: "(1) Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of 20-4-203, they shall, before April 1, notify

such teacher of such termination in writing by certified or registered letter or by personal notification for which a signed receipt is returned. Such notification shall include a printed copy of this section for the teacher's information.

(2) Any tenure teacher who receives a notice of termination may request, in writing 10 days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within 10 days after the request.

(3) Within 10 days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within 10 days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the"; renumbered remainder of former (3) as (5) (relating to appeal to the County Superintendent); and in (5) after "decision", inserted "to terminate".

Interim Committee Bill: Senate Bill No. 18 (Ch. 56, L. 1985) was introduced at the request of Joint Interim Subcommittee No. 4. See "Teacher Tenure in Montana: An Investigation of the Laws and Issues". Mont. Leg. Council (Dec. 1984).

1983 Amendment: Near beginning of (1), deleted reference to subsection (1) of 20-4-203.

Case Notes

Teacher Tenure Statute Not Ambiguous — Assistant Superintendent Considered Tenured Teacher: The school district board voted to terminate Small's employment as assistant superintendent at the end of the employment contract without a hearing or determination of good cause. Small appealed the board's determination on grounds that he had been continuously employed by the school district for 10 years in a position requiring teacher certification and thus was a tenured teacher whose employment could be terminated only after a hearing and a finding of good cause. The District Court agreed that Small was a tenured teacher and remanded to the board with instructions to provide Small with the appropriate termination process, but found that the issue of damages was premature. The school district appealed the decision that Small was a tenured teacher, and Small appealed the decision that damages were premature. The Supreme Court affirmed, finding that the teacher tenure statute is not ambiguous. The statute clearly grants tenure to teachers and denies tenure to District Superintendents. By definition in 20-1-101, a teacher is a person, except a District Superintendent, who holds a valid Montana teacher certificate and who is employed by a district as a member of its instructional, supervisory, or administrative staff. Small held a valid teacher certificate, was not a District Superintendent, and was employed by the district as a member of its supervisory and administrative staff and was thus entitled to tenure. The court also remanded to the County Superintendent for an evidentiary hearing on damages. Small v. Bd. of Trustees, Glacier County School District No. 9, 2001 MT 181, 306 M 199, 31 P3d 358 (2001).

District Court Error in Substituting Its Judgment for That of Factfinder in Nonrenewal of Principal's Contract: The contract of a tenured assistant high school principal was not renewed by the school board of trustees. Appeal was made to the County Superintendent of Schools, who affirmed the trustees' decision. The County Superintendent's decision was affirmed by the State Superintendent of Schools, whose decision was in turn appealed to District Court. The court reviewed the County Superintendent's decision and determined that the findings were supported by reliable, probative, substantial evidence and that none of the County Superintendent's conclusions were in error, but then reversed the agency decision and ordered the principal to be reinstated and paid back wages and benefits on grounds that the County Superintendent failed to consider the principal's due process and first amendment rights pursuant to Pickering v. Bd. of Educ., 391 US 563, 20 L Ed 2d 811, 88 S Ct 1731 (1968). The Supreme Court reversed, noting that the policy used in determining that the principal's due process rights were violated was inapplicable and that a Pickering analysis was not necessary because the principal was not terminated because of the exercise of free speech, but rather for other good causes. It was error for the court to substitute its judgment for that of the factfinder regarding the weight of the evidence. Quick v. Bozeman School District No. 7, 1999 MT 175, 295 M 240, 983 P2d 402, 56 St. Rep. 682 (1999).

Notice of Administrator Termination Sufficiently Clear to Satisfy Statutory Notice Requirements: The contract of a tenured assistant high school principal was not renewed by the school board of trustees. The principal contended that the termination letter, which also served as notice as to why termination was being recommended, was not sufficiently clear and explicit to satisfy this section. Several paragraphs had been stricken from the letter during the hearing before the County Superintendent of Schools. The District Court found that most of the

remaining paragraphs did not provide sufficient detail to satisfy the statute, but that because the first two paragraphs set forth reasons for termination with sufficient clarity, any error in allowing the remaining paragraphs was harmless. On appeal, the Supreme Court noted that there are no formal requirements for what information must be included in a termination letter, only that it be sufficiently detailed to inform the administrator of the charges so that a defense may be reasonably formulated. Although the letter did not set forth specific instances of conduct, the remaining paragraphs provided the principal with information that the superintendent and several administrators had lost faith in their ability to work with the principal, based on a perceived lack of credibility, and were sufficient to enable the formulation of a defense. Quick v. Bozeman School District No. 7, 1999 MT 175, 295 M 240, 983 P2d 402, 56 St. Rep. 682 (1999), following Bd. of Trustees v. Supt. of Pub. Instruction, 171 M 323, 557 P2d 1048 (1976).

Right of Terminated Teacher to Part-Time Position: The school trustees eliminated a tenured teacher's full-time position due to economic reasons and subsequently hired another teacher for a half-time position teaching the same subject. The Supreme Court held that eliminating a full-time position and then creating a part-time position identical in every respect except for hours could not be used as a method to circumvent the protection afforded tenured teachers. The court ruled that the trustees were required to hire the terminated teacher for the part-time position. Harris v. Trustees, 241 M 274, 786 P2d 1164, 47 St. Rep. 260 (1990).

Termination Procedures Not Followed — Termination Upheld on Other Grounds: The school trustees decided, prior to any hearing, to terminate a tenured teacher due to lack of funds. The Supreme Court agreed that the termination violated the statutory procedures but upheld the trustees' action because the firing was for economic reasons and did not reflect on the personal qualifications of the teacher. Birrer v. Trustees, 241 M 262, 786 P2d 1161, 47 St. Rep. 247 (1990).

Breach of Sabbatical Leave Agreement — Tenured Teacher's Contract Not Renewed: When a tenured teacher did not fulfill the provisions of a sabbatical leave agreement, breach of the agreement constituted good cause for nonrenewal of the teacher's contract. Stansberry v. Argenbright, 227 M 123, 738 P2d 478, 44 St. Rep. 935 (1987), citing Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Standards Applying to Termination of Tenured Teacher: A tenured teacher was not offered a new contract because he cohabited with a female teacher, discussed abortion in the classroom, and displayed fetuses to his class. The decision of the board of trustees not to rehire was upheld by the County Superintendent and the State Superintendent. The District Court overturned the decision, and an appeal was taken to the Supreme Court. Counsel for the teacher contended that 20-4-207 contains the standards which apply in the event of termination of the services of a tenured teacher. The Supreme Court held that, by its terms, that section applies where the trustees seek to dismiss a teacher before the expiration of his employment contract, i.e., during the course of a normal school year. The court held that 20-4-207 is not applicable to the termination of the services of a tenured teacher under 20-4-203 and this section. (See 1985 amendment to this section and 20-4-207.) Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Nonrenewal of Tenured Teacher's Contract — Scope of Review: A tenured teacher's contract was not renewed. A hearing was held by the board of trustees, which affirmed its decision not to renew the contract. The teacher appealed to the County Superintendent where he was given a trial de novo with witnesses and record evidence. The teacher then appealed to the State Superintendent based upon the record, and the State Superintendent upheld the decision. The teacher appealed to District Court based upon the record. The District Court reversed the administrative decision, and an appeal to the Supreme Court was made upon the record. The Supreme Court reversed the District Court, saying that the procedure to be used in this instance was identical to that for any other District Court decision involving an administrative decision. The District Court was not a trier of fact. The Supreme Court should not substitute its judgment for that of the County Superintendent as to the weight of the evidence on questions of fact. The Supreme Court may reverse or modify if the substantial rights of the appellant have been prejudiced because the administrative findings and conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982), followed in Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Termination of Tenured Teacher — Standard of Review: A tenured teacher was not offered a new contract. The decision of the board of trustees not to rehire was upheld by the County Superintendent and State Superintendent. The board of trustees based its decision on findings that defendant demonstrated a lack of fitness for teaching in statements made to his junior high class to the effect that his "girlfriend" had to move out of his house because some people did not

like his living arrangements. The trustees also concluded that defendant demonstrated a lack of moral values by cohabiting in Polson with a female teacher, not his wife, which adversely affected his performance as a teacher. The County Superintendent found that although the discussion of abortion and display of fetuses to his class were not in themselves sufficient grounds for dismissal, together with the resultant controversy, they were indicative of the adverse impact defendant's living arrangements were having on his teaching. The State Superintendent did not discuss the abortion or fetus findings. The Supreme Court found that the County Superintendent's findings allowed it to consider the issues. The District Court held that the finding that the cohabitation was a matter of public knowledge was clearly erroneous. The Supreme Court held that the County Superintendent was in the position of the trier of fact and so was able to hear and evaluate the evidence of the various witnesses. Where the evidence was conflicting and the County Superintendent and State Superintendent both found that the trustees' reasons were supported by the evidence, the Supreme Court, applying the standard of 2-4-704, found the findings not clearly erroneous and reversed the District Court. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Discharge of Teacher — Board's Lack of Knowledge of Protected Union Activity: Based on the recommendation of the principal, a striking teacher was not rehired by a board of trustees. The board had no knowledge of the teacher's union activities, but the principal did. The Supreme Court held that the board had committed an unfair labor practice despite its lack of knowledge of the teacher's union activity because the board was responsible for the principal's tainted evaluation and, in accepting his recommendation, committed the prohibited act of discrimination. This is not the usual employee-employer relationship, and the Legislature did not intend to allow a school board to insulate itself by claiming lack of knowledge when a public employee's rights have been disregarded. Bd. of Trustees v. State ex rel. Bd. of Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979).

Dual Motivation for Teacher's Discharge — Burden of Proof — "But For" Test: Where a striking teacher was not rehired by a board of trustees based upon proper reasons related to the teacher's competence and improper reasons related to protected union activity of the teacher, the Supreme Court held that the District Court correctly affirmed the decision of the Board of Personnel Appeals, which, in essence, utilized the procedure and the "but for" test of Mt. Healthy City Board of Education v. Doyle, 429 US 274, 97 S Ct 568, 250 L Ed 2d 471 (1977). Under Mt. Healthy, the burden is first placed upon the teacher to show that the protected activity was a motivating factor in the discharge. The board of trustees then has the burden of showing that the teacher would have been discharged even in the absence of the protected activity. Bd. of Trustees v. State ex rel. Bd. Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979).

Waiver of Time Limit by Superintendent: Because the board allowed plaintiff to believe that the Superintendent had the authority to waive the statutory time limit of 20-4-204 for a hearing request, plaintiff was entitled to a hearing before the board concerning the termination of his contract, even though his request came after expiration of the time limit. (See 1985 amendment.) Yanzick v. Bd. of Trustees, 177 M 459, 582 P2d 338, 35 St. Rep. 1085 (1978).

Notice of Dismissal by Superintendent Held Lawful: Where, after vote by the board of trustees, teacher was notified of his dismissal by Superintendent and not the board itself, there was no violation of the statute, since the Superintendent's action was a purely ministerial one performed in his capacity as chief executive officer of the trustees. (See 1985 amendment.) School District v. Colburg, 169 M 368, 547 P2d 84 (1976).

Stipulation by Counsel as Waiver to Sufficiency of Notice of Reasons for Termination: Where counsel stipulated, in order to limit issues to be considered at hearing before Superintendent, that proper procedural steps were taken for notice of termination, according to this section, he is estopped from thereafter asserting that the case was tried or submitted on wrong theory, since, unlike a stipulation which merely eliminates a single issue, a stipulation of this nature amounts to a binding waiver or elimination of all procedural issues not included. School District v. Colburg, 169 M 368, 547 P2d 84 (1976).

Trustees' Delegation of Authority to District Superintendent to Supply Statement of Reasons for Termination: District Court erred in holding that this section was not complied with when Superintendent and not school board supplied statement of reasons for termination, as notification of a decision already reached by the school board and sent by the Superintendent does not constitute an improper delegation of authority when the Superintendent's action was purely a ministerial one by the chief executive officer of the trustees. (See 1985 amendment.) School District v. Colburg, 169 M 368, 547 P2d 84 (1976).

Dismissal Based on Drop in Enrollment: Certified letter from chairman of school board to tenured teacher which informed teacher that termination of her services was deemed necessary

due to a drop in enrollment of her class was legally sufficient as a notice; this section (prior to amendment) did not require that the notice contain a statement of appeal procedure. Schweigert v. Bd. of Trustees, 163 M 29, 515 P2d 85 (1973).

Teacher's Petition for Reconsideration of Termination Not Timely Filed: Teacher who failed to file petition for a formal hearing to reconsider termination until more than 45 days after receiving notice of termination failed to file request in a timely manner, and the right to a hearing under this section had expired. The fact that the board reaffirmed its decision 40 days after receipt of original notification did not revive expired rights. Schweigert v. Bd. of Trustees, 163 M 29, 515 P2d 85 (1973). (Decided prior to 1985 amendment.)

Nepotism — Effect on Tenure: Where the father, mother, and uncle of the only pupils attending school were the sole persons eligible to serve as trustees, the employment of the mother, who though elected as trustee preferred to act as teacher and did not qualify as trustee, was illegal under 2-2-302, condemning nepotism. This section presupposing capacity to hold the position both legally and in fact, she therefore could not be deemed reelected thereunder in the absence of notice that her services would be no longer required. State ex rel. Hoagland v. School District, 116 M 294, 151 P2d 168 (1944).

Closing of School — Contract Void: Where a teacher who was not notified that her services would not be required for next succeeding year brought an action to recover the amount she would have received if reemployed, having taught for 3 consecutive years, entitling her (prior to amendment) to automatic reemployment under this section because school was closed on the enrollment having fallen to two pupils, the board under section 1044, R.C.M. 1935 (since repealed), had the power to close the school and void the contract, as well as under a clause of her contract providing that if school closed for lack of attendance the contract should be considered at an end. Moses v. School District, 107 M 300, 86 P2d 407 (1938).

Notice Based on Informal Meeting Held Insufficient: The notice of dismissal that must be given a teacher entitled to the benefits of the tenure act is one based upon action by a majority of the board of trustees taken at a meeting thereof. Hence, where two of the three members of the board decided in casual conversations at their homes to dispense with the services of the teacher and notified her to that effect in writing, the notice was not the legal notice required and was insufficient to effect her dismissal. Day v. School District, 98 M 207, 38 P2d 595 (1934).

Statute Part of Contract: Provision requiring notice of termination became a part of the contract of employment, binding upon both the teacher and the board of trustees. The notice of dismissal must be clear and explicit. McBride v. School District, 88 M 110, 290 P 252 (1930), explained in State ex rel. Hoagland v. School District, 116 M 294, 151 P2d 168 (1944), and overruled in Canyon Creek Educ. Ass'n v. Bd. of Trustees, 241 M 73, 785 P2d 201, 47 St. Rep. 93 (1990).

Attorney General's Opinions

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. 41 A.G. Op. 57 (1986).

Grave Economic Necessity — Grounds for Dismissal: Tenured teachers are subject to dismissal in situations of genuine economic necessity, such as when federal funds are terminated. 36 A.G. Op. 77 (1976).

Collateral References

Schools and School Districts *key* 133.9.

78 C.J.S. Schools and School Districts §180.

68 Am. Jur. 2d Schools §§226, 230, 232, 233, 238.

44 Am. Jur. POF2d Defense of Teacher Charged With Professional Incompetence, p. 655.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 ALR 4th 301.

Notice of intention to discharge teacher, or not to renew contract, sufficiency under statutes requiring such notice. 92 ALR 2d 751.

Application to tenured positions in educational institutions of Civil Rights Act of 1964, as amended (42 U.S.C.S. §2000e, et seq.) prohibiting discrimination on basis of sex. 55 ALR Fed. 842.

20-4-205. Notification of teacher reelection — acceptance.

Compiler's Comments

1997 Amendment: Chapter 438 in (1), in first sentence, substituted "June 1" for "May 1" and substituted "all teachers" for "all tenure teachers" and at beginning of second sentence

substituted "Any teacher" for "Any tenure teacher"; at beginning of (2) substituted "Any teacher" for "Any tenure teacher"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1989 Amendment: In (1) changed "April 1" to "May 1". Amendment effective April 20, 1989.

Applicability: Section 2, Ch. 574, L. 1989, provided: "[This act] applies to teacher contracts issued for the school fiscal year 1990 and thereafter."

Case Notes

Termination of Employment: When a nontenured teacher contends that her contract was not renewed due to exercise of first amendment rights, the court found that the school board would have reached the same decision as to plaintiff's reemployment in the absence of the constitutionally protected conduct. Defendants provided the reasons for failure to renew as requested by the plaintiff, and it is incidental whether they constituted good cause. Branch v. School District, 432 F. Supp. 608, 34 St. Rep. 572 (D.C. Mont. 1977).

Collateral References

Schools and School Districts *key* 133.15.

78 C.J.S. Schools and School Districts §§196, 197.

68 Am. Jur. 2d Schools §§221 through 224.

20-4-206. Notification of nontenure teacher reelection — acceptance — termination.

Compiler's Comments

1997 Amendment: Chapter 438 in (1), at end of first sentence, substituted "by June 1 to each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year" for "by May 1 to all nontenure teachers who have been reelected" and at beginning of second sentence substituted "A teacher" for "A nontenure teacher"; in (2), in middle of second sentence, substituted "constitutes conclusive evidence of the nontenure teacher's nonacceptance" for "may be considered nonacceptance"; inserted (3) concerning nonrenewal of employment of nontenure teacher; deleted former (3) through (6) that read: "When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of the notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the teacher a true statement of reasons for termination.

(4) If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within 10 days of receipt of the statement of reasons that the county superintendent hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be scheduled within 10 days and held within 45 days after receipt of the request, except that the period may be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons are not true rests with the teacher, and the showing must be demonstrated by clear and convincing evidence.

(5) If, after a hearing, the county superintendent determines that the reasons are not true, the county superintendent shall order the trustees to offer the teacher a contract for the ensuing school fiscal year.

(6) The provisions of this section do not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1991 Amendment: In (1), in second sentence before "notice", inserted "written"; in (3), in last sentence, substituted "a true statement of reasons for termination" for "such statement"; inserted (4) concerning hearing procedures and burden of proof; inserted (5) concerning County Superintendent ordering trustees to offer teacher a contract after hearing; and made minor changes in style.

Applicability: Section 4, Ch. 439, L. 1991, provided: "[This act] does not apply to nontenure teachers who are considered temporary or substitute teachers."

1987 Amendment: In (1) changed "April 15" to "May 1".

Case Notes

Nonrenewal of Teacher Contract — No Constitutionally Protected Interest or Right to Administrative Hearing: Roos's teaching contract was not renewed, and the school district's motion to dismiss for lack of jurisdiction was upheld by the state superintendent and the District Court. On appeal, the Supreme Court affirmed. The basis for Roos's complaint was that the school district violated its own policy that nonrenewed teachers be notified of the decision by May

1, even though this section requires notification by June 1, and that because the school policy granted greater protection than state law, an administrative hearing on the issue was appropriate. Nevertheless, the appeal failed. Roos did not allege any violation of state statute that grants an administrative hearing or constitutionally protected interest. Thus, the District Court properly held that the County Superintendent of Schools did not have jurisdiction to hear Roos's claims as a contested complaint. Roos v. Kircher Pub. School Bd. of Trustees, School District No. 3, 2004 MT 48, 320 M 128, 86 P3d 39 (2004). See also Irving v. School District No. 1-1A, 248 M 460, 813 P2d 417 (1991).

Scope of Written Statement of Reasons for Termination of Employment of Nontenure Teacher: Under this section, timely notice of termination of a nontenure teacher is sufficient even in the absence of a statement of reasons. Upon request of the teacher, a reasonably detailed statement of reasons for termination is required; however, there is no statutory standard that the reasons must be somehow sufficient to merit a refusal to enter into a contract. This section does not contain any requirements regarding the extent or nature of the statement reasons, but the inadequacy of a statement in no way affects the termination when timely notice is given. (See 1997 amendment.) Birgenheier v. Bd. of Trustees, 242 M 513, 791 P2d 1388, 47 St. Rep. 941 (1990), overruling the statement in Bridger Educ. Ass'n v. Bd. of Trustees, 209 M 31, 678 P2d 659 (1984), that a nontenure teacher is entitled to notice stating what undesirable qualities merit a refusal to enter into a further contract.

Breach of Contract Disputes to Be Handled Administratively: The plaintiff brought an action in District Court alleging breach of the collective bargaining agreement. The Supreme Court ruled that the issue had to be submitted for administrative review before it could be filed in the lower court. The court overruled its holding in McBride v. School District No. 1, 88 M 110, 290 P 252 (1930). Canyon Creek Educ. Ass'n v. Bd. of Trustees, 241 M 73, 785 P2d 201, 47 St. Rep. 93 (1990).

Failure to Follow Contract Grievance Procedure — Loss of Right to Final Administrative Determination: Plaintiff's teaching contract outlined three levels of grievance adjustment. The first level provided that the written grievance be presented to the responsible administrator, level two allowed appeal to the County Superintendent of Schools, and level three provided for binding arbitration. Plaintiff's grievance claimed inaccuracy in an evaluation and requested a new contract but did not suggest that insufficient reasons were given in the notice of nonrenewal. The grievance was denied at the first two levels, but rather than proceeding to binding arbitration, plaintiff went to District Court seeking damages based on insufficiency of notice. The Supreme Court found that the grievance procedure under the union contract was binding and that plaintiff could not have proceeded into District Court on the same issues raised in the grievance. By failing to follow the administrative procedures set out in Throssell v. Bd. of Trustees, 232 M 498, 757 P2d 348, 45 St. Rep. 1228 (1988), and Yanzick v. School District, 196 M 375, 641 P2d 431 (1982), plaintiff gave up his right to a final determination under the administrative procedure required in Montana. He therefore had no claim for nonrenewal of his contract, and there were no further remedies available in District Court. Thompson v. Bd. of Trustees, 237 M 498, 774 P2d 412, 46 St. Rep. 1000 (1989).

Failure to Request Reasons for Termination — Loss of Appeal Rights: Plaintiff was one of four nontenured teachers informed in writing in mid-April that her contract would not be renewed. The letter gave no reason for termination, but school board minutes reflected that the reason was financial, and allegedly all nontenured teachers were released in anticipation that the upcoming mill levy would not pass. Plaintiff therefore did not request reasons for termination within 10 days as required under this section (see 1997 amendment). However, in June the levy did pass and all nontenured teachers were rehired except plaintiff, who appealed in July. Even in cases where financial conditions are the alleged reason for termination, nontenured teachers cannot assume this is the reason unless they request and receive written confirmation from the district trustees. Because plaintiff did not request confirmation, her chance for appeal passed while she waited to be rehired after the mill levy vote. Keller v. School District, 237 M 481, 774 P2d 409, 46 St. Rep. 986 (1989).

"Superintendent/Principal" Entitled to Statutory Processes Regarding Nonrenewal of Contract: Appellant was hired for the 1979-80 school year as "superintendent/principal" by respondent school district for a period of 227 days but left after performing only 193 days' service. The district failed to renew his contract for 1980-81, claiming that as superintendent he was not entitled to notice under 20-4-401. Appellant claimed he also served as principal and was therefore entitled to notice under 20-4-206. The Supreme Court held that he served in both capacities and that as principal he was entitled to the statutory notice provisions regarding nonrenewal of a nontenure teacher contract outlined in 20-4-206. Since respondent did not

comply with 20-4-207 regarding dismissal, the court held that appellant was entitled to damages for breach of the statutorily entered 1980-81 contract but not for damages stemming from the 1979-80 contract. The case was remanded on the issue of damages for determination in light of Wyatt v. School District, 148 M 83, 417 P2d 221 (1966). Hurtt v. School District, 222 M 415, 723 P2d 205, 43 St. Rep. 1377 (1986).

Award Properly Limited to Year of Termination: In an appeal by the school district from an administrative order reinstating and compensating a nontenured school principal who had been discharged, the District Court properly limited the principal's award to the school year of his termination. The proper award is codified in 20-4-207 but is affected by 20-4-206, which applies to nontenured teachers. It was clear the trustees elected to terminate the contract of the nontenured principal and he would not have been reelected for subsequent years. Pryor School District v. Supt. of Pub. Instruction, 218 M 73, 707 P2d 1094, 42 St. Rep. 1405 (1985).

Dismissal of Nontenured Teacher — Notice of Reasons to State Undesirable Qualities: A nontenured teacher was given as a reason for his termination that the school district believed it "could find a better teacher". Such a reason contravenes the intention of this section. A nontenured teacher is entitled to notice that states what undesirable qualities merit refusal to enter into a further contract; this enables a teacher to know about his deficiencies and inadequacies and enables him to improve, thereby elevating the teaching profession and education in Montana. (See 1997 amendment.) Bridger Educ. Ass'n v. Bd. of Trustees, 209 M 31, 678 P2d 659, 41 St. Rep. 533 (1984), overruled in Birgenheier v. Bd. of Trustees, 242 M 513, 791 P2d 1388, 47 St. Rep. 941 (1990).

Collective Bargaining — Teachers' Procedural Rights — School District's Management Rights: A provision of a collective bargaining agreement between a school district and teachers incorporated the requirements of this section that provide nontenured teachers access to the grievance procedure for alleged noncompliance by the school district. The provision did not affect any of the statutorily or contractually reserved management rights of the school district. Savage Pub. Schools v. Savage Educ. Ass'n, 199 M 39, 647 P2d 833, 39 St. Rep. 1192 (1982).

Arbitration of Teacher Contract Nonrenewal: Nonrenewal of nontenured teacher's contract was not a "grievance" within a collective bargaining agreement with the school board and subject to arbitration provisions of the agreement when not allowed under former law regarding negotiations for teachers. Wibaux Educ. Ass'n v. Wibaux County High School, 175 M 331, 573 P2d 1162 (1978).

Termination of Employment: Where a nontenured teacher contended that her contract was not renewed due to exercise of first amendment rights, the court found that the school board would have reached the same decision as to plaintiff's reemployment in the absence of the constitutionally protected conduct. Defendants provided the reasons for failure to renew as requested by the plaintiff, and it is incidental whether they constituted good cause. Branch v. School District, 432 F. Supp. 608, 34 St. Rep. 572 (D.C. Mont. 1977).

Termination of Employment — Retaliation for Exercise of Rights: When the refusal to grant a contract to a nontenured teacher was based in whole or in substantial part upon the teacher's exercise of protected rights, the refusal is unlawful and the teacher has a remedy. Morrison v. School District, 32 St. Rep. 467 (D.C. Mont. 1975) (apparently not reported in Federal Supplement).

Collateral References

44 Am. Jur. POF2d Defense of Teacher Charged With Professional Incompetence, p. 655.

20-4-207. Dismissal of teacher under contract.

Compiler's Comments

1999 Amendment: Chapter 514 in (2)(c) inserted "clearly and explicitly" and after "specific" substituted "reason or reasons" for "instances of behavior or acts"; in third sentence in (3)(a) substituted "not less than 10 days" for "not less than 5 days"; and in first sentence in (5) substituted "within 20 days" for "within 10 days". Amendment effective April 28, 1999.

1997 Amendment: Chapter 438 at end of (1) substituted "for good cause" for "for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees"; in (5), at end of first sentence after "dismissal", substituted "under the guidelines set forth in 20-4-204" for "to the county superintendent", deleted former second and third sentences that read: "Following such appeal, a hearing must be scheduled within 10 days and held within 30 days after the appeal, except that the period may be extended upon agreement between the teacher and the trustees. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the

appeal", and inserted second and third sentences designating to whom appeal is made based on whether employment of teacher is covered by collective bargaining agreement; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1989 Amendment: In second sentence of (5) inserted language clarifying that a hearing be scheduled within 10 days and held within 30 days after appeal unless extended by agreement; and made minor changes in grammar.

1985 Amendment: Inserted (2) relating to who may make a recommendation for dismissal; inserted (3) requiring notice to teacher; and inserted (4) relating to suspension of teacher.

Interim Committee Bill: Senate Bill No. 18 (Ch. 56, L. 1985) was introduced at the request of Joint Interim Subcommittee No. 4. See "Teacher Tenure in Montana: An Investigation of the Laws and Issues". Mont. Leg. Council (Dec. 1984).

Case Notes

Teacher Tenure Statute Not Ambiguous — Assistant Superintendent Considered Tenured Teacher: The school district board voted to terminate Small's employment as assistant superintendent at the end of the employment contract without a hearing or determination of good cause. Small appealed the board's determination on grounds that he had been continuously employed by the school district for 10 years in a position requiring teacher certification and thus was a tenured teacher whose employment could be terminated only after a hearing and a finding of good cause. The District Court agreed that Small was a tenured teacher and remanded to the board with instructions to provide Small with the appropriate termination process, but found that the issue of damages was premature. The school district appealed the decision that Small was a tenured teacher, and Small appealed the decision that damages were premature. The Supreme Court affirmed, finding that the teacher tenure statute is not ambiguous. The statute clearly grants tenure to teachers and denies tenure to District Superintendents. By definition in 20-1-101, a teacher is a person, except a District Superintendent, who holds a valid Montana teacher certificate and who is employed by a district as a member of its instructional, supervisory, or administrative staff. Small held a valid teacher certificate, was not a District Superintendent, and was employed by the district as a member of its supervisory and administrative staff and was thus entitled to tenure. The court also remanded to the County Superintendent for an evidentiary hearing on damages. Small v. Bd. of Trustees, Glacier County School District No. 9, 2001 MT 181, 306 M 199, 31 P3d 358 (2001).

Numerous Sex-Based Jokes and Comments as Rendering High School Teacher Unfit to Teach: A high school teacher who jokes about testes and a student's menstrual period, flips off his students and views the gesture as "the highest form of respect", and makes gender-based remarks and innuendoes in his classroom is unfit to continue teaching as a matter of law. In this case, the County Superintendent received evidence of nine instances of such sex-based conduct but concluded, erroneously, that the conduct did not constitute unfitness under this section. Unfitness in this context means inappropriate, and the conduct was inappropriate. The conduct was unrelated to the purpose of teaching, and the teacher showed an inherent lack of judgment regarding a teacher's role and relationship with students that relates directly to fitness to teach. The County Superintendent's findings, based on substantial evidence, that the teacher did not mean to offend and that the students were not offended is irrelevant. Baldridge v. Bd. of Trustees, 287 M 53, 951 P2d 1343, 54 St. Rep. 1495 (1997).

Wrongful Firing of Tenured Teacher as Violation of Rights — Not Breach of Contract: The school district fired a tenured teacher on the grounds of incompetence. Subsequently, the Supreme Court ruled that the firing was not legal and the district entered into a money settlement with the teacher. The district's insurer refused to cover the settlement on the basis that the policy contained an exclusion for damages due to breaches of contract. The Supreme Court ruled that coverage under the policy was based upon the act giving rise to the claim and not the language of the complaint. The court held that tenure was a right, that the wrongful discharge was negligence, that the fact that the statute required damages based on contracted salary did not change the fact that the district's negligent conduct was not a breach of contract, and that therefore the wrongful discharge was covered under the policy. Missoula County School District No. 1 v. Pac. Employer's Ins. Co., 263 M 121, 866 P2d 1118, 50 St. Rep. 1741 (1993).

Temporary Suspension of Teachers Not Subject to Dismissal Statute: Three teachers temporarily suspended for disciplinary reasons sued for wages not paid during the period of suspension. The Supreme Court ruled that temporary suspensions were not subject to the statute covering the dismissal of teachers. The court further held that disputes over temporary suspensions were subject to contract arbitration provisions and that therefore the lower court

had no jurisdiction to resolve the dispute. DeBar v. Yellowstone County School District, 244 M 297, 796 P2d 1081, 47 St. Rep. 1639 (1990).

School Psychologist Subject to Teacher Dismissal Statute: The plaintiff argued that his dismissal under the state statute providing for dismissal of teachers was improper because he was employed as a school psychologist. The Supreme Court held that the statute did apply to school specialists and pointed out that in a previous case, the plaintiff had successfully argued that he was entitled to the rights of a tenured teacher. Harris v. Bailey, 244 M 279, 798 P2d 96, 47 St. Rep. 1622 (1990).

Statute Specific to Teachers Controls: The plaintiff argued that his firing should be set aside on the basis that he was not given a statement for his discharge as required by 39-2-801. The Supreme Court ruled that the section of law relied on by the plaintiff applied generally to employees in general commerce and that the specific statute relating to termination of teachers was controlling. Harris v. Bailey, 244 M 279, 798 P2d 96, 47 St. Rep. 1622 (1990).

Sufficient Evidence of School Psychologist's Incompetence: The Supreme Court found that the school district had produced sufficient evidence of incompetence to discharge the plaintiff and further that there was no merit to the plaintiff's argument that since he was not trained as a psychologist, he should be judged by a lower standard. Harris v. Bailey, 244 M 279, 798 P2d 96, 47 St. Rep. 1622 (1990).

Dismissal for Sexual Conduct With Students: Evidence of a teacher's numerous sexual contacts with students indicated a failure to provide proper moral and civic instruction and was sufficient good cause to warrant dismissal for immorality, unfitness, and failure to fulfill the duties of a teacher. (See 1997 amendment.) Johnson v. Bd. of Trustees, 236 M 532, 771 P2d 137, 46 St. Rep. 598 (1989).

Structured Interviews Not Sole Determination of Teacher Competence When Other Means Available: The District Court improperly substituted its judgment for a finding by the State Superintendent of Public Instruction that the school district board of trustees failed to prove a tenured teacher was incompetent. The board relied solely on the teacher's performance in four structured interviews but failed to consider 13 years of satisfactory classroom evaluations. Bd. of Trustees v. Anderson, 232 M 501, 757 P2d 1315, 45 St. Rep. 1232 (1988).

Authority of Superintendent Exceeded, but Award of Contract Amount Appropriate: A County Superintendent erred in awarding a discharged teacher the full amount due under a 1984-85 contract when the decision was made in January 1985. However, by the time the District Court considered the matter, the school year had expired, so the award of the full contract amount was appropriate and properly paid as damages. School District Trustees v. Holden, 231 M 491, 754 P2d 506, 45 St. Rep. 786 (1988).

Discussion of Progressive Discipline Nonessential to Good Cause Determination: It was not clear error to discuss the issue of progressive discipline under the heading "other due process considerations" in a County Superintendent's order because the issue was not necessary to the determination of whether a teacher was terminated for good cause. School District Trustees v. Holden, 231 M 491, 754 P2d 506, 45 St. Rep. 786 (1988).

No Notice of Incident as Reason for Termination: A teacher was not given notice of an alleged incident as a reason for termination; therefore, the incident could not be used as a reason for his termination. The County Superintendent was limited to consideration of evidence supporting specific charges given as reasons for dismissal. School District Trustees v. Holden, 231 M 491, 754 P2d 506, 45 St. Rep. 786 (1988).

Two Incidents of Inappropriate Language Not Meriting Dismissal: A County Superintendent properly found that two incidents of sarcastic language by a teacher toward his students, although inappropriate for the classroom, were insufficient to warrant dismissal. School District Trustees v. Holden, 231 M 491, 754 P2d 506, 45 St. Rep. 786 (1988).

Award of Teacher's Backpay — Income of Second Job Not Offset: Income earned at a second job should not offset an award of backpay for a teacher unless it can be shown that the recipient of the award would have been unable to hold the second job at the same time as the job for which he is receiving backpay. Harris v. Bauer, 230 M 207, 749 P2d 1068, 45 St. Rep. 147 (1988).

Resignation of Tenured Teacher — Formal Board Acceptance Not Required: A tenured teacher was charged with misdemeanor theft and pleaded guilty. The Board of Education of District No. 1 voted to authorize the Superintendent of Schools to request the teacher's immediate resignation and grant 30 days' severance pay. The same day the teacher signed a letter of immediate resignation. The guilty plea was later withdrawn, the theft case was dismissed, and the teacher sought to withdraw her resignation. Withdrawal was denied by the Board, County and State Superintendents of Schools, and the District Court. The Supreme Court affirmed, holding that the Board did not need to formally accept a resignation which it had

already decided to request and that it was not a delegation of authority for the Board to make a decision and direct an employee to carry an offer to a teacher. The resignation was effective and the district's contractual obligation was satisfied upon the teacher's acceptance of the severance pay. Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

"Superintendent/Principal" Entitled to Statutory Processes Regarding Nonrenewal of Contract: Appellant was hired for the 1979-80 school year as "superintendent/principal" by respondent school district for a period of 227 days but left after performing only 193 days' service. The district failed to renew his contract for 1980-81, claiming that as superintendent he was not entitled to notice under 20-4-401. Appellant claimed he also served as principal and was therefore entitled to notice under 20-4-206. The Supreme Court held that he served in both capacities and that as principal he was entitled to the statutory notice provisions regarding nonrenewal of a nontenure teacher contract outlined in 20-4-206. Since respondent did not comply with 20-4-207 regarding dismissal, the court held that appellant was entitled to damages for breach of the statutorily entered 1980-81 contract but not for damages stemming from the 1979-80 contract. The case was remanded on the issue of damages for determination in light of Wyatt v. School District, 148 M 83, 417 P2d 221 (1966). Hurtt v. School District, 222 M 415, 723 P2d 205, 43 St. Rep. 1377 (1986).

Award Properly Limited to Year of Termination: In an appeal by the school district from an administrative order reinstating and compensating a nontenured school principal who had been discharged, the District Court properly limited the principal's award to the school year of his termination. The proper award is codified in 20-4-207 but is affected by 20-4-206, which applies to nontenured teachers. It was clear the trustees elected to terminate the contract of the nontenured principal and he would not have been reelected for subsequent years. Pryor School District v. Supt. of Pub. Instruction, 218 M 73, 707 P2d 1094, 42 St. Rep. 1405 (1985).

Standards Applying to Termination of Tenured Teacher: A tenured teacher was not offered a new contract because he cohabited with a female teacher, discussed abortion in the classroom, and displayed fetuses to his class. The decision of the board of trustees not to rehire was upheld by the County Superintendent and the State Superintendent. The District Court overturned the decision, and an appeal was taken to the Supreme Court. Counsel for the teacher contended that this section contains the standards which apply in the event of termination of the services of a tenured teacher. The Supreme Court held that, by its terms, this section applies where the trustees seek to dismiss a teacher before the expiration of his employment contract, i.e., during the course of a normal school year. The court held that this section is not applicable to the termination of the services of a tenured teacher under 20-4-203 and 20-4-204. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Discharge of Teacher — Board's Lack of Knowledge of Protected Union Activity: Based on the recommendation of the principal, a striking teacher was not rehired by a board of trustees. The board had no knowledge of the teacher's union activities, but the principal did. The Supreme Court held that the board had committed an unfair labor practice despite its lack of knowledge of the teacher's union activity because the board was responsible for the principal's tainted evaluation and, in accepting his recommendation, committed the prohibited act of discrimination. This is not the usual employee-employer relationship, and the Legislature did not intend to allow a school board to insulate itself by claiming lack of knowledge when a public employee's rights have been disregarded. Bd. of Trustees v. State ex rel. Bd. of Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979).

Dual Motivation for Teacher's Discharge — Burden of Proof — "But For" Test: Where a striking teacher was not rehired by a board of trustees based upon proper reasons related to the teacher's competence and improper reasons related to protected union activity of the teacher, the Supreme Court held that the District Court correctly affirmed the decision of the Board of Personnel Appeals, which, in essence, utilized the procedure and the "but for" test of Mt. Healthy City Board of Education v. Doyle, 429 US 274, 97 S Ct 568, 250 L Ed 2d 471 (1977). Under Mt. Healthy, the burden is first placed upon the teacher to show that the protected activity was a motivating factor in the discharge. The board of trustees then has the burden of showing that the teacher would have been discharged even in the absence of the protected activity. Bd. of Trustees v. State ex rel. Bd. Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979).

Amendment of Charges: Dismissal based upon charges made in an amendment attempting to remedy prior legally inadequate charges was reversed. Lindgren v. Bd. of Trustees, 171 M 360, 558 P2d 468 (1976).

Dismissal to Be Based on Specific Charge: Teacher was reinstated due to board's failure to base dismissal on specific charge. Teacher must be given proper notice of charges. Bd. of Trustees v. Supt. of Pub. Instruction, 171 M 323, 557 P2d 1048 (1976).

Teacher's Right to Due Process: School boards in proceedings under this section must observe the elementary and fundamental principles of judicial inquiry. When a teacher is dismissed, dismissal must be based upon evidence supporting the specific charge against the teacher and not on other grounds. Therefore, where a school board called a teacher to answer for a half-day's absence from school, then proceeded to question him not only about that specific absence but others over a 9-year period and dismissed him, he was entitled to reinstatement. Bd. of Trustees v. Supt. of Pub. Instruction, 171 M 323, 557 P2d 1048 (1976), followed in Holmes v. Bd. of Trustees, 243 M 263, 792 P2d 10, 47 St. Rep. 914 (1990).

Constitutionality: The last two sentences of this section violated neither Art. VII, sec. 4(2), nor Art. X, sec. 8, Mont. Const. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Constitutionality — Power of District Boards of Trustees: This section was held to be constitutional under Art. X, sec. 9(3)(a), Mont. Const., in that school district boards of trustees do not have sole control and supervision powers under that constitutional provision. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Propriety of Appeal to County Superintendent: Appeal of the dismissal of a teacher under this section to the County Superintendent was proper, and an appeal to a court was not required by Art. VII, sec. 4(2), Mont. Const. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Dismissal Without Meeting — Want of Jurisdiction: Where no meeting of school board, either special or regular, was held prior to summary dismissal of schoolteacher on ground of incompetency, board's dismissal of teacher was void for want of jurisdiction. Wyatt v. School District, 148 M 83, 417 P2d 221, 22 ALR 3d 1039 (1966).

Rules Part of Teacher Contract: Under former statute, now repealed, authorizing dismissal for "violation of rules", teacher could be discharged only for violation of trustees' rules, which rules were made part of her contract by reference, and not for violation of high school superintendent's rules. Hovland v. School District, 128 M 507, 278 P2d 211 (1954).

Appeals to County School Superintendent: Writ of Prohibition did not lie against the County Superintendent of Schools to prevent her from acting in an appeal by a teacher who had been denied reemployment by the school board since appeals from such dismissals go to the Superintendent. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P2d 209 (1954).

Section Inapplicable to Dismissal of District Superintendent: Section providing specifically for appeal to the County Superintendent from an order dismissing a teacher had no application to dismissal of a District School Superintendent, the latter order being governed by section providing generally for appeal to the County Superintendent from decisions of school officers and boards. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943), distinguished in Eastman v. School District, 120 M 63, 180 P2d 472 (1947).

Appeal Statute Part of Teacher Contract: The provision of the school law that in case of a dismissal of a teacher before the expiration of her written contract, she may appeal to the school authorities, becomes as much a condition of the contract as if expressly written therein. Kelsey v. School District, 84 M 453, 276 P 26 (1929), explained in State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Attorney General's Opinions

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. 41 A.G. Op. 57 (1986).

Collateral References

Schools and School Districts *key* 141.

78 C.J.S. Schools and School Districts §§201, 202, 209, 217.

68 Am. Jur. 2d Schools §226, et seq.

44 Am. Jur. POF2d Defense of Teacher Charged With Professional Incompetence, p. 655.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 ALR 4th 301.

Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 ALR 3d 1047.

Incompetency: what constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public schoolteacher. 4 ALR 3d 1090.

Right to dismiss public schoolteacher on ground that services are no longer needed. 100 ALR 2d 1141.

Request for hearing, sufficiency under statutes requiring hearing on request before discharge. 89 ALR 2d 1018.

Assertion of immunity against self-incrimination as ground for discharge of teacher. 44 ALR 2d 799.

Dismissal of public schoolteacher because of disloyalty. 27 ALR 2d 487.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Marriage of teacher as ground of removal or discharge. 118 ALR 1092; 81 ALR 1033.

Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Negligence or incompetency as a ground for discharge of schoolteacher. 49 ALR 482.

20-4-208. Transfer from administrative position.

Compiler's Comments

1997 Amendment: Chapter 438 in (1), at end of first sentence, substituted "when the district reduces the size of its administrative staff" for "when the economic conditions of the district require a reduction of administrative staff"; near end of (2) substituted "for seniority purposes" for "for teacher seniority purposes"; deleted (3)(b) through (7) that read: "(b) "reduction of administrative staff" is limited to reductions necessary because of declining enrollment or financial exigency.

(4) When a tenure teacher serving in an administrative position is to be transferred under this section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which a signed receipt must be obtained. The notification must include:

(a) a statement of the reason or reasons for the reduction of administrative staff; and

(b) a printed copy of this section for the teacher's information.

(5) A tenure teacher who receives notice under subsection (4) may request in writing, within 10 days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not less than 10 days or more than 20 days from receipt of the request unless both parties agree to an extension. If a hearing is requested, the trustees shall:

(a) conduct the hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1); and

(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the teacher to the administrative position.

(6) A tenure teacher may appeal a decision under this section to the county superintendent as provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1).

(7) The teacher or the trustees may appeal the determination of the county superintendent to the superintendent of public instruction as provided in 20-3-107"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1993 Amendment: Chapter 114 inserted (2) providing for recognition of the seniority of a tenured teacher assigned to a teaching position after serving in an administrative position; and made minor changes in style. Amendment effective March 18, 1993.

Repealer: Section 2, Ch. 114, L. 1993, repealed sec. 4, Ch. 204, L. 1991, which provided that the 1991 act, amending 20-4-203 and enacting 20-4-208, did not apply to a person who was employed in an administrative position before October 1, 1991. Repealer effective March 18, 1993.

Applicability: Section 4, Ch. 204, L. 1991, provided: "[This act] does not apply to a person who was employed in an administrative position before October 1, 1991."

Part 3
Teachers' Powers, Duties, and Privileges

Part Law Review Articles

First Amendment Rights of Non-Tenured Teachers, Parish, 37 Mont. L. Rev. 217 (1976).

Teachers' Speech Rights in the Classroom: An Analysis of Cockrel v. Shelby County School District, Wernicke, 71 U. Cin. L. Rev. 1471 (2003).

Part Collateral References

Search conducted by school official or teacher as violation of Fourth Amendment or equivalent state constitutional provision. 31 ALR 5th 229.

Liability of school or school personnel for injury to student resulting from cheerleader activities. 25 ALR 5th 784.

Liability of school or school personnel in connection with suicide of student. 17 ALR 5th 179.

Personal liability of public school teacher in negligence action for personal injury or death of student. 34 ALR 4th 228.

20-4-301. Duties of teacher — nonpayment for failure to comply.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 22 in (1)(c), at end, substituted "of attendance and grades" for "in the form and on the blanks prescribed by the superintendent of public instruction"; in (1)(d), in first sentence after "report", deleted "in the manner and on the forms prescribed by the superintendent of public instruction" and at end, after "register", substituted "and grades" for "that is necessary to calculate ANB"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 320 in (1)(f)(i), at end, inserted "including any curriculum related to the flag prescribed by the trustees"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate text.

Preamble: The preamble attached to Ch. 320, L. 1997, provided: "WHEREAS, the United States Supreme Court has consistently ruled that a state may require recitation of the pledge of allegiance so long as any student or teacher objecting to participation for any reason is allowed to nondisruptively refuse to participate; and

WHEREAS, courts have also ruled that a student who refuses to participate in the pledge of allegiance cannot be compelled to take any particular action, such as standing, remaining seated, or leaving the room during group recitation of the pledge; and

WHEREAS, in an effort to educate students in the American values of patriotism and love of country and to pass on the feelings of civic pride and commitment to America, the Board of Public Education, as one small step in increasing Montana students' awareness of their heritage as Americans, enacted a policy on January 26, 1989, recommending that teachers in every public school classroom begin the day with recitation of the pledge of allegiance while allowing an excuse from participation for any student or teacher who objects for any reason; and

WHEREAS, in 1980 the United States Supreme Court let stand the decision in Palmer v. Board of Education of City of Chicago, 603 F.2d 1271 (7th Cir. 1979), certiorari denied, 444 U.S. 1026 (1980), which held that while a teacher may not be required to participate in the pledge of allegiance, the teacher, despite any personal convictions, may be required to teach subjects related to the flag or other patriotic matters in the prescribed curriculum; and

WHEREAS, section 20-4-301, MCA, requires a teacher to provide moral and civic instruction by endeavoring to impress students with the principles of morality, truth, justice, and patriotism; to instruct students in the principles of free government; and to train them to comprehend the rights, responsibilities, and dignity of American citizenship."

1989 Amendment: At beginning of (1)(d) substituted "within 10 days" for "immediately", after "school" substituted "semester" for "instructional year and before July 10", and after "prepare" substituted "a" for "an annual"; near middle of (3) substituted "semester" for "annual"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

Collateral References

Schools and School Districts *key* 144(1), 147.

78 C.J.S. Schools and School Districts §§218, 237.

68 Am. Jur. 2d Schools §188.

Duty of teacher to perform services other than those which pertain to instruction. 38 ALR 1414.

20-4-302. Discipline and punishment of pupils — definition of corporal punishment — penalty — defense.

Compiler's Comments

1991 Amendment: In (1) deleted former second and third sentences setting parameters for infliction of corporal punishment; inserted (2) through (4) defining and disallowing corporal punishment and allowing and defining physical restraint; in (5), at end of first sentence, deleted "and to administer corporal punishment in the presence of a witness, without undue anger" and in third sentence, after "trustees", inserted "and the county superintendent"; in (6), after "trustees", inserted "or the county superintendent"; at beginning of (7) substituted "If a person

who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person is" for "Any teacher or principal who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed" and at end increased penalty from not more than $100 to not less than $25 or more than $500; inserted (8) regarding affirmative defense; and made minor changes in style. Amendment effective April 4, 1991.

1981 Amendment: Substituted "Where either a district superintendent or a school principal is employed" for "Where a district superintendent or principal is employed" and "the superintendent or principal" for "he" in the second sentence of (2); deleted "and the trustees shall meet as soon as practicable to consider the suspension action of the teacher" from the end of (2).

Collateral References

Schools and School Districts *key* 147, 169, 176, 177.

78 C.J.S. Schools and School Districts §§237, 238; 78A C.J.S. Schools and School Districts §§493, 502.

68 Am. Jur. 2d Schools §§188, 275.

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis. 89 ALR 2d 396.

Teacher's civil liability for administering corporal punishment to pupil. 43 ALR 2d 469.

Personal liability of school authorities for dismissal or suspension of pupil. 42 ALR 763.

Right to discipline pupil for conduct away from school grounds. 41 ALR 1312.

Duty of teacher to perform services other than those which pertain to instruction. 38 ALR 1414.

20-4-303. Abuse of teachers.

Case Notes

Mootness Found in Six-Year-Old Case — Limited Power of Supreme Court: The defendant in a 1974 case was charged with and convicted of abuse of a school teacher under 20-4-303. The fine levied was paid in 1976, about the time the defendant's appeal to District Court on the constitutionality of the statute was dismissed. Notice of the dismissal escaped the defendant's attorney until nearly 3 years later. A year after that, the appeal was submitted to the Supreme Court. Noting the long time lapse and the lapse of power in the court to order the return of the fine, the court held the question moot because any action it could take would have no effect on the parties. St. v. Warden, 191 M 520, 625 P2d 543, 38 St. Rep. 437 (1981).

20-4-304. Attendance at instructional and professional development meetings.

Compiler's Comments

1989 Amendment: Substituted first two sentences relating to closure of schools for teacher organization meetings and attendance of teachers at such meetings or other training sessions for former language that read: "When the trustees of a school district close the schools of the district for the annual session of the state teachers' association, a teacher may attend the annual session without loss of salary or work at his school and perform duties related to his position of employment, as may be prescribed by the trustees, without loss of salary"; and made minor change in phraseology. Amendment effective July 1, 1990.

Attorney General's Opinions

Contractual Leave Not to Be Used by Teacher to Avoid Training: Nothing in statutory law indicates a legislative intention to dictate to schools that the inservice training obligation be fulfilled according to any particular schedule as long as the teacher acquires the necessary training. However, pursuant to this section, a teacher must either attend the annual instructional and professional development meetings of teachers' organizations or attend other inservice training sometime during the year, as approved by the trustees. A teacher may not use contractual leave to avoid the obligation to attend one or the other kind of training. If a teacher does not attend the training, that teacher may not be paid for the 2 days during which the schools are closed. 46 A.G. Op. 2 (1995).

Collateral References

Schools and School Districts *key* 128.

78 C.J.S. Schools and School Districts §169.

Imposition of state or local penalties for threatening to use explosive devices at schools or other buildings. 79 ALR 5th 1.

Part 4
District Superintendent and Principal

20-4-401. Appointment and dismissal of district superintendent or county high school principal.

Compiler's Comments

2001 Amendment: Chapter 318 in (3) inserted "or the boards of trustees of two or more districts" and at end inserted reference to entering an interlocal agreement to share a district superintendent; in (5) near beginning inserted "or the boards of trustees of two or more districts"; and made minor changes in style. Amendment effective April 21, 2001.

1989 Amendment: At end of (3) changed "20-3-361" to "20-3-362".

1987 Amendment: Inserted (3) relating to jointly employing and appointing a District Superintendent; in (5), after "superintendent", inserted "under subsection (2) or (3)" and substituted "districts" for "elementary district and the county high school".

Case Notes

Collective Bargaining Agreement Modified by Administrator's Individual Contract: A retired school administrator claimed that he was entitled to receive retirement benefits identical to those afforded teachers in the district. The district denied his claim on the basis that the collective bargaining agreement specifically denied the benefits to administrative personnel. The Supreme Court held that the administrator was eligible for the benefits because his individual contract stated that he was entitled to all benefits available to teachers and therefore his contract modified the collective bargaining agreement. The court further held that although the plaintiff could not be denied benefits on the basis of the exclusionary language in the collective bargaining agreement, he was ineligible to receive the benefits because he did not have sufficient indistrict service to qualify. Throssell v. Bd. of Trustees, 248 M 392, 812 P2d 767, 48 St. Rep. 481 (1991).

Constructive Discharge of Superintendent — School District Not Immune: Plaintiff was a Superintendent from July 1, 1983, to June 6, 1985, when he took a medical disability retirement. He then sued the school district and individual members of the school board for damages for wrongful discharge and intentional infliction of emotional distress. The District Court jury awarded plaintiff damages totaling nearly $100,000. The Supreme Court reversed and remanded for a new trial on the grounds that the District Court committed reversible error by incorrectly instructing the jury concerning the requirements of due process and the type of conduct required for liability in a case tried under 42 U.S.C. 1983. Constructive discharge is a form of wrongful discharge, and a school district is not immune for lack of "clearly established" law. Doohan v. Bigfork School District No. 38, 247 M 125, 805 P2d 1354, 48 St. Rep. 121 (1991).

Termination of Superintendent Not Breach of Contract: From 1966 to 1983, appellant was hired as an untenured superintendent under a series of written 2-year contracts. In 1983, appellant accepted a 1-year written contract for the 1983-84 school term. In 1984, the school board voted not to renew appellant's contract. Subsequently, appellant filed suit against the district, alleging breach of contract and contending that his contract was "open-ended". In affirming the trial court's dismissal of the original complaint, the Supreme Court concluded that since appellant negotiated for an express contract for 1 year, no breach of contract occurred. Nordlund v. School District, 227 M 402, 738 P2d 1299, 44 St. Rep. 1183 (1987).

"Superintendent/Principal" Entitled to Statutory Processes Regarding Nonrenewal of Contract: Appellant was hired for the 1979-80 school year as "superintendent/principal" by respondent school district for a period of 227 days but left after performing only 193 days' service. The district failed to renew his contract for 1980-81, claiming that as superintendent he was not entitled to notice under 20-4-401. Appellant claimed he also served as principal and was therefore entitled to notice under 20-4-206. The Supreme Court held that he served in both capacities and that as principal he was entitled to the statutory notice provisions regarding nonrenewal of a nontenure teacher contract outlined in 20-4-206. Since respondent did not comply with 20-4-207 regarding dismissal, the court held that appellant was entitled to damages for breach of the statutorily entered 1980-81 contract but not for damages stemming from the 1979-80 contract. The case was remanded on the issue of damages for determination in light of Wyatt v. School District, 148 M 83, 417 P2d 221 (1966). Hurtt v. School District, 222 M 415, 723 P2d 205, 43 St. Rep. 1377 (1986).

Damages for Improper Discharge: When a county high school principal was improperly discharged, the District Court was instructed to compute damages in an amount equal to the amount he would have earned in wages and benefits for 1 year under the terms of his contract at

the time of his improper discharge and an amount equal to his attorney fees and costs plus interest from the date of discharge. Bd. of Trustees v. Eaton, 185 M 453, 605 P2d 1083, 36 St. Rep. 2012 (1979).

Improper Discharge of County High School Principal: The language of this statute is clear and unambiguous and clearly states the qualifications necessary for a county high school principal. Appellant's certificate did not have the proper endorsement; therefore, the board of trustees would normally be required to discharge him. However, under the facts of this case, it is clear that the board sought the convenience of this statute only after an earlier attempt to terminate the appellant went awry. The board's methodology did not conform to this section, and discharge was improper. Bd. of Trustees v. Eaton, 185 M 453, 605 P2d 1083, 36 St. Rep. 2012 (1979).

Failure to Provide Hearing — Want of Jurisdiction: Where an order of a board of trustees dismissing a District School Superintendent for cause was void because he had not been granted a hearing, which order on appeal to the County Superintendent was reversed, whereupon the board appealed to the State Superintendent of Public Instruction who found in favor of the board, the action of the board and the decision of the Superintendent of Public Instruction were void for want of jurisdiction. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Hearing on Removal Required: Dismissal of Superintendent without hearing was void as exceeding trustees' jurisdiction, notwithstanding that no statute required hearing. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Process Required for Dismissal: A hearing as to the fitness of a District School Superintendent to act as such presupposes that charges were preferred, that notice had been given the incumbent to enable him to prepare for and refute the charges, that evidence was taken at the hearing with opportunity for cross-examination of the witnesses — all for the purpose of determining in a judicial manner the truth or falsity of the charges. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Attorney General's Opinions

High School Superintendent Not "Public Officer": A high school district superintendent appointed under this section does not hold a "public office" within the scope of the Montana Recall Act. 42 A.G. Op. 50 (1988).

Early Termination and Renewal of Contract Between Trustees and Superintendent Held Proper — Automatic Renewal Improper: A board of trustees and a District Superintendent may mutually terminate a 3-year employment contract prior to the expiration of its term and enter into another 3-year contract identical to the first except for date of expiration, without violating this section. However, the trustees and Superintendent may not enter into a rolling 3-year employment contract. 41 A.G. Op. 30 (1985).

Collateral References

Schools and School Districts *key* 133, 140.

78 C.J.S. Schools and School Districts §§170, 201.

20-4-402. Duties of district superintendent or county high school principal.

Compiler's Comments

1999 Amendment: Chapter 343 in (7) substituted "pupil attendance, absence, and enrollment" for "cumulative pupil attendance and pupil absence" and at end after "district" deleted "within 10 days after the conclusion of each school semester"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1989 Amendment: Near end of (7), after "district", substituted "within 10 days" for "immediately" and after "conclusion of" substituted "each school semester" for "the school instructional year and before July 10"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

1981 Amendment: Deleted "until the trustees may consider such suspension" from the end of (6).

Case Notes

Waiver of Time Limit by Superintendent: Because the board allowed plaintiff to believe that the Superintendent had the authority to waive the statutory time limit of 20-4-204 for a hearing request, plaintiff was entitled to a hearing before the board concerning the termination of his contract, even though his request came after expiration of the time limit. Yanzick v. Bd. of Trustees, 177 M 459, 582 P2d 338, 35 St. Rep. 1085 (1978).

Attorney General's Opinions

School Contracts — Trustee's Delegation of Power to Superintendent: A School District Superintendent does not have the inherent power to enter a contract on behalf of the school district. A Superintendent is the executive officer of the board of trustees and in this capacity merely acts to execute policy adopted by the board. A school district board of trustees may delegate a portion of its exclusive power to contract to the Superintendent if the delegated power involves only the performance of administrative nondiscretionary acts. 40 A.G. Op. 41 (1984).

Collateral References

Schools and School Districts *key* 147.

78 C.J.S. Schools and School Districts §237.

68 Am. Jur. 2d Schools §188.

Validity of regulation by public-school authorities as to clothes or personal appearance of pupils. 58 ALR 5th 1.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher. 60 ALR 4th 260.

Executive or administrative officer: personal liability of public school executive or administrative officer in negligence action for personal injury or death of student. 35 ALR 4th 272.

Validity of regulation by school authorities as to clothes of pupils. 14 ALR 3d 1201.

Regulations as to school fraternities. 10 ALR 3d 389.

Marriage or other domestic relations as ground for exclusion of pupil from public school. 63 ALR 1164.

Regulations forbidding pupils to leave school grounds during school hours. 48 ALR 659; 32 ALR 1342.

20-4-403. Powers and duties of principal.

Compiler's Comments

1981 Amendment: Inserted (2) relating to student suspension.

Collateral References

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher. 60 ALR 4th 260.

Executive or administrative officer: personal liability of public school executive or administrative officer in negligence action for personal injury or death of student. 35 ALR 4th 272.

CHAPTER 5
PUPILS

Chapter Case Notes

High School Sports Programs — Discrimination Against Female Participants: In a matter alleging gender-based inequality in high school athletics, it was not erroneous for the federal District Court to fashion the use of a creative settlement course by using a "facilitator". The settlement agreement was adopted by order, with the District Court retaining jurisdiction to monitor progress. The continued jurisdiction was proper, and even though the question of whether the court could consider the change in women's volleyball seasons was not properly before the District Court in the action preceding this appeal, the District Court has jurisdiction under the order and terms of the settlement agreement to exercise its continuing jurisdiction to consider the matter at some future date. Ridgeway v. Mont. High School Ass'n, 858 F2d 579, (9th Cir. 1988). After reviewing the final report of the Special Master and the parties' progress reports, the District Court ruled that a change in high school girls' volleyball and basketball seasons was not necessary to achieve and maintain gender equity. 749 F. Supp. 1544 (D.C. Mont. 1990).

Chapter Law Review Articles

Guarding the Treasure: Protection of Student Religious Speech in the Classroom, Allred, 22 Seattle U.L. Rev. 741 (1999).

Making the Grade: Can Student Drug Testing Programs in Public Schools Pass a Legal Challenge?, 25 Willamette L. Rev. 165 (1989).

Chapter Collateral References

Validity, construction, and application of "hazing" statutes. 30 ALR 5th 683.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity. 68 ALR 4th 228.

Liability of university, college, or other school for failure to protect student from crime. 1 ALR 4th 1099.

Part 1
Attendance

Part Compiler's Comments

Student Cigarette Tobacco Referendum: Section 1, Ch. 438, L. 1991, provided: "A referendum entitled the "Montana school tobacco referendum 1991", open to all Montana students enrolled in grades 7 through 12, must be held in the second week of October 1991 in a ballot form provided by the superintendent of public instruction. The referendum must be conducted as prescribed in this section.

(1) Students enrolled on the date of the referendum in grades 7 through 12 in each accredited public school and in each accredited nonpublic school whose principal notifies the superintendent of public instruction by September 20, 1991, of intent to participate may vote in the referendum.

(2) Not later than October 1, 1991, the superintendent of public instruction shall provide instructions for the referendum, as provided in this section, to each participating school that includes grades 7 through 12. The referendum must be conducted by secret ballot and be presented to students in school in the following ballot form:

[ ] YES — I DO favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

[ ] NO — I DO NOT favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

(3) Votes must be tabulated by the student governing body and the principal of each participating school. The principal shall transmit in writing the vote count for his school to the superintendent of public instruction not later than November 1, 1991, together with a statement by the principal that the referendum was conducted fairly and the vote count is genuine to the best of his knowledge and belief.

(4) The superintendent of public instruction shall tabulate the total vote in the referendum from all participating schools not later than November 15, 1991. If the number of students voting in the referendum is at least 50% of the number of students enrolled in public school grades 7 through 12 on October 1, 1991, and if a majority of students voting voted for the referendum, the superintendent of public instruction shall certify to the director of the department of revenue that the referendum has been approved. Otherwise, the superintendent shall certify that the referendum has been rejected.

(5) Within 60 days of receiving certification from the superintendent of public instruction that the referendum has been approved, the department of revenue shall inform each retailer who sells cigarettes and tobacco that the referendum has been approved and ask retailers to post prominently a sign where cigarettes and tobacco are sold, stating: "Out of respect for the wishes of Montana junior and senior high school students as expressed in the Montana School Tobacco Referendum 1991, this store voluntarily agrees not to sell cigarettes and tobacco to persons under 18 years of age. Your cooperation with our Montana students' vote against tobacco sales to minors is appreciated."" See Title 16, ch. 11, part 3.

Part Law Review Articles

Compulsory Education and Parent Rights: A Judicial Framework of Analysis, 30 B.C.L. Rev. 861 (1989).

Part Collateral References

AIDS infection as affecting right to attend public school. 60 ALR 4th 15.

20-5-101. Admittance of child to school.

Compiler's Comments

1995 Amendment: Chapter 214 in (4) inserted second sentence prohibiting attendance agreement or tuition for homeless child; in (5) inserted exception clause; and made minor changes in style. Amendment effective March 24, 1995.

1989 Amendment: Inserted (4) relating to admitting a child who is homeless; and made minor changes in grammar. Amendment effective March 18, 1989.

1981 Amendment: Chapter 575 deleted former (3)(a) relating to exceptional circumstances; inserted "if there are exceptional circumstances that merit waiving the age provision of this section" at the end of (3).

Case Notes

Age of Admission to School: A reasonable interpretation of former constitutional and statutory provisions specifying that school shall be open to children between the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age, and each school district may establish a "cutoff" date governing entry into the first grade. State ex rel. Ronish v. School District, 136 M 453, 348 P2d 797 (1960).

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

Collateral References

Schools and School Districts *key* 152, 153.

78A C.J.S. Schools and School Districts §§448, 449.

68 Am. Jur. 2d Schools §§245 through 247.

Residence for purpose of admission to public school. 56 ALR 3d 641; 83 ALR 2d 497.

Age: power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority. 78 ALR 2d 1021.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges. 113 ALR 177; 72 ALR 499.

20-5-102. Compulsory enrollment and excuses.

Compiler's Comments

1991 Amendment: Deleted former (2)(c) that read: "(c) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this title"; deleted former (3) that read: "(3) The excuse provided for in subsection (2)(c) of this section shall be issued by the district superintendent or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within 10 days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final"; and made minor changes in style. Amendment effective July 1, 1991.

1983 Amendment — Commissioner Correction: Deleted former (2)(a), which read: "enrolled in a private institution which provides instruction in the program prescribed by the board of public education pursuant to 20-7-111"; and inserted (2)(f) relating to enrollment in a nonpublic or home school.

When former (2)(a) was deleted by committee amendment and (2)(b) through (2)(g) were renumbered accordingly, a reference in (3) to "subsection (2)(d)" was overlooked and not corrected to reflect the renumbering. The Code Commissioner has corrected the reference to read "subsection (2)(c)".

Administrative Rules

Title 10, chapter 65, subchapter 3, ARM Compulsory school attendance.

Case Notes

Wrongful Placement of Special Education Child — Duty Owed by School District — Sovereign Immunity No Bar to Claim for Damages: The plaintiff, a minor child, was diagnosed as needing special education and was to be educated in a class with other "normal" children but was later removed to a class of retarded children and as a result regressed in development. The school district's action of placement of the child was subject to judicial review and was not barred from review by the doctrine of sovereign immunity merely because it was discretionary. The school authorities owed the child a duty of reasonable care in testing and placing her in an appropriate special education program, and the District Court therefore erred in dismissing the child's action for damages. B.M. v. St., 200 M 58, 649 P2d 425, 39 St. Rep. 1285 (1982). B.M. was followed in Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

Attorney General's Opinions

Compulsory Enrollment: This section requires compulsory school enrollment for any student who has reached 7 years of age prior to the first day of school, who has not yet reached his 16th birthday, and who has not yet completed the work of the 8th grade. 38 A.G. Op. 5 (1979).

20-5-103. Compulsory attendance and excuses.

Attorney General's Opinions

Compulsory Attendance: This section requires compulsory school attendance for any student who has reached 7 years of age prior to the first day of school, who has not yet reached his 16th birthday, and who has not yet completed the work of the 8th grade. 38 A.G. Op. 5 (1979).

Law Review Articles

The First Amendment and the Socialization of Children: Compulsory Public Education and Vouchers, Shiffrin, 11 Cornell J.L. Pub. & Pol'y 503 (2002).

Collateral References

Schools and School Districts *key* 160.

78A C.J.S. Schools and School Districts §§463 through 470.

68 Am. Jur. 2d Schools §§252 through 258.

Validity of state or local government regulation requiring private school to report attendance and similar information to government—post-Yoder cases. 8 ALR 5th 875.

Conditions at school as excusing or justifying nonattendance. 9 ALR 4th 122.

What constitutes "private school" within statute making attendance at such a school compliant with compulsory school attendance law. 65 ALR 3d 1222.

Applicability of compulsory attendance law covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 ALR 2d 874.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law. 3 ALR 2d 1401.

Releasing public school pupils from attendance for purposes of attending religious education classes. 2 ALR 2d 1371.

Extent of legislative power with respect to attendance and curriculum in schools. 53 ALR 832; 39 ALR 477.

20-5-105. Attendance officer — powers and duties.

Collateral References

Truant or attendance officer's liability for assault and battery or false imprisonment. 62 ALR 2d 1328.

20-5-106. Truancy.

Collateral References

Schools and School Districts *key* 161, 173.

78A C.J.S. Schools and School Districts §§471, 501.

20-5-107. Incapacitated and indigent child attendance.

Collateral References

Schools and School Districts *key* 161.

78A C.J.S. Schools and School Districts §§471, 474.

20-5-109. Nonpublic school requirements for compulsory enrollment exemption.

Compiler's Comments

2005 Amendment: Chapter 138 in (2) substituted "the minimum aggregate hours" for "180 days" and after "instruction" deleted "or the equivalent"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1989 Amendment: In (5) inserted "of the county in which the home school is located, in each school fiscal year"; and made minor changes in phraseology.

Administrative Rules

Title 10, chapter 65, subchapter 3, ARM Compulsory school attendance — qualifying nonpublic school procedures.

Law Review Articles

IDEA and the New Inequality — The Denial of Subsidized Services to Privately Schooled Children With Disabilities, Youngberg, 24 Whittier L. Rev. 597 (2002).

Finding the Way Back Home: Funding for Home School Children Under the Individuals With Disabilities Education Act, Lambert, 101 Colum. L. Rev. 1709 (2001).

The Latest Home Education Challenge: The Relationship Between Home Schools and Public Schools, Lukasik, 74 N.C.L. Rev. 1913 (1996).

Public School Choice and Open Enrollment: Implications for Education, Desegregation, and Equity, Smith, 24 J.L. & Educ. 147 (1995).

School Choice and the Religion Clauses: The Law and Politics of Public Aid to Private Parochial Schools, Futterman, 81 Geo. L.J. 711 (1993).

Vouchers and Private School Autonomy, Kemerer, Hairstan, & Lauerman, 21 J.L. & Educ. 601 (1992).

Collateral References

Schools *key* 4.

78 C.J.S. Schools and School Districts §6.

68 Am. Jur. 2d Schools §§2, 253, 254, 303, 304.

Validity, construction, and application of statute, regulation, or policy governing home schooling or affecting rights of home-schooled students. 70 ALR 5th 169.

Validity of state regulation of curriculum and instruction in private and parochial schools. 18 ALR 4th 649.

Part 2
Duties — Suspension and Expulsion

20-5-201. Duties and sanctions.

Compiler's Comments

1993 Amendment: Chapter 403 inserted (4) allowing the withholding of grades, transcripts, and the diploma of a pupil responsible for the cost of school materials or for the loss or damage of school property and providing a procedure for withholding and for an appeal; and made minor changes in style. Amendment effective April 19, 1993.

Case Notes

Voluntary Membership in High School Athletic Association Not Unconstitutional Delegation of Trustee Authority: A Livingston high school student, after being informed by the Montana High School Association (MHSA) that he could not participate in basketball because of the MHSA's rule limiting student participation in MHSA events to eight consecutive semesters, filed an action alleging that the board of trustees' consent to be bound by the MHSA rules violated Art. X, sec. 8, Mont. Const., which vests school board trustees with power to supervise and control schools in their district. The Supreme Court held that the MHSA is merely acting as a neutral

arbiter to fill the breach caused by the nonexistence of legislative authority and that becoming a member of the MHSA is not an unconstitutional delegation of the district's authority because membership is voluntary. The court noted that although a district's decision to withdraw from membership in the MHSA would undoubtedly cause the district to have a difficult time in finding other schools against which to compete, membership remains voluntary, and by participating, each district is electing to make the rules of the MHSA its own. Grabow v. Mont. High School Ass'n, 2002 MT 242, 312 M 92, 59 P3d 14 (2002).

Collateral References

Schools and School Districts *key* 169, et seq.

78A C.J.S. Schools and School Districts §493, et seq.

68 Am. Jur. 2d Schools §275, et seq.

Validity of regulation by public-school authorities as to clothes or personal appearance of pupils. 58 ALR 5th 1.

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student. 47 ALR 5th 1.

Demonstrations: participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 ALR 3d 864.

Clothes of pupils, validity of regulation by school authorities. 14 ALR 3d 1201.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 ALR 3d 996.

Teacher's civil liability for administering corporal punishment to pupil. 43 ALR 2d 469.

Power of Legislature or school authorities to prescribe and enforce oath of allegiance, salute to flag, or other ritual of a patriotic character. 147 ALR 698.

Regulations forbidding pupils to leave school grounds during school hours. 48 ALR 659; 32 ALR 1342.

Right to discipline pupil for conduct away from school grounds. 41 ALR 1312.

20-5-202. Suspension and expulsion.

Compiler's Comments

1995 Amendment: Chapter 457 inserted (2) requiring the adoption of school policy requiring expulsion of student concerning firearm brought to school; inserted (3) requiring immediate suspension; inserted (4) regarding instructional activities and educational services; and made minor changes in style. Amendment effective July 1, 1995.

1981 Amendment: Inserted "and 20-4-403" after "20-4-402" at the beginning of the section.

Law Review Articles

Due Process Rights and High School Suspensions After Goss v. Lopez, Townsend, 36 Mont. L. Rev. 333 (1975).

One Strike and You're Out? Constitutional Constraints on Zero Tolerance in Public Education, Blumenson & Nilsen, 81 Wash. U.L.Q. 65 (2003).

Collateral References

Schools and School Districts *key* 177.

78A C.J.S. Schools and School Districts §503.

68 Am. Jur. 2d Schools §283, et seq.

Imposition of state or local penalties for threatening to use explosive devices at schools or other buildings. 79 ALR 5th 1.

Hearing on charges before suspension or expulsion from educational institution. 58 ALR 2d 903.

Personal liability of school authorities for dismissal or suspension of pupil. 42 ALR 763.

Expulsion, dismissal, suspension, or other discipline of student of public school, college, or university as violating due process clause of federal Constitution's Fourteenth Amendment—Supreme Court cases. 88 L Ed 2d 1015.

20-5-203. Secret organization prohibited.

Collateral References

Schools and School Districts *key* 169, 171, 173.

78A C.J.S. Schools and School Districts §§493, 499, 503, 512.

Regulations as to school or college fraternities. 10 ALR 3d 389.

Part 3
Attendance Outside School District

Part Administrative Rules

Title 10, chapter 10, subchapter 3, ARM Special accounting practices.

Part Case Notes

PRIOR TO 1993 SCHOOL FINANCE REVISION

Youth Committed to Program in Nonadjacent State — School District Not Liable for Related Education Costs: The Youth Court committed a youth to a program for sexual offenders located in Minnesota. Cost was $148 a day, of which $48 were education costs, and the court assigned payment of that portion to the youth's school district. On appeal of the assignment, the Supreme Court found that 20-5-314 authorized reciprocal tuition agreements only with states adjoining Montana but found no statutory method to calculate tuition to be paid to a school in a state not adjacent to Montana. Absent specific statutory authority, the Supreme Court held that the Youth Court erred in finding the school district liable for the youth's education costs. (Decided prior to 1987 amendment to 20-5-311, repealed 1993.) In re W.J.H., 226 M 479, 736 P2d 484, 44 St. Rep. 817 (1987).

Tuition Transfer — School Board Decision Improperly Reversed — Reviewing Agency Analysis: It was improper for the State Superintendent of Public Instruction to reverse school board denial of a tuition transfer by including findings that were not part of the record, were irrelevant, or were conjectures or conclusions rather than facts. Findings of the reviewing agency may not be properly included as facts when they are not part of the record below, and the reviewing agency must confine itself to an analysis of whether the findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or whether they are arbitrary, capricious, or characterized by abuse of discretion. Frazer School District v. Flynn, 225 M 299, 732 P2d 409, 44 St. Rep. 248 (1987). This holding is dispositive of a later appeal in a companion case, Frazer School District v. Forsness, 226 M 244, 734 P2d 1218, 44 St. Rep. 624 (1987).

Constitutionality: Section 2, Ch. 77, L. 1927, providing for appeal to the State Board of Education in matters of transportation, rent, tuition, or board, was not open to the objection that under Art. XI, sec. 11, 1889 Mont. Const. (now Art. X, sec. 9, Mont. Const.), the Legislature was limited to prescribing powers and duties for Board to be exercised in connection with the state educational institutions and therefore was without authority to clothe it with jurisdiction to pass on appeals relating to matters connected with the common schools. Section 20-5-304 (repealed 1993) was not ineffective for failure to provide procedure rules for taking the appeal. State ex rel. Stephens v. Keaster, 82 M 126, 266 P 387 (1928).

Quasi-Judicial Capacity of Trustees: In exercise of power to admit nonresident pupils and fix the amount of tuition to be charged them, board of trustees acts in a quasi-judicial capacity, and courts will not interfere with the proper exercise of its discretion and judgment in that regard. Peterson v. School Bd., 73 M 442, 236 P 670 (1925).

Part Attorney General's Opinions

PRIOR TO 1993 SCHOOL FINANCE REVISION

Acceptance of Canadian Students — Tuition — Waiver: A school district board of trustees may, in its discretion, accept as elementary and high school students Canadian residents who wish to attend school in Montana. The trustees are also authorized to exercise discretion in granting a waiver of tuition to these and all other out-of-district students. If the trustees choose to charge tuition, 20-5-305 (repealed 1993) must be referred to in setting the amount of tuition for elementary students and 20-5-312 (repealed 1993) for high school students. 42 A.G. Op. 103 (1988).

Claim of Tuition Offset by Resident Elementary School District: A school district paying the tuition of a resident elementary pupil who attends a school outside the district pursuant to 20-5-302 (repealed 1993) is not eligible to claim a tuition offset under 20-5-303 (repealed 1993) for property taxes paid by the parents to the county or district in which the child attends school. 41 A.G. Op. 50 (1986).

Responsibility for Tuition of Child in Legal Custody of Local Welfare Department: If a local welfare department has legal custody by a temporary or permanent order for placement of a minor child and places that child with foster parents outside the school district of residence (residence of the natural parents in most cases), tuition must be paid by the district of residence. If the placement of the child is outside the state, financial responsibility for school costs rests

with the sending agency under the Interstate Compact on the Placement of Children. 40 A.G. Op. 69 (1984). (Opinion rendered prior to 1985 amendment to 20-5-301, repealed 1993.)

Responsibility for Tuition of Student Who Attends High School Out of State: If a student is voluntarily attending school outside the state, responsibility for payment of tuition depends on the existence of a valid tuition agreement. If no valid tuition agreement exists, the child's parents or guardians are responsible for tuition costs. If a valid tuition agreement exists, the child's school district of residence is responsible for tuition costs. The Superintendent of Public Instruction should be consulted about the existence of a reciprocal tuition agreement with an adjoining state. If the student's out-of-state placement is by court order, the sending agency is responsible for tuition costs under the Interstate Compact on the Placement of Children. 40 A.G. Op. 69 (1984). (Opinion rendered prior to 1985 amendment to 20-5-311, repealed 1993.)

Closely Held Corporation Ineligible for Tuition Offset: A shareholder in a closed or family-type Subchapter S corporation is not eligible to claim the tuition offset under 20-5-303 (repealed 1993) when the corporation owns the property and is the taxpayer responsible for the district and county property taxes referred to in 20-5-303 (repealed 1993). One who accepts the benefits of a corporation must also accept the burdens that flow from the use of a corporate structure. A shareholder in a closely held corporation accordingly must bear any disadvantages resulting from corporate status. One disadvantage associated with incorporation in Montana is the unavailability of tuition offset under 20-5-303 (repealed 1993) when the property taxpayer is a corporation and not the child's parent. 40 A.G. Op. 42 (1984). (Opinion rendered prior to 1985 amendment to 20-5-303, repealed 1993.)

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-5-314. Reciprocal attendance agreement with adjoining state or province.

Compiler's Comments

1993 Amendment: Chapter 563 throughout section substituted reference to attendance agreement for reference to tuition agreement; in three places in (1), after "state", inserted "or province" and in second sentence, after "prescribed by", substituted "20-5-323 are" for "20-5-305 and 20-5-312 shall be"; substituted present (2) regarding completion of an attendance agreement for former language that read: "Any tuition agreement approved under the provisions of 20-5-301, 20-5-302, or 20-5-311 for a child's attendance at a school outside of the state shall be completed in accordance with the applicable reciprocal tuition agreement"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Case Notes

Youth Committed to Program in Nonadjacent State — School District Not Liable for Related Education Costs: The Youth Court committed a youth to a program for sexual offenders located in Minnesota. Cost was $148 a day, of which $48 were education costs, and the court assigned payment of that portion to the youth's school district. On appeal of the assignment, the Supreme Court found that this section authorized reciprocal tuition agreements only with states adjoining Montana but found no statutory method to calculate tuition to be paid to a school in a state not adjacent to Montana. Absent specific statutory authority, the Supreme Court held that the Youth Court erred in finding the school district liable for the youth's education costs. In re W.J.H., 226 M 479, 736 P2d 484, 44 St. Rep. 817 (1987).

Attorney General's Opinions

Responsibility for Tuition of Student Who Attends High School Out of State: If a student is voluntarily attending school outside the state, responsibility for payment of tuition depends on the existence of a valid tuition agreement. If no valid tuition agreement exists, the child's parents or guardians are responsible for tuition costs. If a valid tuition agreement exists, the child's school district of residence is responsible for tuition costs. The Superintendent of Public Instruction should be consulted about the existence of a reciprocal tuition agreement with an adjoining state. If the student's out-of-state placement is by court order, the sending agency is responsible for tuition costs under the Interstate Compact on the Placement of Children. 40 A.G. Op. 69 (1984).

20-5-320. Attendance with discretionary approval.

Compiler's Comments

2001 Amendment: Chapter 464 in (2)(c)(i) at end of first sentence deleted "but any waiver must be applied equally to all students" and inserted second and third sentences regarding waiver of tuition; inserted (2)(c)(ii) defining entity; in (9)(a) in first sentence in two places after "parent" inserted "or guardian" and in second sentence after "paid in district" deleted "and county"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-5-321. Attendance with mandatory approval — tuition and transportation.

Compiler's Comments

2005 Amendment: Chapter 463 in (1)(b)(ii) in first sentence near middle after "under" substituted "20-5-324(5)(a)(ii)" for "20-5-324(6)"; in (3) in first sentence after "district of" substituted "attendance" for "choice" and after "agreement" deleted "and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days", deleted former second sentence that read: "The county superintendent shall approve the agreement for payment under 20-5-324(5)", and inserted "The trustees of the district of attendance shall"; inserted (3)(a) and (3)(b) requiring the district trustees to inform the county superintendent of the agreement's approval and to submit the agreement for payment approval; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 464 deleted former (1)(a)(ii) that read: "(ii) the district of residence provides transportation and is not within the same county as the child's school district of choice"; in (1)(b)(i) after "due to" deleted "road or", after "geographic conditions" inserted "between the child's home and the school that the child would attend within the district of residence", and after "attend" substituted "school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school" for "the school nearest the child's residence"; inserted (1)(b)(ii) regarding appeal of the decision of the county transportation committee; in (1)(c) inserted second sentence allowing a child enrolled in an elementary school to continue to attend the elementary school after the other child has left the high school; in (2)(c)(i) at end of first sentence deleted "but any waiver must be applied equally to all students" and inserted second and third sentences regarding waiver of tuition; inserted (2)(c)(ii) defining entity; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (4) near beginning the code commissioner changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1997 Amendments: Chapter 529 in (1)(d), at beginning after "child", inserted "is under the protective care of a state agency or", after "adjudicated" substituted "to be" for "by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or", and at end deleted "and has been placed in a licensed youth care facility that is approved by the department of public health and human services and, as a result of the placement, is required to attend school outside of the child's district of residence"; and in (1)(e), at end, substituted "in foster care or a group home licensed by the state" for "by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction". Amendment effective July 1, 1997.

Chapter 550 in (1)(d) substituted "youth in need of intervention" for "youth in need of supervision". Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendments: Chapter 458 in (1)(d), after "neglected", deleted "or dependent"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (1)(d) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Special Session Amendment: Inserted (1)(a)(i) concerning resident district not providing transportation and (1)(a)(ii) relating to resident district not within county providing transportation; and made minor changes in style. Amendment effective January 3, 1994.

Effective Date — Retroactive Applicability: Section 2, Ch. 32, Sp. L. November 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to attendance agreements signed after [the effective date of this act] [January 3, 1994] for the school fiscal year beginning July 1, 1994."

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Administrative Rules

ARM 10.7.106A Transportation costs allocated by out-of-district attendance agreements.

ARM 10.20.106 Students placed in education programs.

20-5-322. Residency determination — notification — appeal for attendance agreement.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 132 in (1) inserted exception clause; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 215 inserted (6) providing that a nonresident student who becomes a resident by reaching the age of 18 during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year. Amendment effective July 1, 2005.

Effective Date — Applicability: Section 4, Ch. 215, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school budgets for the school fiscal years beginning on or after July 1, 2006."

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the

superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-5-323. Tuition and transportation rates.

Compiler's Comments

2005 Amendment: Chapter 462 in (3)(b) near middle substituted "20-9-306" for "20-9-306(10)". Amendment effective April 28, 2005.

Effective Date — Applicability: Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendments — Composite Section: Chapter 409 in (6) in first sentence near end increased alternate amount charged for transportation from 21.25 cents a mile to 25 cents a mile; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 464 in (1) near middle after "20-5-321" substituted "the rate of tuition charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance" for "the basis of the rate of tuition is a flat rate for each of the 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of each year, using statewide district expenditure and revenue data for the general fund, debt service fund, and retirement fund to determine the average district contribution"; in (3)(b) near beginning after "student" substituted "80% of the maximum per-ANB rate established in 20-9-306(10)" for "the average district per-ANB foundation payment amount"; inserted (3)(c) establishing the maximum tuition rate at $2,500 per ANB; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 3, Ch. 409, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school district transportation reimbursements for school fiscal years beginning on or after July 1, 2001."

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (2) the code commissioner changed "children with disabilities" to "a child with a disability"; and in (4)(a) after "child with" changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1997 Amendment: Chapter 529 in (1), near beginning after "subsection (3)", substituted "through (5)" for "and (4)"; in (4), in first sentence after "province", deleted "or has been placed by a state agency in an out-of-state residential program"; inserted (4)(d) excluding out-of-state placement by a state agency; inserted (5) requiring the placing state agency to pay education costs of a child placed in an out-of-state residential facility; and made minor changes in style. Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-5-324. Tuition report and payment provisions.

Compiler's Comments

2005 Amendment: Chapter 463 in (1) in introductory clause at beginning substituted "Following the close of each school fiscal year" for "At the close of the school term of each school fiscal year and before July 15" and at end substituted "superintendent of public instruction" for "county superintendent"; in (1)(a) near beginning after "who" substituted "attended" for "is attending", after "provisions of" deleted "20-5-321(1)(b)", and at end inserted "in the previous school year"; in (1)(c) at end after "each" substituted "child reported under the provisions of subsection (1)(a)" for "reported child"; in (1)(d) and in (1)(e) at end inserted "in the previous school year"; in (2) deleted former first sentence that read: "The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides" and inserted introductory clause; inserted (2)(a) through (2)(c) pertaining to the payment of tuition obligations and the determination and reimbursement of per-ANB entitlements; deleted former (3) that read: "(3) Before July 30, the county superintendent shall report the information in subsections (1)(d) and (1)(e) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection"; inserted (3) requiring district trustees to submit the report to be eligible to receive payment; in (5)(a)(i) near beginning after "residence" inserted "at the resident district's expense"; inserted (5)(a)(ii) providing a timeline and other requirements for the payment of tuition and transportation obligations; in (5)(b) near middle after "residence" inserted "because of a parent's or guardian's request" and inserted "20-5-320 or"; deleted former (6) through (8) that read: "(6) When a child has mandatory approval under the provisions of 20-5-321(1)(d) or (1)(e), the tuition and transportation obligation for an elementary school child attending a school outside of the child's district of residence must be financed by the basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3)"; inserted (6)(a) specifying the funds into which a district must deposit tuition and transportation receipts; inserted (7) providing that a district must use certain reimbursements to pay obligations of students attending out-of-state schools or attending day-treatment programs; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 130 inserted (1)(e) requiring a report of the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs; in (3) near beginning of first sentence inserted reference to subsection (1)(e); in (5)(a) near middle after "(1)(b)" inserted "or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence"; and made minor changes in style. Amendment effective March 26, 2003.

Effective Date — Applicability: Section 2, Ch. 130, L. 2003, provided: "[This act] is effective on passage and approval and applies to tuition paid for attendance in school fiscal years beginning on or after July 1, 2003." Approved March 26, 2003.

2001 Amendment: Chapter 464 in (1)(a) at end inserted "approved under the provisions of 20-5-321(1)(b), (1)(d), or (1)(e)"; in (4) near beginning substituted reference to subsection (5)(a) for reference to subsection (5); in (5)(a) at beginning deleted "Except as provided in subsection (6)" and near middle substituted reference to 20-5-321(1)(a) or (1)(b) for reference to 20-5-321; inserted (5)(b) requiring a parent to finance the tuition and transportation amount when a child

has approval to attend a school outside the child's district of residence; in (6) near beginning substituted reference to 20-5-321(1)(d) or (1)(e) for reference to 20-5-321 and in two places substituted "district of residence" for "county of residence"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (9)(b) near middle changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

1997 Amendments: Chapter 22 in (6), in two places, substituted "basic county tax" for "county basic tax" and substituted "equalization" for "districts"; in (7), in first sentence, substituted "elementary or high school county equalization fund provided for in 20-9-335" for "basic county tax account provided for in 20-9-334"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 389 in (9)(a), after "provisions of", deleted "Title 20, chapter 7, part 4, or"; inserted (9)(b) authorizing tuition received for child with disabilities in current school year in excess of tuition received for child without disabilities to be deposited in a district's miscellaneous programs fund to support authorized costs of program; and made minor changes in style. Amendment effective April 25, 1997.

Chapter 529 inserted (10) providing that statutory provisions do not apply to out-of-state placements by a state agency. Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

1995 Amendment: Chapter 509 in (3) and (8) substituted "per-ANB entitlement" for "foundation amount"; and in (8), after "residence", deleted "from the state equalization account". Amendment effective July 1, 1995.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Part 4
Health

20-5-402. Definitions.

Compiler's Comments

1995 Amendments: Chapter 308 in definition of postsecondary school, after "means", deleted "a vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 418 in definition of Department substituted "public health" for "health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1989 Amendment: At end of definition of governing authority inserted "preschool or postsecondary school"; in definition of local health officer deleted references to Department; inserted definition of local health department, postsecondary school, and preschool; and in definition of school, in introductory clause, inserted "a place or" and inserted reference to postsecondary school and preschool. Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

Administrative Rules

ARM 37.114.701 Definitions.

20-5-403. Immunization required — release and acceptance of immunization records.

Compiler's Comments

2005 Amendment: Chapter 156 in (3) near middle of third sentence after "shall" inserted "retain a certified copy for the permanent record and"; and made minor changes in style. Amendment effective October 1, 2005.

1991 Amendment: Inserted (1)(b) requiring immunization against Haemophilus influenza type "b". Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 165, L. 1991, provided: "A statement of intent is required for this bill because it amends 52-2-735 to require the department of health and environmental sciences [now department of public health and human services] to adopt rules to require children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted to a day-care center unless an exemption has been claimed as provided in 20-5-405.

It is the intent of the legislature that the department adopt rules similar to rules established for administration of the school immunization laws, Title 20, chapter 5, part 4.

Furthermore, it is intended that rules allow persons to claim a religious or medical exemption from the immunization requirements contained in 52-2-735 in the same manner as provided in 20-5-405."

1989 Amendment: In introductory clause of (1) inserted "other than a postsecondary school"; in (1)(a) inserted "mumps"; deleted former (1)(d) that read: "(d) is a pupil transferring from another school district, in which case the provisions of subsection (2) apply"; deleted former (2) that read: "(2) A person who transfers from one school district to another has 30 calendar days after commencement of attendance at the school to which he or she transfers to either complete immunization as specified in subsection (1)(a), commence immunization in the manner required by 20-5-404, or file for an exemption. If none of the foregoing actions is taken within 30 days, the transfer pupil is prohibited from further attendance until such action is taken"; inserted (2) relating to immunization required of postsecondary school pupils; and inserted (3) relating to pupil and record transfers. Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

1983 Amendment: At beginning of (1), changed "A" to "The"; substituted prohibition on commencing attendance for "may not enroll any person as a pupil in"; in (1)(b), substituted "attendance" for "enrollment".

1981 Amendment: Inserted (1)(d) providing a grace period for transferees; deleted former (2) which provided that failure to act pursuant to subsection (1) in a reasonable period of time was an exemption under 20-5-405(1); and inserted (2) relating to administration of transferee grace period.

Administrative Rules

ARM 37.114.705 Requirements for unconditional attendance at school offering any portion of K-12.

ARM 37.114.709 Requirements for unconditional attendance at postsecondary school.

ARM 37.114.710 Requirements for conditional enrollment.

20-5-404. Conditional attendance.

Compiler's Comments

1991 Amendment: In middle inserted reference to Haemophilus influenza type "b" and at end inserted requirement that children under 5 years of age receive that vaccine. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 165, L. 1991, provided: "A statement of intent is required for this bill because it amends 52-2-735 to require the department of health and environmental sciences [now department of public health and human services] to adopt rules to require children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted to a day-care center unless an exemption has been claimed as provided in 20-5-405.

It is the intent of the legislature that the department adopt rules similar to rules established for administration of the school immunization laws, Title 20, chapter 5, part 4.

Furthermore, it is intended that rules allow persons to claim a religious or medical exemption from the immunization requirements contained in 52-2-735 in the same manner as provided in 20-5-405."

1989 Amendment: Inserted "other than a postsecondary school"; and inserted "mumps". Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

1983 Amendment: Substituted clause relating to commencement of attendance for "may be enrolled by the governing authority on the condition that he" and inserted "if that person".

Administrative Rules

ARM 37.114.710 Requirements for conditional enrollment.

20-5-405. Medical or religious exemption.

Compiler's Comments

1989 Amendment: Substituted (1) relating to annual affidavits for a religious exemption for "When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school, or the person seeking to attend school, if an adult, signs and files with the governing authority a written statement on a form prescribed by the department stating that immunization is contrary to the personal or religious beliefs of the signer, immunization of the person seeking to attend school may not be required prior to commencement of attendance in any school. The statement must be maintained as part of the person's immunization records"; and at end of (3) deleted "The exclusion period may not exceed 30 calendar days." Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

1983 Amendment: Throughout section, changed "enrollment" to "to attend school" and to "commencement of attendance" once.

Administrative Rules

ARM 37.114.715 Medical exemption.

ARM 37.114.716 Religious exemption.

Attorney General's Opinions

Challenges to Mandatory Immunization on Religious Grounds — Restraint Advisable: Although a school district has an undeniable compelling interest in protecting students from communicable diseases, it does not have unlimited discretion to determine the legitimacy or sincerity of the religious tenets and practices of one seeking an exemption pursuant to this section. Absent established uniform standards or procedures, a school district should refrain from challenging an affidavit claiming a religious exemption from mandatory immunization. 44 A.G. Op. 7 (1991).

Religious Exemption to Mandatory Immunization Not Limited to Established or Recognized Religion: The religious exemption to mandatory immunization of students in this section is not limited to beliefs or tenets of an established or recognized traditional religion but also encompasses sincerely held personal religious beliefs. 44 A.G. Op. 7 (1991).

20-5-406. Immunization record.

Administrative Rules

Title 37, chapter 114, subchapter 7, ARM Immunization of school children.

20-5-407. Rulemaking.

Administrative Rules

Title 37, chapter 114, subchapter 7, ARM Immunization of school children.

20-5-408. Enforcement.

Compiler's Comments

1989 Amendment: In (1), in first sentence, inserted "other than a postsecondary school". Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

1983 Amendment: Near middle of (1), substituted "allowed to attend" for "enrolled".

Administrative Rules

ARM 37.114.710 Requirements for conditional enrollment.

ARM 37.114.720 Report of immunization status.

ARM 37.114.721 Report of noncompliance.

20-5-412. Definition — parent-designated adult — administration of glucagon — training.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

20-5-413. Limits on liability.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

20-5-420. Self-administration of asthma medication.

Compiler's Comments

Effective Date: Section 4, Ch. 306, L. 2005, provided: "[This act] is effective July 1, 2005."

Name Change — Directions to Code Commissioner: Pursuant to sec. 33, Ch. 519, L. 2005, throughout section the code commissioner substituted "physician assistant" for "physician assistant-certified".

CHAPTER 6
SCHOOL DISTRICTS

Chapter Case Notes

School Territory Transfer Statutes Unconstitutional — Insufficient Guidelines for Delegation of Legislative Authority: In 1994, the respondents, individuals residing in both Rosebud and Big Horn Counties but outside of the Northern Cheyenne Indian Reservation, petitioned their respective County Superintendents of Schools requesting a territory transfer from the Lame Deer High School District (LDHSD—created in 1993) back to the Colstrip and Hardin High School Districts. The requests were granted. LDHSD appealed the decisions to the State Superintendent of Public Instruction, who reversed the decisions. The respective District Courts reversed the Superintendent of Public Instruction's decision. The Supreme Court reversed the District Courts' decisions on the grounds that the school territory transfer statute is an unconstitutional delegation of legislative power. The broad grant of discretion to a County Superintendent of Schools, unchecked by any standard, policy, or rule of decision, renders the statute unconstitutional. Hayes v. Lame Deer High School District, 2000 MT 342, 303 M 204, 15 P3d 447, 57 St. Rep. 1464 (2000). See also Belgrade Elementary & High School District No. 44 v. Morris, 2000 MT 347, 303 M 245, 15 P3d 482, 57 St. Rep. 1484 (2000), and In re Petitions to Transfer Territory, 2000 MT 348, 303 M 249, 16 P3d 1000, 57 St. Rep. 1486 (2000).

Sufficiency of Single Petition to Transfer Territory From One K-12 District to Another K-12 District: Residents of Upper Nine Mile Valley petitioned the Missoula County School Superintendent to be transferred from Alberton K-12 district to Frenchtown K-12 district. The superintendent determined that the petition was valid and scheduled a hearing, but prior to the hearing, the Alberton Board of Trustees requested that the hearing be canceled because two separate petitions were not filed—one for elementary students and one for high school students. The superintendent denied the request, and on appeal to District Court, summary judgment was granted in favor of the superintendent. The Alberton Board of Trustees then appealed to the Supreme Court, asserting that two petitions were required under either 20-6-213 or 20-6-320 (both now repealed) in order to transfer both elementary and high school territories from one K-12 district to another K-12 district. Conversely, the superintendent maintained that because the request was for the transfer of combined elementary and high school territory from one K-12 district, as defined in 20-6-701, to another, only one petition was necessary. In order to give meaning to all the applicable statutes, the Supreme Court concluded that a K-12 school district is a high school district upon which an elementary district has been attached and remains a high school district for purposes of the governing statutes. Therefore, 20-6-320 (now repealed) applied to the petition in question because it concerned transfer of territory from one high school district to another. The question then became not whether a formal, second petition was required to address the elementary district, but whether under 20-6-320(8) (now repealed) the petition in question was "accompanied" by an elementary "petition" that satisfied the corollary requirements of 20-6-213 (now repealed). The Alberton trustees argued that a distinct, second elementary petition, also signed by a majority of registered electors, was required or else the entire transfer process was invalid. The Supreme Court refused to abide by such a strict, formalistic approach, noting that the law respects form less than substance. The petition clearly

identified that the territory was K-12, meaning that any attached elementary territory would also be transferred, thus the petition to transfer high school territory was unquestionably "accompanied" by a petition to transfer elementary territory as well, and it was not fatal that both petitions appeared on a single sheet of paper. The court held that it would be unreasonable and far too formalistic to require that two separate petitions be submitted when one petition, clearly identifying the intent to transfer both high school and elementary territory, served the same function. The District Court was affirmed. McKirdy v. Vielleux, 2000 MT 264, 302 M 18, 19 P3d 207, 57 St. Rep. 1101 (2000).

School District Not Liable for Injury of Child on Playground — Witness Credibility as Question for Jury — Limited Review of Jury Verdict: The Morgans complained that the school district was liable for a teacher's negligence because their daughter, who needed close supervision, was injured on playground equipment during recess. The jury found in favor of the teacher. The Morgans sought a new trial on grounds of insufficient evidence to support the verdict. The Supreme Court's review of a jury verdict is necessarily very limited, and a jury verdict will not be reversed if it is supported by substantial credible evidence. The gist of the Morgans' appeal concerned the credibility and consistency of statements made by the only witness to the accident—the teacher. Witness credibility is a matter for determination by the jury after proper instruction from the court. Thus, the Supreme Court deferred to the properly instructed jury's evaluation of the teacher's credibility and affirmed the verdict. Morgan v. Great Falls School District No. 1, 2000 MT 28, 298 M 194, 995 P2d 422, 57 St. Rep. 134 (2000), following Whiting v. St., 248 M 207, 810 P2d 1177, 48 St. Rep. 396 (1991), Lee v. Kane, 270 M 505, 893 P2d 854, 52 St. Rep. 268 (1995), and Sandman v. Farmers Ins. Exch., 1998 MT 286, 291 M 456, 969 P2d 277, 55 St. Rep. 1165 (1998). Morgan was followed, with regard to the limited scope of review of a jury verdict and the test for substantial credible evidence, in Benson v. Diverse Computer Corp., 2004 MT 114, 321 M 140, 89 P3d 981 (2004).

Territory Transfer Process — Date for Appeal of State Superintendent's Decision: Section 20-6-320 (now repealed) contained the entire process for transferring territory from one high school district to another by means of a petition. Under the statutory provisions, a decision by the state Superintendent of Public Instruction was final 30 days after its date, absent any appeal. (See 1997 amendment.) Pretty on Top v. Snively, 266 M 45, 879 P2d 49, 51 St. Rep. 241 (1994), distinguishing Carbon County School District Trustees v. Spivey, 247 M 33, 805 P2d 61 (1991).

High School Sports Programs — Discrimination Against Female Participants: In a matter alleging gender-based inequality in high school athletics, it was not erroneous for the federal District Court to fashion the use of a creative settlement course by using a "facilitator". The settlement agreement was adopted by order, with the District Court retaining jurisdiction to monitor progress. The continued jurisdiction was proper, and even though the question of whether the court could consider the change in women's volleyball seasons was not properly before the District Court in the action preceding this appeal, the District Court has jurisdiction under the order and terms of the settlement agreement to exercise its continuing jurisdiction to consider the matter at some future date. Ridgeway v. Mont. High School Ass'n, 858 F2d 579 (9th Cir. 1988). After reviewing the final report on the Special Master and the parties' progress reports, the District Court ruled that a change in high school girls' volleyball and basketball seasons was not necessary to achieve and maintain gender equity. 749 F. Supp. 1544 (D.C. Mont. 1990).

Findings of Fact Not Requested by Appellant — Standard of Review: An order transferring territory from one elementary district to another did not contain a finding that the four elements of a valid petition listed in 20-6-213 (now repealed) were met, nor did the order contain findings that the transfer was in the best interests of the residents of the affected territory. Although 2-4-623 requires that a final decision in a contested case must include findings of fact, the Supreme Court found substantial credible evidence supporting the transfer, including unanimous favorable testimony from residents of the affected territory. Additionally, the court noted that appellants failed to request findings of fact from the County Superintendent or the Board of County Commissioners and that such failure barred court reversal for lack of factfindings, pursuant to 2-4-704(2)(g). Bd. of Trustees, Clinton School District v. Bd. of Trustees, Bonner School District, 221 M 341, 719 P2d 1240, 43 St. Rep. 877 (1986).

Petition to Be Signed by Majority of Electors Residing in Territory to Be Transferred: The provisions of 20-6-213 (now repealed) required that a petition for transfer of territory from one elementary district to another be signed only by a majority of electors residing in the territory to be transferred rather than by a majority of electors residing in the entire district. Bd. of Trustees, Clinton School District v. Bd. of Trustees, Bonner School District, 221 M 341, 719 P2d 1240, 43 St. Rep. 877 (1986).

Best Interests and Advisability — Elements to Consider: A majority of the residents of another district petitioned to become part of a school district in Teton County. Teton County approved the transfer, and Cascade County rejected it. A petition is granted only if the transfer is both advisable and in the best interests of the residents of the territory. One factor pertaining to advisability is the financial condition of the remaining territory. The transfer was found to be financially inadvisable. On that basis Cascade County properly denied the transfer. They did not have to consider the best interests of the residents. Gunderson v. County Comm'rs, 183 M 317, 599 P2d 359, 36 St. Rep. 1615 (1979).

Failure to Meet Jointly: Plaintiff and a majority of the residents of his territory petitioned to become a part of a school district in Teton County. The Cascade County Commissioners failed to meet jointly with Teton County Board of Commissioners as required by 20-6-213 (now repealed). Each Board of Commissioners was unanimous in its decision, though their decisions were contrary, and no facts are alleged that any other mode of decision would have produced a different result. Plaintiff has not alleged an injury from the procedure followed, and one who is not injured will not be heard to complain. The District Court properly dismissed the complaint for failure to state a claim upon which relief could be granted. Gunderson v. County Comm'rs, 183 M 317, 599 P2d 359, 36 St. Rep. 1615 (1979).

Abuse of Discretion: When the Board of County Commissioners considered all factors relevant to the creation of a joint school district and when the interests of the persons petitioning for the district were not greatly injured by the refusal to create the district, the Board of County Commissioners did not abuse its discretion. Ballard v. Gregory, 166 M 110, 530 P2d 1163 (1975).

County Commissioners' Power: Statute did not give the Board of County Commissioners power to act arbitrarily or without a hearing or in disregard of the evidence of matters which, by the terms of the statute, it should consider. Read v. Stephens, 121 M 508, 193 P2d 626 (1948).

Matters Considered to Make Transfer Determination: In determining whether certain territory should be transferred from one district to another, consideration can be given the financial condition of the districts, the means and convenience of communication therein, the number and places of residences of the children therein, their ages, other matters that show the change to be advisable or otherwise, and what is for the best interest of the territory proposed to be transferred. Read v. Stephens, 121 M 508, 193 P2d 626 (1948).

Indian Territory: Since former statute contemplated that Indian lands be in a school district and that Indian children be counted in apportioning school money, it was the Superintendent's mandatory duty to attach territory on an Indian reservation to an adjacent district or districts, no petition on the part of anyone being required as a condition precedent. State ex rel. Lantz v. Morris, 113 M 193, 126 P2d 1104 (1942).

Annexation — De Facto Corporation by Estoppel: It would seem that where a school district attempted in good faith to annex another district under an existing law providing for annexation but mistakenly proceeded under a law permitting the extension of its boundaries by taking in part of another district, and the district thus created was acquiesced in by all concerned for more than 5 years, it was a corporation de facto and the legality of its existence was not open to collateral attack by resident taxpayers in an action to enjoin the sale of bonds issued by the district. Henderson v. School District, 75 M 154, 242 P 979 (1926), distinguished in Scilley v. Red Lodge-Rosebud Irrigation District, 83 M 282, 272 P 543 (1928).

Part 1
School Districts — General Provisions

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-6-101. Definition of elementary and high school districts.

Compiler's Comments

1997 Amendment: Chapter 219 deleted former (4) that read: "(4) Unless the context clearly indicates otherwise, an elementary district operating a high school in a county that has not been divided into high school districts is considered a high school district under this title and the trustees of the elementary district are the trustees of the high school district. An elementary district operating a high school may not have the bonding authority of a high school district. However, the elementary district may exercise its bonding authority, in the manner provided by law, for high school purposes"; in (4) substituted "a high school district that has not unified with an elementary district under 20-6-312" for "subject to the limitations prescribed by law for a county high school as a result of its being a part of the county government. The boundaries of the

high school district for a county high school are: (a) the high school district boundaries established by the county high school boundary commission; or

(b) if no boundaries have been established, the county boundaries, except for any territory located in a joint high school district"; deleted (6) that read: "(6) A county high school recognized as a high school district under the provisions of subsection (5)(b) may not have a bonding authority. Instead, the county shall exercise its bonding authority in the manner provided in 20-9-451"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1991 Amendment: In (2)(a) inserted second sentence stating when an elementary district is inactive; in (2)(b) inserted second sentence concerning high school district with attached elementary district; and made minor changes in style. Amendment effective July 1, 1991.

Case Notes

School District Defined: Section 1020, Rev. Codes 1921 (now repealed), defined a school district to be "the territory under the jurisdiction of a single board, designated as board of trustees". It was clear that the term "school district" had reference solely to the public school system. Box v. Duncan, 98 M 216, 38 P2d 986 (1934).

Negligence Liability: In absence of statute imposing liability for negligence upon school districts or their trustees, they may not be held liable, although statute contains the general provision that a school district may sue and be sued. Perkins v. Trask, 95 M 1, 23 P2d 982 (1933), distinguished in Felton v. Great Falls, 118 M 586, 169 P2d 229 (1946). (See Title 2, ch. 9, part 1.)

Continuation in Existence Until Disorganized: A school district lawfully organized is a public corporation and remains such until disorganized in some manner recognized by law. State ex rel. School District v. Urton, 76 M 458, 248 P 369 (1926).

Annexation — De Facto Corporation by Estoppel: It would seem that where a school district attempted in good faith to annex another district under an existing law providing for annexation but mistakenly proceeded under a law permitting the extension of its boundaries by taking in part of another district and the district thus created was acquiesced in by all concerned for more than 5 years, it was a corporation de facto and the legality of its existence was not open to collateral attack by resident taxpayers in an action to enjoin the sale of bonds issued by the district. Henderson v. School District, 75 M 154, 242 P 979 (1926), distinguished in Scilley v. Red Lodge-Rosebud Irrigation District, 83 M 282, 272 P 543 (1928).

Necessary and Implied Powers: A school district is a public corporation but with very limited powers. It may, through its board, exercise only such authority as is conferred by law, either expressly or by necessary implication. Finley v. School District, 51 M 411, 153 P 1010 (1915). See also Jay v. School District, 24 M 219, 61 P 250 (1900); State ex rel. Cartersville Irrigation District v. McGraw, 74 M 164, 240 P 817 (1925); Day v. School District, 98 M 207, 38 P2d 595 (1934).

Powers of District Distinct From Municipal Corporation: A school district is a body corporate but does not possess the powers of local legislation and control that are the distinguishing characteristics of a municipal corporation. Hersey v. Neilson, 47 M 132, 131 P 30 (1913).

Collateral References

Schools and School Districts *key* 21, 64, 78.

78 C.J.S. Schools and School Districts §§24 through 26, 240, 270.

68 Am. Jur. 2d Schools §§17 through 19.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events. 68 ALR 5th 663.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip. 68 ALR 5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes. 66 ALR 5th 1.

Tort liability of public schools and institutions of higher learning. 86 ALR 2d 489; 160 ALR 7.

Power of school district to employ counsel. 75 ALR 2d 1339.

Right of school district to maintain action based on misapportionment of school money. 105 ALR 1273.

20-6-103. Permanent record of district boundaries.

Case Notes

Limitation on Powers to Change Boundaries: There was no authority on the part of the County Superintendent or Board of County Commissioners, under the guise of defining boundaries, to reach out and include in an existing district noncontiguous tracts of land not

included therein. The County Superintendent was authorized to make minor changes as necessary to make the boundaries definite and certain but not to change the boundaries of the existing district by attaching lands wherever situated in the county not a part of any school district. State ex rel. Lantz v. Morris, 113 M 187, 126 P2d 1101 (1942).

Collateral References

Schools and School Districts *key* 30, 48(6).
78 C.J.S. Schools and School Districts §§32, 99.
68 Am. Jur. 2d Schools §28, et seq.

20-6-104. Moratorium on creation of new district — exception.

Compiler's Comments

1997 Amendment: Chapter 219 after "elementary district" substituted "or a new high school district" for "under the provisions of 20-6-216 and 20-6-217 or initiate the creation of a new high school district under the provisions of 20-6-303 and 20-6-325". Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1995 Amendment: Chapter 285 in (1), at beginning, deleted "Following July 1, 1993"; and in (2), at end, substituted "a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704" for "a petition to create a new elementary or high school district that was filed prior to July 1, 1993". Amendment effective March 30, 1995.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court.

Compiler's Comments

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

20-6-110. Student construction project — disclosure — immunity.

Compiler's Comments

Effective Date: Section 4, Ch. 521, L. 2005, provided that this section is effective July 1, 2005.

Applicability: Section 5, Ch. 521, L. 2005, provided: "[This act] applies to student labor on construction projects regardless of the completion date of the project if the disclosure provided for in [section 1(1)] [20-6-110(1)] is made."

Part 2
Elementary School Districts

Case Notes

Provisions Jurisdictional: Section 1034, Rev. Codes 1929 (now repealed) requiring petition by a majority of resident freeholders in a school district as prerequisite to consolidation was jurisdictional and not merely directory. State ex rel. Wilson v. Musburger, 114 M 175, 133 P2d 586 (1943).

Abandonment of District: An order of a County Superintendent of Schools for the abandonment of a school district was not void for want of jurisdiction because of no attempt at compliance with section 970, Rev. Codes 1935 (now repealed), since section had nothing to do with the abandonment of a school district. State ex rel. McDonnell v. Musburger, 111 M 579, 111 P2d 1038 (1941).

Effect of Appeal to County Commissioners — Opinion Divided: An appeal lay from order creating joint school district to the Boards of County Commissioners of counties affected, and the effect of the appeal was simply to suspend or delay the effective creation of the district and not to vacate the order of creation. If, on appeal, opinion was equally divided between the Boards of County Commissioners, one Board favoring creation and the other opposed thereto, the order of creation by the County School Superintendents stood affirmed. State ex rel. School District v. Lensman, 108 M 118, 88 P2d 63 (1939).

Mode of Procedure Under Former Section: Section 1035, Rev. Codes 1935 (now repealed), did not fully or clearly provide the procedure of creating joint school districts, and it was duty of the officers empowered to create such districts to adopt any mode of procedure reasonably suitable to

carry the legislative intention into effect. State ex rel. School District v. Lensman, 108 M 118, 88 P2d 63 (1939).

Time for Posting Notices: Section 1034, Rev. Codes 1921 (now repealed), requiring County Superintendent upon receipt of consolidation petition of school districts "to cause a ten days posted notice" to be given of the election meant that the Superintendent has 10 days within which to act voluntarily and was not a limitation on the time within which the election notices may be posted. Swaim v. Redeen, 101 M 521, 55 P2d 1 (1936). Morgan was followed, with regard to the limited scope of review of a jury verdict and the test for substantial credible evidence, in Benson v. Diverse Computer Corp., 2004 MT 114, 321 M 140, 89 P3d 981 (2004).

Right of Appeal From Order of County Commissioners: Since an order of the Board of County Commissioners in the matter of setting aside an order of the County Superintendent of Schools creating a school district is final and no appeal lies to either school authorities or courts, equity will take jurisdiction of an action to right any wrong committed by the Board. Grant v. Michaels, 94 M 452, 23 P2d 266 (1933).

Petition Facts Jurisdictional: Requirements of the statute as to what a petition for the creation of a new school district shall contain are jurisdictional; they must be made to appear in the petition or proven as matter of evidence; omission to do either is fatal. School District v. Larson, 80 M 363, 260 P 1042 (1927).

Creation of New County — Transmission of Funds: Where school district territory was cut in two by creation of new county and the County Commissioners charged with the duty of dividing the new county into school districts left the boundaries of the district in question, the district ipso facto became a joint one. Therefore, refusal of the County Treasurer of the old county, in which a portion of the district lay, to transmit to the Treasurer of the new county the funds collected by him as taxes upon the property within that portion for school purposes was wrongful. State ex rel. School District v. Urton, 76 M 458, 248 P 369 (1926).

Petition — Contents: A petition for the creation of a new school district is not a pleading, the contents of which are subject to critical legal analysis to determine its sufficiency. The petition is sufficient to confer jurisdiction upon the board of trustees if it clearly indicates the desire of a majority of the school electors residing in the proposed new district for segregation and describes its boundaries. State ex rel. Hall v. Peterson, 55 M 355, 177 P 245 (1918).

Attorney General's Opinions

Merger of Districts Without High School: Merger of two districts, neither containing a high school, is not an annexation for purposes of administration of social security but a consolidation requiring a referendum to provide social security coverage. 36 A.G. Op. 55 (1976).

20-6-201. Elementary district classification.

Compiler's Comments

1993 Amendment: Chapter 137 in (4), at end, substituted "in 20-3-302" for "filling trustee vacancies" and deleted former second and third sentences that read: "Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law"; and made minor changes in style.

Case Notes

One Governmental Subdivision Not Subject to Suit by Another: School districts sued the county for recovery of lost revenue and investment income on decreased reserve funds. The Supreme Court found that dismissal of the suit was proper because absent specific statutory or constitutional authority, one governmental subdivision may not sue another for damages. School District No. 55 v. Musselshell County, 245 M 525, 802 P2d 1252, 47 St. Rep. 2249 (1990).

Collateral References

Schools and School Districts *key* 21, 52.
78 C.J.S. Schools and School Districts §§24, 105.
68 Am. Jur. 2d Schools §§17, 42.

20-6-202. Time limitation for boundary changes.

Compiler's Comments

2001 Amendment: Chapter 237 near end of introductory clause substituted "fourth Monday" for "second Monday"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Case Notes

Nunc Pro Tunc Order — Relation Back of Action: District Court, on application for Writ of Mandate, properly ordered a Superintendent to hear a petition to have unattached territory annexed to two adjoining districts erroneously denied by him, nunc pro tunc as of February 17th of the preceding year (when he should have acted), his action thereby relating back. State ex rel. Lantz v. Morris, 113 M 193, 126 P2d 1104 (1942).

Collateral References

Schools and School Districts *key* 32 through 34.

78 C.J.S. Schools and School Districts §§32, 35.

68 Am. Jur. 2d Schools §31.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. 17 ALR 5th 195.

Discretion of administrative officers as to changing boundaries of school districts. 135 ALR 1096; 65 ALR 1523.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

Right of political division to challenge acts or proceedings by which its boundaries or limits are affected. 86 ALR 1367.

20-6-209. Elementary district abandonment.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 138 in (1)(a) near beginning and in (2) in first sentence substituted "the minimum aggregate hours" for "180 days"; and in (1)(a) after "lesser" and in (2) near middle of first sentence after "lesser" substituted "number of aggregate hours" for "number of days". Amendment effective July 1, 2005.

Chapter 510 in (1) after "contiguous district" inserted "or districts" and after "county" inserted "or, with the consent of the county superintendent of an adjacent county, to a contiguous district or districts in the adjacent county"; and made minor changes in style. Amendment effective July 1, 2005.

Preambles: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in (1)(a) and (2), after "approved", substituted "by the board of trustees under the provisions of 20-9-806" for "by the county superintendent or the superintendent of public instruction under the provisions of 20-9-804"; and made minor changes in style. Amendment effective July 1, 1997.

Case Notes

Grounds for Review — Hardship Caused by Order: Contiguity is not the only requirement for attaching an abandoned district to another district. Thus District Court should have granted Writ of Review where manner of attachment allegedly required children to travel 14 miles farther each way to get to more overcrowded schools and worked an undue hardship on both parents and children. Potter v. Miller, 145 M 197, 399 P2d 994 (1965).

Abandonment of Nonoperating District Properly Ordered: County Superintendent of Schools properly ordered abandonment of elementary school district where school had not been maintained within said district during the last 3 consecutive school years and an average of four or less pupils had been furnished transportation to another elementary school. State ex rel. Knaup v. Holland, 132 M 569, 319 P2d 516 (1957).

Transportation of Pupils Upon Abandonment: On abandonment of an elementary school district no student eligible to attend high school is deprived of the opportunity of attending school. Transportation must be provided by the high school district. State ex rel. Knaup v. Holland, 132 M 569, 319 P2d 516 (1957).

Consolidation Law Inapplicable: Section relating to the consolidation of school districts had nothing to do with the abandonment of a school district and was not dependent upon any question of whether school was held within either or any of the districts in question. State ex rel. McDonnell v. Musburger, 111 M 579, 111 P2d 1038 (1941).

Mandamus — Exhaustion of Administrative Remedy Required: Where plaintiff seeking a Writ of Mandate to annul an order of a County School Superintendent directing the abandonment of a school district had the right of appeal to the Superintendent of Public Instruction and, if unsuccessful there, could have had the matter passed upon by the District Court on Writ of Review but did not pursue such remedy, the Writ of Mandate was not available to him. State ex rel. McDonnell v. Musburger, 111 M 579, 111 P2d 1038 (1941).

Attorney General's Opinions

Abandoned Elementary School District Not Allowed to Petition to Reopen School: An elementary school district that has not operated a school for 3 consecutive school years is considered permanently abandoned pursuant to this section, and the abandoned district may not petition to reopen a school in the district pursuant to 20-6-502. However, this section also requires the County Superintendent to attach the territory of the abandoned district to another district, and nothing in that section precludes the revised district from petitioning to reopen a school. 49 A.G. Op. 14 (2002).

Collateral References

Schools and School Districts *key* 36, 44.
78 C.J.S. Schools and School Districts §§27, 59.
68 Am. Jur. 2d Schools §28.

20-6-214. Boundary adjustments in elementary school districts.

Compiler's Comments

2003 Amendment: Chapter 151 inserted second sentence requiring that territory proposed for transfer conform to 26-6-105(1) and (2) and that the resolution contain information outlined in 20-6-105(3); near end of third sentence after "proceed" inserted "to a hearing" and at end substituted "20-6-105(6)" for "20-6-213"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

Case Notes

Form of Ballots as Voiding Election: Where the ballots for a consolidation election were prepared to read only "For" or "Against" rather than "For consolidation" or "Against consolidation" as required by prior statute and testimony showed that in at least one instance a voter was confused by this heading and mismarked her vote, the election was on its face null and void. Woolsey v. Carney, 141 M 476, 378 P2d 658 (1963).

Abuse of Discretion Required to Be Shown: Where administrative official exercises his power within the limits fixed by statute, not arbitrarily or fraudulently but within his sound discretion, the courts may not interfere. Read v. Stephens, 121 M 508, 193 P2d 626 (1948).

Authority to Change Boundaries Delegated: Aside from statutory limitations, Legislature has delegated to the County Superintendent of Schools and to the Board of County Commissioners a full measure of discretionary power in creating and changing the boundaries of school districts. Read v. Stephens, 121 M 508, 193 P2d 626 (1948).

20-6-215. Review of boundaries by county superintendent.

Compiler's Comments

2003 Amendment: Chapter 151 in second sentence near middle after "changes" inserted "must include information that the territory proposed for transfer complies with the provisions

of 20-6-105(1) through (3)" and at end substituted "20-6-105(6)" for "20-6-213"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

20-6-218. Relocation of elementary school within district.

Compiler's Comments

Effective Date: Section 3, Ch. 281, L. 1989, provided that this section is effective March 23, 1989.

Part 3
High School Districts

20-6-301. High school district classification.

Compiler's Comments

2005 Amendment: Chapter 91 inserted second sentence providing that if there is more than one elementary district in which operating high school buildings are located, the classification of the high school district must be the same as the classification of the elementary district in which the operating high school building that was first constructed is located; and made minor changes in style. Amendment effective March 24, 2005.

Collateral References

Schools and School Districts *key* 21, 52.
78 C.J.S. Schools and School Districts §§24, 105.
68 Am. Jur. 2d Schools §§17, 42.

20-6-307. High school district abandonment.

Compiler's Comments

2005 Amendment: Chapter 510 at end of third sentence inserted "or, with the consent of the county superintendent of an adjacent county, to another contiguous high school district or districts in the adjacent county". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Collateral References

Schools and School Districts *key* 36, 44.
78 C.J.S. Schools and School Districts §§27, 59.
68 Am. Jur. 2d Schools §28.

20-6-308. Organization of joint high school district.

Compiler's Comments

2003 Amendment: Chapter 151 at end of second sentence after "district" inserted "and must be made pursuant to the procedures provided in 20-6-105"; deleted former (1) and (2) that read: "No such boundary change shall be made when:

(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than $1 million; or

(2) a portion of the territory to be transferred is less than 3 miles from an operating accredited high school located in another high school district"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

Collateral References

Schools and School Districts *key* 33.

78 C.J.S. Schools and School Districts §§57, 58.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

20-6-312. County high school unification.

Compiler's Comments

1997 Amendment: Chapter 219 in (1) deleted former second sentence that read: "If the county has not been divided into high school districts, a high school district with boundaries coterminous with the county boundaries shall be created, except that such high school district shall not include the territory of any existing joint high school district located in the county" and deleted former last sentence that read: "The creation of high school districts under this provision shall be in lieu of the high school district division provisions of 20-6-303"; in (2)(b), after "20% of", deleted "the electors of the county or, if the county has been divided into high school districts"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

Case Notes

Consolidation of High Schools to Consolidate Courses: Under Ch. 47, Ex. L. 1933 (sections 1301.1 through 1301.6, R.C.M. 1935, since repealed), a school district maintaining only a 2-year high school course might properly be consolidated with a district maintaining a complete course. The act was constitutional. State ex rel. Berthot v. School District, 102 M 356, 58 P2d 264 (1936); Pierson v. Hendricksen, 98 M 244, 38 P2d 991 (1934).

Date of Consolidation — Statute Not Repealed: Section 1023, Rev. Codes 1921 (now repealed), declaring that no school district should be created or boundaries thereof changed between March 1 and July 1 of any calendar year was not impliedly repealed by act authorizing high school consolidation; action of Commissioners in consolidating high schools in March, thereby creating new district at least for high school purposes, was void. Box v. Duncan, 98 M 216, 38 P2d 986 (1934).

Legislative Intent — Arbitrary Action Without Notice: Legislature never intended to confer upon the Board of County Commissioners the arbitrary power of consolidating county high schools without notice to anyone affected thereby and without making any provision for the disposition of the property of the discontinued school. Box v. Duncan, 98 M 216, 38 P2d 986 (1934).

Attorney General's Opinions

Board of County Commissioners — No Power to Consolidate High School Districts: The sole and mandatory procedure for consolidating two high school districts in a county is in 20-6-315 (now repealed). The Board of County Commissioners has no authority to consolidate districts. 41 A.G. Op. 5 (1985).

Collateral References

Schools and School Districts *key* 11, 24.

78 C.J.S. Schools and School Districts §§13, 27.

20-6-313. Transactions after approved county high school unification.

Compiler's Comments

1997 Amendment: Chapter 219 deleted former (1)(a) that read: "The high school boundary commission, without the approval of the superintendent of public instruction, shall order the creation of a high school district if the county has not already been divided into high school districts" and deleted (1)(e) that read: "(e) The board of county commissioners shall execute, in the name of the county, all necessary and appropriate deeds, bills of sale, and other instruments for the conveyance of title to all real and personal property of the county high school, including all appurtenances and hereditaments, to the high school district"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

Collateral References

Schools and School Districts *key* 11, 17.

78 C.J.S. Schools and School Districts §§13, 18.

20-6-314. Time limitations for boundary changes.

Compiler's Comments

2001 Amendment: Chapter 237 near end of introductory clause substituted "fourth Monday" for "second Monday". Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1997 Amendments: Chapter 22 substituted "January" for "March"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 403 in introductory clause substituted "January" for "March"; and made minor changes in style. Amendment effective April 28, 1997.

Source: This section was modeled after 20-6-202, a similar provision relating to elementary school districts.

Collateral References

Schools and School Districts *key* 32 through 34.

78 C.J.S. Schools and School Districts §§32, 35.

68 Am. Jur. 2d Schools §31.

Discretion of administrative officers as to changing boundaries of school districts. 135 ALR 1096; 65 ALR 1523.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

Right of political division to challenge acts or proceedings by which its boundaries or limits are affected. 86 ALR 1367.

20-6-322. Boundary adjustments in high school districts.

Compiler's Comments

2003 Amendment: Chapter 151 inserted second sentence requiring that territory proposed for transfer conform to 26-6-105(1) and (2) and that the resolution contain information outlined in 20-6-105(3); near end of third sentence after "proceed" inserted "to a hearing" and at end substituted "20-6-105(6)" for "20-6-320"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

Effective Date: Section 7, Ch. 403, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 28, 1997.

Part 4
School District Reorganization

20-6-410. Tenure protected — hiring preference for employees.

Compiler's Comments

Effective Date: Section 3, Ch. 497, L. 1991, provided: "[This act] is effective July 1, 1991."

20-6-411. Bonded indebtedness to remain with original territory except when assumed by election.

Attorney General's Opinions

When School Bonds Become Binding: The act of delivery is essential to the very existence of public bonds as obligations binding on their issuers. Therefore, school bonds become binding upon taxpayers on the date the bonds are delivered, not on the date of issuance. 45 A.G. Op. 8 (1993).

Collateral References

Schools and School Districts *key* 41(2).

78 C.J.S. Schools and School Districts §74.

68 Am. Jur. 2d Schools §34.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

20-6-412. Property tax valuation after district boundary change.

Compiler's Comments

1993 Amendment: Chapter 133 near middle substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Case Notes

Transfer of School District Property to Another District — Distribution of Flat Tax Proceeds: In 1989, the method of taxing coal gross proceeds with a property tax was replaced with a flat tax of 5% on production. The final clause of 15-23-703(4)(b) (1991) directs that the flat tax be distributed in accord with the property tax distribution scheme of 1990. The Decker school district was transferred from Lodge Grass to Hardin in 1991. Thus, under the 1990 property tax scheme, Hardin would have been entitled to property tax revenue from the Decker district after that territory was transferred to Hardin. When read in conjunction with this section, 15-23-703(4)(b) (1991) entitled Hardin to distribution of the Decker district coal tax revenue under the flat tax distribution scheme. Lodge Grass High School District v. Hamilton, 264 M 290, 871 P2d 890, 51 St. Rep. 282 (1994).

20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt.

Compiler's Comments

1999 Amendment: Chapter 214 in (2) near end substituted "the taxable value of the territory" for "the number of children attending school and residing within the territory"; and made minor changes in style. Amendment effective March 30, 1999.

1989 Amendment: Inserted (3) relating to the handling of tuition debt; and in (4), after "bonded indebtedness", inserted "and tuition". Amendment effective July 1, 1989.

Collateral References

Schools and School Districts *key* 41(1), (3).

78 C.J.S. Schools and School Districts §76.

68 Am. Jur. 2d Schools §35.

20-6-418. Surrender of records when district ceases to exist.

Case Notes

Division of Property Required: Upon creation of a new school district out of an old one a division of its property and funds should be made as of the date on which it was created, with each district to hold and own all permanent property, such as sites, schoolhouses, and furniture, situated within its boundaries. Weasel Head v. Armstrong, 99 M 364, 43 P2d 243 (1935).

20-6-421. Conditions for district annexation.

Compiler's Comments

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date: Section 15, Ch. 510, L. 2005, provided: "[This act] is effective July 1, 2005."

20-6-422. District annexation.

Compiler's Comments

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date: Section 15, Ch. 510, L. 2005, provided: "[This act] is effective July 1, 2005."

20-6-423. District consolidation.

Compiler's Comments

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date: Section 15, Ch. 510, L. 2005, provided: "[This act] is effective July 1, 2005."

20-6-424. Interim governance of consolidated district.

Compiler's Comments

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date: Section 15, Ch. 510, L. 2005, provided: "[This act] is effective July 1, 2005."

Part 5
Opening and Closing of Schools

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-6-501. Definition of various schools.

Compiler's Comments

1999 Amendment: Chapter 343 in third sentence in (1) after "high school" deleted "or an accredited 6-year high school"; deleted former (2)(c) that read: "(c) a 6-year high school is a school that comprising the work of grades 7 through 12 or their equivalents that has been accredited as a 6-year high school under the provisions of 20-7-102"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 219 deleted (2)(e) that read: "(e) a county high school is a 4-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901, and any subsequent amendments thereto"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1987 Amendment: Deleted (2)(f) that read: "(f) a postsecondary vocational-technical center established under the provisions of 20-7-311".

Attorney General's Opinions

Public Character of School Not Altered by Religion of Student Body: An elementary school district composed entirely of property belonging to North Harlem Hutterite Colony would be eligible to receive public money for school purposes without violating any provision of 1972 Montana Constitution provided the school remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school. 36 A.G. Op. 5 (1975).

Collateral References

78 C.J.S. Schools and School Districts §1.
68 Am. Jur. 2d Schools §1.

20-6-502. Opening or reopening of elementary school.

Compiler's Comments

2001 Amendment — Coordination: Section 21, Ch. 237, a coordination section, amended this section as follows: in (1) near beginning of first sentence substituted "two pupils" for "three pupils" and at end deleted "during the ensuing school fiscal year"; in (2) at end of second sentence substituted "two" for "five" and inserted third sentence pertaining to procedures to be used by trustees planning to open a school during the current school fiscal year; in (3) in first sentence after "commissioners" deleted "(budget board)", in second sentence near beginning substituted "board" for "budget board" and at end substituted "two" for "five", and in third sentence substituted "board" for "budget board"; in (4)(a) at beginning of first sentence substituted "board" for "budget board", inserted second sentence requiring trustees to apply to superintendent for approval to open or reopen a school by June 1 prior to the beginning of the school year in which the school is to be opened, in third sentence at end inserted "by the fourth Monday of June", and in fifth sentence at end substituted "by June 1" for "before the fourth Monday of June"; inserted (4)(b)(i) pertaining to the submission of the budget for a reopening school during a current school fiscal year to the superintendent of public instruction for approval or adjustment; inserted (4)(b)(ii) requiring a school to be classified as an isolated school prior to opening during a current school fiscal year; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

The amendments to this section made by sec. 1, Ch. 105, L. 2001, were replaced by sec. 21, Ch. 237, L. 2001, a coordination section.

The amendments to this section made by sec. 9, Ch. 237, L. 2001, were rendered void by sec. 21, Ch. 237, L. 2001, a coordination section.

Attorney General's Opinions

Abandoned Elementary School District Not Allowed to Petition to Reopen School: An elementary school district that has not operated a school for 3 consecutive school years is considered permanently abandoned pursuant to 20-6-209, and the abandoned district may not petition to reopen a school in the district pursuant to this section. However, 20-6-209 also requires the County Superintendent to attach the territory of the abandoned district to another district, and nothing in that section precludes the revised district from petitioning to reopen a school. 49 A.G. Op. 14 (2002).

Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance: A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).

Short-Term Lease — Voter Approval Unnecessary: School district trustees may lease, for a term of 3 years or less, a mobile building to be used as a school and may relocate it on land already owned by the district without voter approval. 37 A.G. Op. 97 (1977).

Collateral References

Schools and School Districts *key* 9 through 11.
78 C.J.S. Schools and School Districts §13.

20-6-504. Opening of a junior high school.

Attorney General's Opinions

Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance: A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be

budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).

Collateral References

Schools and School Districts *key* 11.

78 C.J.S. Schools and School Districts §13.

20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating county high school.

Compiler's Comments

1993 Amendment: Chapter 633 in (1), in second sentence after "applied", deleted "under 20-9-320" and before "between" substituted "BASE funding program amount" for "foundation program schedule amount provided in 20-9-303(2)(a)". Amendment effective July 1, 1993.

1989 Special Session Amendment: Near end of second sentence of (1) substituted "the foundation program schedule amount provided in 20-9-303(2)(a)" for "the maximum-general-fund-budget-without-a-voted-levy"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Collateral References

Schools and School Districts *key* 110.

78 C.J.S. Schools and School Districts §411.

68 Am. Jur. 2d Schools §106, et seq.

Attendance: determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds. 80 ALR 2d 953.

20-6-507. Opening of middle school.

Administrative Rules

ARM 10.30.201 Approval criteria.

20-6-508. Kindergarten through grade twelve system.

Attorney General's Opinions

Public Character of School Not Altered by Religion of Student Body: An elementary school district composed entirely of property belonging to North Harlem Hutterite Colony would be eligible to receive public money for school purposes without violating any provision of 1972 Montana Constitution provided the school remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school. 36 A.G. Op. 5 (1975).

Collateral References

78 C.J.S. Schools and School Districts §1.

68 Am. Jur. 2d Schools §1.

20-6-509. School closure.

Case Notes

Dissemination of Incomplete Document Used to Make Decision — Right to Participate Entails Complying With Right to Know: A school district assembled a group of people to research and advise the district on the closure of schools, and a member of the group summarized the closure research information on a computer-generated spreadsheet and delivered various versions of the spreadsheet to various people and groups. The version given the school district contained a system rating the schools and explaining the rating system, but the group of parents that plaintiff belonged to was given a version not containing the rating system when a member of the group requested a copy. The school district told the group that a spreadsheet comparing the schools did not exist. The spreadsheet was a document of a public body subject to public inspection prior to the time that the school district's board met and used the spreadsheet to help determine which schools to close. The school district violated plaintiff's right to examine public documents. At a minimum, the "reasonable opportunity" standard articulated in Art. II, sec. 8, Mont. Const., and 2-3-111 for the right to participate demands compliance with the right to know contained in Art. II, sec. 9, Mont. Const. When the school district violated plaintiff's right to know, it reduced what should have been a genuine interchange into a mere formality. Bryan could and did voice her opinion to the school district, but did so without the ratings information contained on the version of the spreadsheet used by the school district. Therefore, the school district also violated her Art. II, sec. 8, Mont. Const., right of participation. The Supreme Court stated that this violation tainted the entire process from start to finish and ruled that the school

district's closure decision was void. The court stated that on remand, the school district should allow plaintiff an opportunity to rebut the closure decision and should then reexamine the decision and affirm or modify it. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

School District Advisory Group as Public or Governmental Body: A school district assembled a group of people to research and advise the district on the closure of schools. The Legislature has given a school district the power to close schools. Therefore, the advisory group assumed the identity of the district with respect to the closure question and performed a legislatively designated governmental function that served a clear public and governmental purpose, and the advisory group was a public or governmental body subject to Art. II, sec. 9, Mont. Const. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

Standing of Parent Who Did Not Request Information on Proposed School Closure but Belonged to Group Another Member of Which Did: School district parents, including Bryan, worked in concert to rebut a school closure recommendation, delegating duties among themselves. Schroeder, but not Bryan, requested information from the school authorities, which was not received. Bryan sued as a result of the school closure. That Bryan did not personally request the information did not prevent her from having standing to claim a violation of Art. II, sec. 9, Mont. Const. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

Mandamus Not Applicable: The matter of maintaining or closing of any particular school or schools, being addressed to the discretion of the board, cannot be controlled by mandamus. State ex rel. Robinson v. Desonia, 67 M 201, 215 P 220 (1923).

Collateral References

Schools and School Districts *key* 11.

78 C.J.S. Schools and School Districts §13.

Part 6
School Property

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-6-602. Trustees' power over property.

Collateral References

Schools and School Districts *key* 64, 65.

78 C.J.S. Schools and School Districts §§239, 240.

68 Am. Jur. 2d Schools §§75, 76.

20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required.

Compiler's Comments

2001 Amendment: Chapter 276 inserted (2) regarding acceptance of agreement by trustees as consideration for exchange of land; and made minor changes in style. Amendment effective April 20, 2001.

1993 Amendment: Chapter 633 substituted language in (1)(c) prohibiting trustees from taking action without voter approval unless cost of constructing, purchasing, or acquiring site or building is financed without exceeding maximum general fund budget amount for former (1)(c) that read: "(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the foundation program schedule amount provided in 20-9-303(2)(a), and in the case of a site purchase, the site has been approved under the provisions of 20-6-621". Amendment effective July 1, 1993.

1989 Special Session Amendment: In (1)(c) substituted "the foundation program schedule amount provided in 20-9-303(2)(a)" for "the maximum-general-fund-budget-without-a-vote amount prescribed in 20-9-316 through 20-9-321"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Case Notes

Authority of Board of Trustees to Proceed With School Construction Without Voter Approval — Use of Insurance Proceeds — Contiguous Property: A citizens' group contended that a school district Board of Trustees lacked the authority to construct a new middle school without first getting approval from the voters for the purchase of the property. The District Court correctly

found that the Board had authority to proceed with construction: (1) without an election if the cost could be financed without exceeding the maximum-general-fund-budget-without-a-vote amount, as set out in this section; (2) using insurance proceeds to credit the district building fund under 20-9-508; and (3) without a site approval election if the property was contiguous to an existing site that was in use for school purposes under 20-6-621. The Awareness Group v. Bd. of Trustees, 243 M 469, 795 P2d 447, 47 St. Rep. 1333 (1990).

Attorney General's Opinions

Community College District Statutory Borrowing Authority: A community college district may enter into an agreement with a city whereby the city would loan the district the proceeds from the sale of an industrial development revenue bond and the district would repay the loan from college revenues. A district may also enter into a promissory note loan agreement with a private lender whereby the district would repay the loan from college revenues. A college district election is not required to approve these construction project financing arrangements; however, a city is required to hold a public hearing prior to issuing industrial development revenue bonds. A district is subject to the election requirement in this section when acquiring or constructing sites or buildings. 42 A.G. Op. 78 (1988).

School District Power Regarding Property — Applicability to Community College Trustees: The authority to lease and/or lease/purchase property for school purposes and to sell unused school property granted by 20-6-603, 20-6-604, 20-6-609, and 20-6-625 is extended to a community college board of trustees under 20-15-102. 41 A.G. Op. 72 (1986).

Collateral References

Schools and School Districts *key* 65, 70, 74.
78 C.J.S. Schools and School Districts §§248, 253, 258, 263.
68 Am. Jur. 2d Schools §§75, 76.

20-6-604. Sale of property when resolution passed after hearing — appeal procedure.

Compiler's Comments

1997 Amendment: Chapter 144 in (3) substituted "shall provide notice of the resolution" for "shall cause notices of the resolution to be published in a newspaper of general circulation in the district. If there is no newspaper of general circulation, the trustees shall cause notices of the resolution to be posted".

1991 Amendment: In (6), after "disposal", inserted "of real or personal property of the district" and after "fund, or" substituted "other appropriate fund" for "any combination of these three funds"; and made minor changes in style. Amendment effective April 23, 1991.

1987 Amendment: In (1), at beginning of second sentence (former beginning of (2)), substituted "If a decision to sell or dispose of property is made, the trustees shall adopt a resolution" for "The trustees of any district shall adopt a resolution stating their intention" and made minor change in phraseology; deleted remainder of former (2) that read: "When such a resolution is adopted, the trustees shall set the date of the trustees' meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of such real or personal property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real or personal property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for 5 days after the date of its adoption"; inserted (2) relating to date the resolution may become effective; inserted (3) relating to notice of the resolution; and in (4), near beginning of first sentence, substituted "prior to the effective date" for "within 5 days after the date".

Attorney General's Opinions

School District Power Regarding Property — Applicability to Community College Trustees: The authority to lease and/or lease/purchase property for school purposes and to sell unused school property granted by 20-6-603, 20-6-604, 20-6-609, and 20-6-625 is extended to a community college board of trustees under 20-15-102. 41 A.G. Op. 72 (1986).

Collateral References

Schools and School Districts *key* 65, 74.
78 C.J.S. Schools and School Districts §§253, 263.

20-6-605. Land acquired by conditional deed or at will or sufferance.

Collateral References

Schools and School Districts *key* 65.
78 C.J.S. Schools and School Districts §254.
68 Am. Jur. 2d Schools §§72, 73.
Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

20-6-606. Letting contracts for school facilities.

Compiler's Comments

2005 Amendment: Chapter 574 at end inserted "or Title 18, chapter 2, part 5"; and made minor changes in style. Amendment effective October 1, 2005.

Collateral References

Schools and School Districts *key* 78.
78 C.J.S. Schools and School Districts §277.

20-6-607. Leasing district property and disposition of any rentals.

Compiler's Comments

2005 Amendment: Chapter 462 in first sentence after "facilities" inserted "or personal property"; and made minor changes in style. Amendment effective April 28, 2005.

Case Notes

School District Not Considered Person Engaged in Business Subject to Liability Under Montana Unfair Trade Practices Act: The Great Falls school district entered exclusive agreements with Coke and Pepsi to provide soft drinks in school facilities in exchange for $500,000 over a 10-year period. Plaintiff, which had supplied soft drinks to the district for almost 20 years, sued the school district for violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1973. The school district contended that it was not subject to suit under the Act because by definition, it was not a person engaged in business, and the Supreme Court agreed. The plain meaning of person in 30-14-202 does not include a school district. To conclude otherwise would infringe on a school district's statutory power to raise revenue for funding education. A school district is also not a business as defined in the Act because a business is a person, which does not include a school district. Further, in accordance with the purpose set out in 30-14-201, the Act was created to apply to competitive businesses, not government, which generally acts as a market regulator and not a competitor. Mont. Vending, Inc. v. Coca-Cola Bottling Co. of Mont., 2003 MT 282, 318 M 1, 78 P3d 499 (2003).

Attorney General's Opinions

Rental of School Facilities by Religious Groups: Religious groups can use public school facilities on an occasional and short-term basis during nonschool hours upon securing permission from the school district trustees and paying a fair rental. 36 A.G. Op. 65 (1976).

Collateral References

Power of school or local authorities as to granting leases of school property. 111 ALR 1051.

20-6-608. Authority and duty of trustees to insure district property.

Compiler's Comments

1999 Amendment: Chapter 343 inserted (2) allowing trustees to deposit proceeds from insurance settlement on real or personal property into appropriate fund; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1989 Special Session Amendment: In first sentence, after "shall", deleted "have the authority and it shall be their duty to"; and inserted last sentence including insurance costs in the general fund budget. Amendment effective July 1, 1990.

Attorney General's Opinions

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

Collateral References

Schools and School Districts *key* 78.

78 C.J.S. Schools and School Districts §274.

68 Am. Jur. 2d Schools §82.

20-6-609. Trustees' authority to acquire property by lease-purchase agreement.

Compiler's Comments

1997 Amendment: Chapter 22 in first sentence, after "lease",inserted "for 3 years" and inserted second sentence requiring compliance with 20-6-625. Amendment effective July 1, 1997.

Attorney General's Opinions

School District Power Regarding Property — Applicability to Community College Trustees: The authority to lease and/or lease/purchase property for school purposes and to sell unused school property granted by 20-6-603, 20-6-604, 20-6-609, and 20-6-625 is extended to a community college board of trustees under 20-15-102. 41 A.G. Op. 72 (1986).

20-6-621. Selection of school sites — approval election.

Compiler's Comments

2001 Amendment: Chapter 483 at end of (3)(c) substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1999 Amendment: Chapter 18 deleted (4) that provided: "(4) The board of land commissioners may sell, at the appraised value, or lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than:

(a) 25 acres to be used as a site in the district for an elementary school; or

(b) 50 acres to be used as a site in the district for a high school." Amendment effective October 1, 1999.

1997 Amendment: Chapter 79 at beginning of (1)(a) inserted exception clause; at beginning of (1)(b) deleted "except"; in (4)(a) increased allowable acreage for sale or lease from 10 acres to 25 acres, before "site" deleted "school", and after "district" inserted "for an elementary school"; inserted (4)(b) authorizing sale or lease of 50 acres for high school site; and made minor changes in style. Amendment effective March 17, 1997.

1995 Amendments — Composite Section: Chapter 418 in (3)(b) substituted "department of public health" for "department of health and environmental sciences of the state of Montana"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (3)(b) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1985 Amendment: In (3)(c) changed "department of administration" to "department of commerce".

1981 Amendment: Substituted "department" for "board" in (3)(b).

Administrative Rules

Title 37, chapter 111, subchapter 8, ARM Schools.

Case Notes

Repealed Statute Regarding Sale or Lease of School Trust Lands to School Districts — No Justiciable Controversy or Action Upon Which Relief Could Be Granted: Former subsection (4) of this section allowed the Board of Land Commissioners to sell, for appraised value, or to lease, for $1 a year, school trust lands to a school district. The Department of Natural Resources and Conservation stipulated that the provision was unconstitutional because it made state lands available for less than full market value. The District Court agreed, noting that leasing school trust lands to some school districts would favor only some of the beneficiaries and not the school trust as a whole. The Legislature concurred and repealed the subsection in 1999. Plaintiff subsequently sued the Department, the Board, and the state, contending that the Department unlawfully determined that the provision was unconstitutional and failed to defend the constitutionality of the provision. The state moved to dismiss the complaint on grounds that no

justiciable controversy existed and that the complaint alleged no cause of action upon which relief could be granted. The District Court granted summary judgment for the state, and on appeal, the Supreme Court affirmed. Any determination that the Department exceeded its authority would have had no bearing on the existing rights or interests at issue, and a judgment granting the relief sought would not have effectively operated to resolve any issue in the case. Thus, there was no justiciable case or controversy, and the claim was properly dismissed. Advocates for Educ., Inc. v. Dept. of Natural Resources and Conservation, 2004 MT 230, 322 M 429, 97 P3d 553 (2004), following Mont.-Dak. Util. Co. v. Billings, 2003 MT 332, 318 M 862, 80 P3d 1247 (2003).

Authority of Board of Trustees to Proceed With School Construction Without Voter Approval — Use of Insurance Proceeds — Contiguous Property: A citizens' group contended that a school district Board of Trustees lacked the authority to construct a new middle school without first getting approval from the voters for the purchase of the property. The District Court correctly found that the Board had authority to proceed with construction: (1) without an election if the cost could be financed without exceeding the maximum-general-fund-budget-without-a-vote amount, as set out in 20-6-603; (2) using insurance proceeds to credit the district building fund under 20-9-508; and (3) without a site approval election if the property was contiguous to an existing site that was in use for school purposes under this section. The Awareness Group v. Bd. of Trustees, 243 M 469, 795 P2d 447, 47 St. Rep. 1333 (1990).

Contiguity of Land Separated by Public Road: The Supreme Court held that a site approval election was unnecessary for the purchase of a tract of land that would border a present school site for 800 feet but for a county road running between the parcels. The parcels were found to be contiguous within the meaning of this section. The fact that each parcel would be owned by a different school district did not necessitate an election because the purchase met the intent of this section by promoting the building of schools within the same general area of a city, thereby easing transportation and administration procedures. The Awareness Group v. Bd. of Trustees, 243 M 469, 795 P2d 447, 47 St. Rep. 1333 (1990).

Attorney General's Opinions

Short-Term Lease — Voter Approval Unnecessary: School district trustees may lease, for a term of 3 years or less, a mobile building to be used as a school and may relocate it on land already owned by the district without voter approval. 37 A.G. Op. 97 (1977).

20-6-622. Review and approval of school building plans and specifications.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) near end after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1) changed "department of administration" to "department of commerce".

1983 Amendment: In (1), after "No school building" deleted "in the state", after "privately owned or operated" inserted "in which students are housed or instructed" and substituted "may" for "shall", after "remodeled" deleted "or repaired", and inserted last clause relating to building codes; in (2), after "plans and specifications" inserted "required in subsection (1)"; at end of (2), substituted "applicable building code" for "rules promulgated by the department"; and in (3), substituted "required in subsection (1)" for "submitted to the department of administration".

Collateral References

Schools and School Districts *key* 71, 73.

78 C.J.S. Schools and School Districts §§257, 262.

68 Am. Jur. 2d Schools §79.

Accessory or incidental use: what constitutes accessory or incidental use of religious or educational property within zoning ordinance. 11 ALR 4th 1084.

20-6-624. School building plans and specifications approval before payment.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in (2) substituted "board of public health" for "state board of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2) substituted "department of public health and human services" for "state board of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Pursuant to sec. 3, Ch. 546, the codifier has not codified the Ch. 418 amendment in (2).

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Administrative Rules

Title 23, chapter 7, ARM Fire prevention and Investigation Bureau.

Title 37, chapter 111, subchapter 8, ARM Schools.

20-6-625. Authorization to lease buildings or land for school purposes.

Attorney General's Opinions

School District Power Regarding Property — Applicability to Community College Trustees: The authority to lease and/or lease/purchase property for school purposes and to sell unused school property granted by 20-6-603, 20-6-604, 20-6-609, and 20-6-625 is extended to a community college board of trustees under 20-15-102. 41 A.G. Op. 72 (1986).

Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance: A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).

Short-Term Lease — Voter Approval Unnecessary: School district trustees may lease, for a term of 3 years or less, a mobile building to be used as a school and may relocate it on land already owned by the district without voter approval. 37 A.G. Op. 97 (1977).

Collateral References

Schools and School Districts *key* 72.

78 C.J.S. Schools and School Districts §259.

68 Am. Jur. 2d Schools §86.

Use of public school premises for religious purposes during nonschool time. 79 ALR 2d 1148.

20-6-631. When contracts for architectural services required.

Compiler's Comments

1997 Amendment: Chapter 153 at beginning inserted reference to trustees of school district; after "determine that the" deleted "estimated cost of any"; increased dollar amount of estimate requiring architectural services from $50,000 to $150,000; inserted reference to Title 37, chapter 65; and made minor changes in style. Amendment effective March 25, 1997.

20-6-633. Hiring for architectural services authorized.

Compiler's Comments

1997 Amendment: Chapter 153 in first sentence, at beginning, substituted language concerning trustees' determination that architectural services are necessary for "After selecting a firm" and substituted language authorizing trustees to hire licensed architect for "shall negotiate with the selected firm a fair and reasonable fee"; in last sentence, in two places, substituted "architect" for "firm"; and made minor changes in style. Amendment effective March 25, 1997.

20-6-640. Long-term loans.

Compiler's Comments

Effective Date: Section 2, Ch. 585, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 23, 1991.

Part 7
K-12 School Districts

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

1991 Statement of Intent: The statement of intent attached to Ch. 555, L. 1991, provided: "A statement of intent is necessary for this bill to clarify that the superintendent of public instruction shall promulgate rules to prescribe procedures for budgeting and for revenue distribution for K-12 school districts formed by the attachment of an elementary district to a high school district. It is the intent of the legislature to encourage the formation of K-12 school districts whenever the trustees and the electorate of districts with the same boundaries choose to do so. In order to facilitate this action, it may be necessary for the superintendent of public instruction to address certain unforeseen circumstances through the rulemaking process."

Part Administrative Rules

Title 10, chapter 30, subchapter 4, ARM K-12 districts.

20-6-701. K-12 school districts required — definition — procedure for creation — exception.

Compiler's Comments

1997 Amendments: Chapter 22 in (1), after exception clause, deleted "by the school fiscal year beginning July 1, 1995"; in two places in (4) changed reference to Public Law 81-874 funding to reference to impact aid funding; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 95 in (1), after exception clause, deleted "by the school fiscal year beginning July 1, 1995"; and in two places in (4) substituted "federal funding" for "Public Law 81-874 funding", after "creation" inserted "or continuation", and after "K-12 district" substituted "has resulted in or will result" for "would result". Amendment effective March 19, 1997.

1993 Amendment: Chapter 194 at beginning of (1) inserted "Except as provided in subsection (4), by the school fiscal year beginning July 1, 1995" and made attachment mandatory rather than permissive; in (3)(a) substituted "The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts" for language concerning providing for passage of trustee resolutions requesting County Superintendent to order an election or allowing not less than 20% of electors of an elementary and high school district to petition for election to consider attachment proposition; in (3)(b) substituted requirement that County Superintendent order attachment of an elementary school district to a high school district within 10 days of receipt of resolution for requirement that County Superintendent within 10 days of receipt of a resolution or valid petition order district trustees to call an attachment election in conjunction with a regular school election; deleted (3)(b)(ii) that required that attachment proposition include assumption of the elementary school district's bonded indebtedness by the high school district; deleted (3)(c) that required that districts conduct attachment election in manner prescribed for school elections; deleted (3)(d) that required that County Superintendent, after receiving certificate of election from district trustees, determine if the attachment proposition has been approved by the districts and, if so, within 10 days of receipt of the certificate order attachment of the elementary school district to the high school district; and inserted (4) excluding application of this section to school districts receiving Public Law 81-874 funding if creation of K-12 district would result in loss of Public Law 81-874 funding. Amendment effective July 1, 1993.

Effective Date: Section 13, Ch. 555, L. 1991, provided: "[This act] is effective July 1, 1991."

Case Notes

Sufficiency of Single Petition to Transfer Territory From One K-12 District to Another K-12 District: Residents of Upper Nine Mile Valley petitioned the Missoula County School Superintendent to be transferred from Alberton K-12 district to Frenchtown K-12 district. The superintendent determined that the petition was valid and scheduled a hearing, but prior to the hearing, the Alberton Board of Trustees requested that the hearing be canceled because two separate petitions were not filed—one for elementary students and one for high school students.

The superintendent denied the request, and on appeal to District Court, summary judgment was granted in favor of the superintendent. The Alberton Board of Trustees then appealed to the Supreme Court, asserting that two petitions were required under either 20-6-213 or 20-6-320 (both now repealed) in order to transfer both elementary and high school territories from one K-12 district to another K-12 district. Conversely, the superintendent maintained that because the request was for the transfer of combined elementary and high school territory from one K-12 district, as defined in this section, to another, only one petition was necessary. In order to give meaning to all the applicable statutes, the Supreme Court concluded that a K-12 school district is a high school district upon which an elementary district has been attached and remains a high school district for purposes of the governing statutes. Therefore, 20-6-320 (now repealed) applied to the petition in question because it concerned transfer of territory from one high school district to another. The question then became not whether a formal, second petition was required to address the elementary district, but whether under 20-6-320(8) (now repealed) the petition in question was "accompanied" by an elementary "petition" that satisfied the corollary requirements of 20-6-213 (now repealed). The Alberton trustees argued that a distinct, second elementary petition, also signed by a majority of registered electors, was required or else the entire transfer process was invalid. The Supreme Court refused to abide by such a strict, formalistic approach, noting that the law respects form less than substance. The petition clearly identified that the territory was K-12, meaning that any attached elementary territory would also be transferred, thus the petition to transfer high school territory was unquestionably "accompanied" by a petition to transfer elementary territory as well, and it was not fatal that both petitions appeared on a single sheet of paper. The court held that it would be unreasonable and far too formalistic to require that two separate petitions be submitted when one petition, clearly identifying the intent to transfer both high school and elementary territory, served the same function. The District Court was affirmed. McKirdy v. Vielleux, 2000 MT 264, 302 M 18, 19 P3d 207, 57 St. Rep. 1101 (2000).

20-6-702. Funding for K-12 school districts.

Compiler's Comments

1997 Amendment: Chapter 22 in (3)(b), in two places after "program", deleted "amount", near beginning, after "tax", inserted "for elementary equalization", and near middle, after "basic", substituted "county tax for high school equalization" for "special tax"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendments: Chapter 563 near middle of (6) substituted "20-5-320 through 20-5-324" for "chapter 5, part 3" and substituted "20-5-323" for "20-5-305 and 20-5-312".

Chapter 633 in (3)(a) substituted "total per-ANB entitlements" for "foundation program schedule payments"; throughout (3)(b) and (3)(c) substituted "BASE funding" for "foundation"; and in (3)(c), near beginning of first sentence, substituted "BASE funding program purposes" for "the permissive levy amount" and after "using" substituted "each district's guaranteed tax base ratio" for "the mill value per elementary ANB and the mill value per high school ANB" and in second sentence substituted "BASE budget levy" for "permissive amount". Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Effective Date: Section 13, Ch. 555, L. 1991, provided: "[This act] is effective July 1, 1991."

Case Notes

Failure of Legislature to Define Quality Education — Inability of Court to Determine That Education System Adequately Funded: The District Court held that the state system of funding public education was unconstitutional under Art. X, sec. 1(3), Mont. Const., but did not violate the equal protection clause in Art. II, sec. 4, Mont. Const. On appeal, the Supreme Court held that because the Legislature has not defined what "quality" means, it was not possible to conclude that the current funding system was designed to provide a quality education. Although deferring to the Legislature to provide a definition of a quality education, given the unchallenged findings of the District Court regarding Art. X, sec. 1(3), Mont. Const., the Supreme Court nevertheless concluded that whatever definition the Legislature devises, the current system was

not sufficiently grounded in principles of quality to be considered constitutional. Because the unconstitutionality of the present funding system was affirmed, the Supreme Court held that the District Court need not have addressed the equal protection issue, so the District Court was directed to vacate its conclusion that the present system did not violate equal protection. Columbia Falls Elementary School District No. 6 v. St., 2005 MT 69, 326 M 304, 109 P3d 257 (2005).

20-6-703. Transitions after formation of K-12 school district.

Compiler's Comments

1997 Amendment: Chapter 403 in (1)(a), near beginning, substituted "county superintendent" for "board of county commissioners" and inserted "order the trustees to". Amendment effective April 28, 1997.

1993 Special Session Amendment: Chapter 36 deleted (4) that read: "(4) An elementary district and a high school district that form a K-12 school district under the provisions of 20-6-701 may not be considered an enlarged district for the purpose of bonus payments under 20-6-401 through 20-6-408." Amendment effective July 1, 1994.

Saving Clause: Section 5, Ch. 36, Sp. L. November 1993, was a saving clause.

1993 Amendment: Chapter 633 in (3), at end, substituted "20-9-308" for "20-9-315". Amendment effective July 1, 1993.

Effective Date: Section 13, Ch. 555, L. 1991, provided: "[This act] is effective July 1, 1991."

20-6-704. Dissolution of K-12 school district.

Compiler's Comments

2005 Amendment: Chapter 510 in (1) near end after "program with" substituted "a contiguous" for "an adjacent" and at end after "provisions of" substituted "20-6-422 or 20-6-423" for "20-6-203 through 20-6-208 or 20-6-315 through 20-6-319"; in (3) near beginning of first sentence after "consolidated with" substituted "a contiguous" for "an adjacent"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 95 at beginning of (1) inserted exception clause, after "section" inserted "the trustees of a district shall submit for approval to", and after "electors of a K-12 district" deleted "shall approve"; inserted (2) providing procedures for the dissolution of a K-12 district if trustees determine that creation or continuation of the district has resulted or will result in the loss of federal funding; in first sentence in (3) inserted reference to subsection (2) and in second sentence, after "districts", substituted requirement that resolution or petition contain a description of manner of apportionment of property, funds, and financial obligations for former language that read: "and the resolution or petition does not contain a description of the apportionment of funds and property, the provisions of subsection (4)(c) must be used to determine the disposition of property and funds"; in (5), after "dissolved", deleted "for purposes of annexing or consolidating the high school or elementary program with one or more other districts"; deleted former (5)(a) that read: "The trustees of the K-12 district are the trustees of the district whose territory is not consolidated or annexed to one or more adjacent districts upon dissolution of the K-12 district"; in (5)(a), before "district", inserted "elementary" and after the second "K-12 district" substituted language concerning apportionment between the elementary and high school programs of obligations not identified in subsection (3) for "including tuition"; deleted former (5)(c) that read: "(c) Unless otherwise provided for in the proposition for dissolution of the K-12 district, all the tangible property, real and personal, of the K-12 district and all cash and receivables remaining to the credit of the K-12 district after providing for payment of outstanding debts, except bonded indebtedness, become the property of the district whose territory is not annexed or consolidated with one or more adjacent districts"; and made minor changes in style. Amendment effective March 19, 1997.

Effective Date: Section 4, Ch. 285, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 30, 1995.

Administrative Rules

ARM 10.30.415 Dissolution of K-12 districts.

20-6-711. Tenure protected — hiring preference for noncertified employees.

Compiler's Comments

Effective Date: Section 13, Ch. 555, L. 1991, provided: "[This act] is effective July 1, 1991."

CHAPTER 7
SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

Part 1
Accreditation and Curriculum

Part Administrative Rules

Title 10, chapter 54, ARM Content and performance standards.

Title 10, chapter 55, ARM Standards of accreditation.

Part Collateral References

Liability of private school or educational institution for breach of contract arising from provision of deficient educational instruction. 46 ALR 5th 581.

Malpractice: tort liability of public schools and institutions of higher learning for educational malpractice. 1 ALR 4th 1139.

Defining a Basic System of Education for Montana's Next Century, Interim Report. Mont. Leg. Council (Dec. 1988).

20-7-101. Standards of accreditation.

Compiler's Comments

2005 Amendment: Chapter 208 inserted (2) requiring board, prior to adoption or amendment of accreditation standard, to submit proposal to interim committee, requiring committee to request fiscal analysis by legislative fiscal division, and requiring fiscal division to provide analysis to committee and office of budget and program planning for use in preparation of executive budget; inserted (3) prohibiting board from implementing standard with substantial fiscal impact until July 1 following next regular legislative session, requiring board to request that same legislature fund implementation of proposed standard, and providing that substantial fiscal impact is amount that cannot be readily absorbed in existing school district program budget; and made minor changes in style. Amendment effective April 7, 2005.

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

1983 Amendment: Inserted (2) relating to records retention.

Administrative Rules

Title 10, chapter 54, ARM Content and performance standards.

Title 10, chapter 55, ARM Standards of accreditation.

Collateral References

Schools and School Districts *key* 164.

78A C.J.S. Schools and School Districts §485.

20-7-102. Accreditation of schools.

Compiler's Comments

2005 Amendment: (Temporary version) Chapter 462 in (4) at end substituted "20-9-306(11)(c)(ii)" for "20-9-306(10)(c)(i)"; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

(Version effective July 1, 2007) In (4) at end substituted "20-9-306(10)(c)(ii)" for "20-9-306(10)(c)(i)"; and made minor changes in style. Amendment effective July 1, 2007.

2001 Amendment: Chapter 73 at beginning of first sentence of (1) deleted "Every school year" and after "junior high school" inserted "7th and 8th grades funded at high school rates" and in third sentence after "school year" inserted "or years" and at end inserted "by the superintendent of public instruction"; inserted (2) allowing multiyear accreditation of schools that are in

compliance with 20-4-101; inserted (4) defining 7th and 8th grades funded at high school rates; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: In (2), substituted two references to nonpublic schools for two references to nonpublic high schools.

Administrative Rules

Title 10, chapter 55, subchapter 6, ARM General provisions.
Title 10, chapter 55, subchapter 7, ARM School leadership.
Title 10, chapter 55, subchapter 8, ARM Educational opportunity.
Title 10, chapter 55, subchapter 9, ARM Academic requirements.
ARM 10.55.908 and 10.55.909 School facilities and records.
Title 10, chapter 55, subchapter 10, ARM School program — program area standards.
Title 10, chapter 55, subchapter 11, ARM Communication arts: program.
Title 10, chapter 55, subchapter 12, ARM Fine arts: program.
Title 10, chapter 55, subchapter 13, ARM Health enhancement: program.
Title 10, chapter 55, subchapter 14, ARM Mathematics: program.
Title 10, chapter 55, subchapter 15, ARM Science: program.
Title 10, chapter 55, subchapter 16, ARM Social studies: program.
Title 10, chapter 55, subchapter 17, ARM Vocational/practical arts: program.
Title 10, chapter 55, subchapter 18, ARM Library/media: program.
Title 10, chapter 55, subchapter 19, ARM School counseling: program.

Case Notes

Mandamus Unavailable to Accredit Three-Year High School: Granting Writ of Mandate to compel State Board of Education to accredit school as 3-year high school before obtaining approval of Superintendent of Public Instruction was an invasion of Board's discretionary power. State ex rel. School District v. Cooney, 102 M 521, 59 P2d 48 (1936).

20-7-111. Instruction in public schools.

Administrative Rules

Title 10, chapter 55, subchapter 7, ARM School leadership.

20-7-112. Sectarian publications prohibited and prayer permitted.

Compiler's Comments

1989 Amendment: In first sentence, before "distributed", deleted "used or" and at end of sentence deleted "or be included in the school library"; at beginning of second sentence substituted "Instruction may not be given advocating" for "Instruction shall not be given in"; inserted last sentence relating to including the Bible and other religious material in a library; and made minor changes in phraseology. Amendment effective March 29, 1989.

Severability: Section 2, Ch. 367, L. 1989, was a severability clause.

Attorney General's Opinions

Public Character of School Not Altered by Religion of Student Body: An elementary school district composed entirely of property belonging to North Harlem Hutterite Colony would be eligible to receive public money for school purposes without violating any provision of 1972 Montana Constitution provided the school remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school. 36 A.G. Op. 5 (1975).

Collateral References

Schools and School Districts *key* 165.
78A C.J.S. Schools and School Districts §486.
Prayer: what constitutes "prayer" under federal constitutional prohibition of prayer in public schools. 30 ALR 3d 1352.
Prayer in public schools. 86 ALR 2d 1304.
Wearing of religious garb by public schoolteachers. 60 ALR 2d 300.
Bible distribution or reading in public schools. 45 ALR 2d 742.
Release of public school pupils from attendance for purpose of attending religious education classes. 2 ALR 2d 1371.

20-7-115. Private music instruction.

Collateral References

Schools and School Districts *key* 164.
78A C.J.S. Schools and School Districts §485.

20-7-117. Five-year-old schooling and preschool programs.

Compiler's Comments

1991 Amendment: In first sentence of (1), near beginning, substituted "shall establish or make available" for "may establish"; and made minor changes in style. Amendment effective July 1, 1992.

1987 Amendment: In (1), in two places, changed "has been enrolled" to "have been enrolled".

Collateral References

Schools and School Districts *key* 163.

78A C.J.S. Schools and School Districts §484.

Power and duty of school authorities to maintain kindergartens or specialized departments. 70 ALR 1313.

20-7-118. Offsite provision of educational services by school district.

Compiler's Comments

Effective Date — Applicability: Section 4, Ch. 570, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school fiscal years beginning on or after July 1, 2005".

20-7-131. Equivalency of completion of secondary education.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 149 (Ch. 94, L. 1983) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Public Education to adopt rules for issuance of documents certifying equivalency of completion of secondary education.

While the Board has clearly delineated rulemaking authority to adopt standards of accreditation and establish the accreditation status of every school, its rulemaking authority has only been implied in the area of setting standards for documents which state that an eligible applicant has satisfied requirements for equivalency of completion of secondary education.

At the recommendation of the Administrative Code Committee [now Administrative Rule Review Committee], the Board requested legislation specifically providing the Board with the authority to adopt policies for the issuance of high school equivalency certificates and to direct the Superintendent of Public Instruction to issue those certificates.

The bill gives the Board the express rulemaking authority to adopt rules in the area of high school equivalency certificates. It is contemplated that:

(1) the Board's current rules in this area will be amended to show proper authority and implementation;

(2) the Board may adopt rules required for other types of programs of similar nature."

Administrative Rules

Title 10, chapter 66, ARM Adult secondary education credentials.

Collateral References

78A C.J.S. Schools and School Districts §508.

20-7-133. Pledge of allegiance required — exemption for students and teachers.

Compiler's Comments

Preamble: The preamble attached to Ch. 320, L. 1997, provided: "WHEREAS, the United States Supreme Court has consistently ruled that a state may require recitation of the pledge of allegiance so long as any student or teacher objecting to participation for any reason is allowed to nondisruptively refuse to participate; and

WHEREAS, courts have also ruled that a student who refuses to participate in the pledge of allegiance cannot be compelled to take any particular action, such as standing, remaining seated, or leaving the room during group recitation of the pledge; and

WHEREAS, in an effort to educate students in the American values of patriotism and love of country and to pass on the feelings of civic pride and commitment to America, the Board of Public Education, as one small step in increasing Montana students' awareness of their heritage as Americans, enacted a policy on January 26, 1989, recommending that teachers in every public school classroom begin the day with recitation of the pledge of allegiance while allowing an excuse from participation for any student or teacher who objects for any reason; and

WHEREAS, in 1980 the United States Supreme Court let stand the decision in Palmer v. Board of Education of City of Chicago, 603 F.2d 1271 (7th Cir. 1979), certiorari denied, 444 U.S. 1026 (1980), which held that while a teacher may not be required to participate in the pledge of

allegiance, the teacher, despite any personal convictions, may be required to teach subjects related to the flag or other patriotic matters in the prescribed curriculum; and

WHEREAS, section 20-4-301, MCA, requires a teacher to provide moral and civic instruction by endeavoring to impress students with the principles of morality, truth, justice, and patriotism; to instruct students in the principles of free government; and to train them to comprehend the rights, responsibilities, and dignity of American citizenship."

20-7-134. Access to public high school campuses — definition.

Compiler's Comments

Effective Date: Section 62, Ch. 271, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

Part 2
Libraries

20-7-201. State visual, aural, and other educational media library.

Compiler's Comments

1987 Amendment: Near end of third sentence substituted "the audiovisual and media library account in the state special revenue fund" for "a media library enterprise fund" and in fourth sentence substituted "audiovisual and media library account" for "library media enterprise fund".

1983 Amendment: Substituted references to enterprise fund for references to revolving fund.

20-7-202. School library required.

Collateral References

Schools and School Districts *key* 76.

78 C.J.S. Schools and School Districts §269.

20-7-204. School library book selection.

Collateral References

Propriety, under First Amendment, of school board's censorship of public school library or coursebooks. 64 ALR Fed. 771.

Part 3
Vocational and Technical Education

Part Administrative Rules

Title 10, chapter 41, ARM Career and vocational/technical education.

20-7-301. Duties of superintendent of public instruction.

Compiler's Comments

2001 Amendment: Chapter 133 throughout section substituted "K-12 career and vocational/technical education" for "K-12 vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1987 Amendment: Throughout section inserted references to "K-12"; deleted former (3), (5), (8), and (12) through (14) relating to postsecondary vocational-technical center certificates to students, Director's qualifications, budget recommendations to the Legislature, tuition and fee charges, allowable building rental costs, and guidelines for authority of a local school district Board of Trustees operating a center; and in (5), at end, deleted "which are to receive financial assistance".

Advisory Council Formed: Executive Reorganization Order 5-72, signed by the Governor and effective September 15, 1972, established a vocational education advisory council for purposes of this chapter.

Administrative Rules

Title 10, chapter 41, ARM Career and vocational/technical education.

Case Notes

Constitutionality: Amendment by Ch. 434, L. 1975, designating State Board of Education as State Board of Vocational Education, contravened intent of Art. X, sec. 9, Mont. Const., which intended vocational education to be responsibility of Board of Public Education, and was unconstitutional. The act was unseverable and thus invalid in toto, but the appropriation to Superintendent of Public Instruction remained operative. Bd. of Pub. Educ. v. Judge, 167 M 261, 538 P2d 11 (1975).

Collateral References

Schools and School Districts *key* 164.
78A C.J.S. Schools and School Districts §485.
68 Am. Jur. 2d Schools §303.

20-7-303. Authorization to establish and maintain K-12 career and vocational/technical education courses and programs.

Compiler's Comments

2001 Amendment: Chapter 133 in three places substituted "K-12 career and vocational/technical education" for "K-12 vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1987 Amendment: Near beginning substituted "an elementary or high school district" for "any district, community college district, or unit of the Montana university system", near middle inserted "K-12", and at end inserted "for compliance with K-12 vocational education standards".

Administrative Rules

Title 10, chapter 41, ARM Career and vocational/technical education.

20-7-305. Funding for secondary K-12 career and vocational/technical education programs — application — rules.

Compiler's Comments

2001 Amendment: Chapter 133 in two places in (1) and in (2) substituted "secondary K-12 career and vocational/technical education" for "secondary vocational education and industrial arts"; in second sentence in (2) substituted "method for distribution" for "method for ANB determination"; in (3) substituted "secondary K-12 career and vocational/technical education program" for "secondary vocational education or industrial arts program or a course in such a program" and after "that program" deleted "or course"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

Statement of Intent: The statement of intent attached to HB 618 (Ch. 287, L. 1981) provided: "Section 1. Rulemaking authority having been specifically granted under sections 1 and 2 of House Bill 618, this statement of intent is required by law.

Section 2. The allocation method established in House Bill 618 is to be administered by the office of the superintendent of public instruction for secondary vocational and industrial arts programs according to rules promulgated by that office. The rules are to provide for the form of the application and any budgeting and accounting requirements that are needed to satisfactorily provide for fiscal responsibility regarding the funds. Further rules are necessary to define and approve course areas and programs to receive the funding. The rules shall contain a table of five classes of courses ranked by the relative cost of providing the course. An example of such a table would be:

Category	Weight
I	.50
II	.40
III	.30
IV	.20
V	.10

The superintendent of public instruction is to place each course or program into one of these classes. The weights are to be adjusted as necessary to provide equitable allocation of funds and to insure that appropriated funds are not exceeded."

20-7-306. Distribution of secondary K-12 career and vocational/technical education funds.

Compiler's Comments

2001 Amendment: Chapter 133 in two places in (3) and in (5) substituted "K-12 career and vocational/technical education" for "K-12 vocational education and industrial arts"; in (1) substituted "K-12 career and vocational/technical education programs" for "vocational programs" and after "programs" substituted language requiring categorization according to relative additional cost of programs based on outlined weighted factors for "programs into one of five weighted categories based upon the relative additional costs of those programs"; deleted former (2) that read: "(2) The superintendent of public instruction shall determine the weighted category to be assigned industrial arts programs"; in (2) substituted "factors outlined in subsection (1)" for "categories" and substituted "allocations do not exceed the amount" for "procedures outlined in subsection (4) do not result in entitlements that exceed the amount"; at beginning of first sentence of (3) inserted exception clause, near middle after "based upon the" substituted "calculation" for "average number belonging (ANB)", and before "preceding" substituted "year" for "ANB calculation period immediately", inserted second sentence requiring funding for expenditures to be based on the calculation for secondary K-12 career and vocational/technical education programs of the high school district for 2 years preceding the year of requested funding, and at beginning of third sentence substituted "funding" for "ANB"; in (4) after "programs" substituted language requiring total funding to be distributed to eligible programs based on four listed factors for "the ANB generated for each category established in subsection (1) must be multiplied by the factor for that category, and the product must be multiplied by the district's direct state aid per-ANB. Industrial arts programs must be funded at 50% of the category assigned. The high school district is entitled to receive for secondary vocational education and industrial arts, the total of the computation of all secondary vocational education and industrial arts categories"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1993 Amendment: Chapter 633 in (3), after "(4)", deleted "and (5)"; in (5), at end of first sentence, substituted "district's direct state aid per-ANB" for "applicable ANB dollar value established by 20-9-319"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In first sentence of (4), before "immediately", substituted "ANB calculation period" for "year"; near end of (5), after "total of", inserted "the computation of"; in second sentence of (6), before "be expended", substituted "may" for "shall"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

Statement of Intent: See compiler's comments to 20-7-305.

20-7-308. State director of K-12 career and vocational/technical education — duties.

Compiler's Comments

2001 Amendment: Chapter 133 throughout section substituted "K-12 career and vocational/technical education" for "K-12 vocational education"; in (3) after "staff" substituted language regarding membership of professional staff for "necessary for the state supervision and administration of K-12 vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1987 Amendment: Throughout section inserted references to "K-12"; and deleted former (7) through (10) and (12) through (15) that read: "(7) provide a postsecondary vocational-technical center system policy and procedural handbook for institutional operations that will standardize operations among the centers;

(8) identify and direct the county treasurer in those counties where postsecondary vocational-technical centers are located to establish the necessary multifund structures for postsecondary vocational-technical center financial operations;

(9) meet with the chairman of the board of trustees, district superintendent, and center director of each postsecondary vocational-technical center at least twice each year to discuss recommended changes in the superintendent of public instruction's policies and procedures;

(10) formulate and put into effect uniform fiscal, student, staff, and program accounting systems for the postsecondary vocational-technical centers;

(12) represent the postsecondary vocational-technical center system to state agencies, associations, and others when appropriate;

(13) recommend a staffing pattern for the postsecondary vocational-technical centers;

(14) provide for the evaluation of programs and services within each postsecondary vocational-technical center;

(15) provide for evaluation of each postsecondary vocational-technical center's ability to meet employment and student vocational-technical education needs".

Administrative Rules

Title 10, chapter 41, ARM Career and vocational/technical education.

20-7-321. Acceptance of acts of congress for vocational education.

Compiler's Comments

Cite to Federal Law: The Vocational Education Act of 1963, referred to in this section, is compiled in the U.S.C. as Title 20, §§35 to 35n. The Vocational Education Amendments of 1968 are compiled at numerous places in Title 20, U.S.C.

20-7-328. Legislative intent.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 130, L. 2001, repealed sec. 6, Ch. 460, L. 1999, which terminated this section June 30, 2001. Effective March 26, 2001.

Effective Date: Section 5, Ch. 460, L. 1999, provided that this section is effective July 1, 1999.

Termination: Section 6, Ch. 460, L. 1999, provided: "[This act] terminates June 30, 2001."

20-7-329. Eligible agency for federal vocational education requirements.

Compiler's Comments

2001 Amendment: Chapter 133 in middle of first sentence in (2) substituted "K-12 career and vocational/technical education" for "K-12 vocational education" and in second sentence substituted "vocational-technical education" for "postsecondary vocational education". Amendment effective July 1, 2001.

Termination Provision Repealed: Section 2, Ch. 130, L. 2001, repealed sec. 6, Ch. 460, L. 1999, which terminated this section June 30, 2001. Effective March 26, 2001.

Effective Date: Section 5, Ch. 460, L. 1999, provided that this section is effective July 1, 1999.

Termination: Section 6, Ch. 460, L. 1999, provided: "[This act] terminates June 30, 2001."

20-7-330. Creation of state plan committee — meetings — report.

Compiler's Comments

2001 Amendment: Chapter 130 in first sentence in (1) substituted "appoint three people from their respective advisory boards to serve" for "appoint two people to serve" and substituted "committee to review and update" for "committee to develop" and substituted language in second sentence requiring two members of each advisory board to be educators and the remaining member to be a representative of a business or community interest for former language that read: "The four appointed members shall select a fifth member who must represent a community-based organization that provides vocational and technical education services"; in (2)(a) substituted "discuss the state plan" for "discuss the implementation of the state plan"; deleted former (2)(b) that read: "(b) evaluate the state plan"; and made minor changes in style. Amendment effective March 26, 2001.

Termination Provision Repealed: Section 2, Ch. 130, L. 2001, repealed sec. 6, Ch. 460, L. 1999, which terminated this section June 30, 2001. Effective March 26, 2001.

Effective Date: Section 5, Ch. 460, L. 1999, provided that this section is effective July 1, 1999.

Termination: Section 6, Ch. 460, L. 1999, provided: "[This act] terminates June 30, 2001."

Part 4
Special Education for Exceptional Children

Part Administrative Rules

Title 10, chapter 16, ARM Special education.

Part Case Notes

Exhaustion of Remedies Under Individuals With Disabilities Act Not Required Upon Claim of Discrimination in Public Education Under Human Rights Act: Amanda Johnson suffered from Campomelic Syndrome and as a result was confined to a wheelchair. Prior to Amanda's enrollment at Great Falls High School, her family brought Amanda's access issues to the attention of the Great Falls School District. There was no elevator in the school, which precluded Amanda's access to second-floor classrooms and science labs. There were numerous other physical barriers as well, such as parking problems, snow-covered sidewalks, cafeteria restrictions, heavy doors, office countertops that were too high, and inaccessibility to restrooms, water fountains, vending machines, and public telephones. The district determined that it could not build an elevator and continue to provide educational services to the rest of the student body; however, the district did prepare individualized education programs for Amanda each year that attempted to accommodate her by scheduling her classes on the first floor, transporting her to another high school for science labs, fitting desks for her and providing special seating, making minor physical adjustments to the building, providing a parking space for her in the faculty lot, attempting to coordinate snow removal with her arrival, and assigning a staff member to help her use the cafeteria. Nevertheless, her family was dissatisfied with the district's efforts and brought an education discrimination claim, alleging that the district illegally discriminated against Amanda by failing to provide an accessible building in violation of Title 49, ch. 2, commonly known as the Montana Human Rights Act (MHRA), and specifically 49-2-307 and 49-2-308. A hearings examiner found that Amanda did have far less access to the school than her classmates, but concluded that the district had provided reasonable access in light of the resources available to meet Amanda's needs. The hearings examiner ordered the district to proactively monitor accommodations provided to students with physical disabilities and to take a number of steps to minimize the likelihood of future violations of the MHRA. The Commission on Human Rights adopted the hearings examiner's findings and conclusions, and the district filed for judicial review, arguing to the District Court that: (1) the Commission lacked jurisdiction to consider the complaint until Amanda exhausted the administrative remedies under the Individuals With Disabilities Education Act (IDEA) through the Office of Public Instruction; and (2) the relief granted exceeded the Commission's statutory authority. The District Court agreed and overruled the Commission's order, and the issues were appealed to the Supreme Court. On the first issue, the Supreme Court found that the gravamen of Amanda's claim was grounded in discrimination under the MHRA, not the right to a free appropriate public education under the IDEA. Disabled students can receive an appropriate education, as attested by Amanda's 3.7 grade point average, and still suffer discrimination when the physical premises of a school deprive them of basic human dignities. When claims involve the simple application of the IDEA exhaustion doctrine in the absence of a parallel state statutory remedy, the logic of the IDEA exhaustion may apply, but when, as here, state human rights laws provide an administrative remedy through the Commission on Human Rights, there is no compelling reason to preclude the MHRA claim by first requiring the IDEA exhaustion. The court found no legal basis for determining that the IDEA was intended to limit applicable state human rights discrimination claims. Thus, Amanda's claim could proceed prior to exhaustion of or without ever invoking the IDEA administrative remedies, and the District Court erred in holding otherwise. On the second issue, the Supreme Court found that the remedy ordered by the Commission—requiring the district to formalize its policy and procedure for addressing the special needs of disabled students—fell within the authority of 49-2-506 and was reasonable in light of the relief requested. The District Court was reversed, and the Commission's order was reinstated. Great Falls Pub. Schools v. Johnson, 2001 MT 95, 305 M 200, 26 P3d 734 (2001), following Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), and Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999 (1997), and distinguishing Koopman v. Freemont County School District No. 1, 911 P2d 1049 (Wyo. 1996).

IDEA Complaint Held Subject to Exhaustion of Administrative Remedies: The Shieldses brought a civil action under 42 U.S.C. 1983 to enforce the rights of their son under the Individuals With Disabilities Education Act (IDEA) after the son was excluded from a ski trip. The Shieldses had previously filed a grievance with the school, appealed the result of the grievance to the Superintendent of the Helena School District, and appealed the Superintendent's decision to the trustees of the school district. The District Court dismissed the section 1983 action, holding that the Shieldses failed to appeal the decision of the trustees to the Superintendent of Public Instruction and thereby failed to exhaust their administrative remedies. The Shieldses argued that the doctrine of exhaustion of administrative remedies should not apply to them because they are seeking damages and because they were excused by

futility and due process. The Supreme Court affirmed the dismissal, citing: (1) the exhaustion requirement contained in IDEA, 20 U.S.C. 1415(f); (2) the exhaustion requirement contained in the state rules, ARM 10.16.2417(5) (transferred to 10.16.3523); and (3) the case of Koopman v. Freemont City School District No. 1, 911 P2d 1049 (Wyo. 1996), in which the Wyoming Supreme Court held that the doctrine of exhaustion of administrative remedies applied in a case nearly identical to the case brought by the Shieldses. Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997).

IDEA Complaint Held Subject to Exhaustion of Administrative Remedies Under Montana Human Rights Act: The Shieldses brought a civil action under 42 U.S.C. 1983 to enforce the rights of their son under the Individuals With Disabilities Education Act (IDEA) after he was excluded from a ski trip. The Shieldses had previously filed a grievance with the school, appealed the result of the grievance to the Superintendent of the Helena School District, and appealed the Superintendent's decision to the trustees of the School District. The District Court dismissed the section 1983 action, holding that the Shieldses failed to first file a complaint with the Human Rights Commission and thereby failed to exhaust their administrative remedies. The Shieldses argued that their case was a state tort action and did not fall within the jurisdiction of the Commission under Title 49, ch. 2, commonly known as the Montana Human Rights Act. Citing Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), the Supreme Court held that because the gravamen of the complaint was discrimination, the complaint fell under the Montana Human Rights Act and that the Shieldses were therefore required to file a written, verified complaint with the Commission. The Supreme Court held that only after exhausting that procedure could they then bring a complaint in District Court. Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997).

Failure to Follow Procedural Requirements of Individuals With Disabilities Education Act Held Not to Deny Free Appropriate Public Education — Independent Cause of Action for Misdiagnosis and Misplacement Dismissed as Barred by Res Judicata: Brian Parini was diagnosed with a learning disability and was placed in special education pursuant to the requirements of the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. 1400, et seq. Subsequently, Brian's mother filed a petition with the Office of Public Instruction (OPI), alleging that Brian's condition had not been subjected to a 3-year reevaluation as required by IDEA and that Brian was therefore denied his right under IDEA to a free appropriate public education (FAPE). OPI found that while IDEA may not have been complied with as to certain procedural requirements, Brian was not denied a FAPE. Brian then filed a complaint with the District Court in which he alleged that OPI had erred and also asserted an independent cause of action for damages, claiming that school employees had negligently misdiagnosed and misplaced him, denying him a FAPE. Relying extensively upon federal case law interpreting and applying IDEA, the Supreme Court held that the absence of a reevaluation did not deny Brian an educational opportunity because there was no causal linkage between the absence of the reevaluation and the educational opportunity afforded to Brian. The Supreme Court also concluded, in reliance upon its opinion in B.M. v. St., 200 M 58, 649 P2d 425 (1982), and Art. X, sec. 1, Mont. Const., that Brian was entitled to bring an independent tort action for negligent misdiagnosis and misplacement. However, the Supreme Court held that because a nearly identical claim had been brought before OPI and the District Court and decided against Brian, his independent tort action was barred by the doctrine of res judicata. Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

High School Association Enforcement of Sports Eligibility Rules — Learning Disabled Student Lacking Individualized Education Program — Injunction Improper: The Montana High School Association (MHSA) ruled that J.M., an alleged learning disabled student, was ineligible for participation in interscholastic sports activities during his senior year because he had already participated in four seasons of sports. The District Court, relying on T.H. v. Mont. High School Ass'n, CV-92-150-BLG-JFB (D.C. Mont. Sept. 24, 1992), enjoined MHSA from enforcing the four-season rule because J.M. had a federally protected right under the federal Individuals With Disabilities Education Act (IDEA), 20 U.S.C. 1400, et seq. On appeal, the Supreme Court found that it was improper to elevate J.M.'s privilege of participation in interscholastic sports to the level of a federally protected right under IDEA and to afford him individualized inquiry when J.M. had not followed the statutorily and administratively mandated mechanism for identification and qualification under IDEA and for developing a formal, written individualized education program. Because MHSA was not a state or local education agency, as defined in IDEA, MHSA had no obligation to identify or evaluate J.M.'s special education needs. The District Court's reliance on T.H. was in error, and the injunction was inappropriate absent evidence that J.M. was actually qualified for IDEA benefits. J.M. v. Mont. High School Ass'n, 265

M 230, 875 P2d 1026, 51 St. Rep. 401 (1994), followed in M.H. v. Mont. High School Ass'n, 280 M 123, 929 P2d 239, 53 St. Rep. 1328 (1996).

Procedural Flaws in Individualized Education Program — Parents Entitled to Reimbursement for Private Tutoring: The parents of a handicapped student filed suit seeking reimbursement for the costs of private tutoring elected by the parents when the school district failed to comply with procedures under federal law in the preparation of an individualized education program (IEP). Affirming the District Court decision, the Ninth Circuit Court ruled that the district's failure to comply with procedures in preparing the IEP deprived the student of free appropriate public education and that the parents were entitled to reimbursement for private tutoring until the IEP was properly prepared. W.G. v. Bd. of Trustees of Target Range School District No. 23, 960 F2d 1479 (9th Cir. 1992).

Wrongful Placement of Special Education Child — Duty Owed by School District — Sovereign Immunity No Bar to Claim for Damages: The plaintiff, a minor child, was diagnosed as needing special education and was to be educated in a class with other "normal" children but was later removed to a class of retarded children and as a result regressed in development. The school district's action of placement of the child was subject to judicial review and was not barred from review by the doctrine of sovereign immunity merely because it was discretionary. The school authorities owed the child a duty of reasonable care in testing and placing her in an appropriate special education program, and the District Court therefore erred in dismissing the child's action for damages. B.M. v. St., 200 M 58, 649 P2d 425, 39 St. Rep. 1285 (1982). B.M. was followed in Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

Part Law Review Articles

The Right to a Special Education, Monzie, 57 Mont. L. Rev. 151 (1996).

When Parents and Educators Clash: Are Special Education Students Entitled to a Cadillac Education?, DeBerry, 34 St. Mary's L.J. 503 (2003).

Irreconcilable Differences? Defining the Rising Conflict Between Regular and Special Education, Meredith & Underwood, 24 J.L. & Educ. 195 (1995).

Part Collateral References

Tort liability of public school or government agency for misclassification or wrongful placement of student in special education program. 33 ALR 4th 1166.

20-7-401. Definitions.

Compiler's Comments

2003 Amendment: Chapter 479 deleted definition of assistive technology device that read: ""Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability"; deleted definition of assistive technology service that read: ""Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with a disability;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with a disability or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child with a disability"; deleted definition of autism that read: ""Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's

educational performance is adversely affected primarily because the child has a serious emotional disturbance"; in definition of child with a disability near middle after "as having" substituted "a disability" for "cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities" and after "because of" substituted "the disability" for "those impairments" and deleted second sentence that read: "A child who is 5 years of age or younger may be identified as a child with a disability without the specific disability being specified"; deleted definition of cognitive delay that read: ""Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance"; deleted definition of deaf-blindness that read: ""Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness"; deleted definition of deafness that read: ""Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance"; deleted definition of emotional disturbance that read: ""Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed"; deleted definition of hearing impairment that read: ""Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness"; deleted definition of orthopedic impairment that read: ""Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, or cerebral palsy)"; deleted definition of other health impairment that read: ""Other health impairment" means limited strength, vitality, or alertness because of chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance"; in definition of related services near beginning after "means" deleted "transportation and any developmental, corrective, and other supportive", after "services" inserted "in accordance with regulations of the Individuals With Disabilities Education Act", and after "special education" deleted "and includes speech-language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes" and deleted former second sentence that read: "The term also includes school health services, social work services in schools, and parental counseling and training"; deleted definition of specific learning disability that read: ""Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive delay; or environmental, cultural, or economic disadvantages"; deleted definition of speech-language impairment that read: ""Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance"; deleted definition of traumatic brain injury that read: ""Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial

impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma"; deleted definition of visual impairment that read: ""Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 4, Ch. 479, L. 2003, provided: "[This act] is effective on the date by which congress, in the reauthorization of the Individuals With Disabilities Education Act, requires all states to implement the changes required by reauthorization." In a letter dated April 11, 2005, the Office of Public Instruction informed the Code Commissioner that July 1, 2005, is "the date by which Congress, in the reauthorization of the Individuals With Disabilities Education Act, requires states to implement the changes required by reauthorization".

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, throughout section the code commissioner changed references to children with disabilities and child with disabilities to references to child with a disability. Amendment effective March 15, 1999.

1997 Amendment: Chapter 472 substituted child with a disability for child with disabilities as defined term; in definition of specific learning disability, in two places, substituted "disabilities" for "handicaps"; and made minor changes in style.

1993 Amendment: Chapter 356 inserted definitions of assistive technology device and assistive technology service; substituted present definition of autism for former definition that read: ""Autism" means a condition that is manifested by severe communication and other developmental and educational problems"; near beginning of definition of child with disabilities inserted reference to evaluation in accordance with the Individuals With Disabilities Education Act and near middle, after "health impairments", inserted "deaf-blindness; multiple disabilities"; inserted definition of deaf-blindness; at end of definition of deafness, before "educational performance", substituted "child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's" for "child's hearing is nonfunctional for the purpose of"; substituted present definition of free appropriate public education for former definition that read: ""Free appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of children with disabilities as adequately as the needs of children without disabilities are met"; near middle of definition of related services, after "physical therapy", inserted "recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training"; inserted definition of traumatic brain injury; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 16 in definition of handicapped child substituted "speech/language impaired" for "speech-impaired" (rendered void by Ch. 249); and made minor changes in style.

Chapter 249 inserted definitions of autism, child with disabilities, cognitive delay, and free appropriate public education; deleted definitions of appropriate public education, deaf/blind, handicapped child, mentally retarded, and multihandicapped (see 1989 MCA for text); in definition of other health impairment, after "means", deleted "having an autistic condition that is manifested by severe communication and other developmental and educational problems" and after "diabetes" inserted "that adversely affects a child's educational performance"; in definition of related services substituted reference to child with disabilities for reference to handicapped child; in definition of special education, near middle, substituted reference to child with disabilities for reference to handicapped child; in definition of specific learning disability, near end, substituted "cognitive delay" for "mental retardation"; in definition of visual impairment, at end, substituted "partial blindness and blindness" for "partially seeing and blind children"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: Changed "speech pathology" to "speech-language pathology".

1985 Amendments: Chapter 560 in definition of emotionally disturbed, in first sentence, at end of introductory language, inserted "that adversely affects educational performance" and near end of first sentence, after "physical symptoms", deleted "pains", inserted second sentence including a schizophrenic within definition, in third sentence made minor changes in phraseology and at end of sentence inserted "unless it is determined that the child is emotionally disturbed", and deleted the remainder of definition that read: "The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as

psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment"; and in definition of handicapped child inserted last sentence permitting a child 5 years of age or younger to be identified as handicapped without the handicapping condition being specified.

Chapter 618 inserted definition of surrogate parent.

1983 Amendment: Inserted definitions of deaf/blind, multihandicapped, and related services; in definition of emotionally disturbed in third sentence (now deleted), deleted "autistic" before "psychotic"; in definition of handicapped child, inserted "deaf/blind, multihandicapped" after "emotionally disturbed"; in definition of other health-impaired, inserted (a), including an autistic condition, and "having" at beginning of (b); at end of definition of special education, deleted "The term includes but is not limited to speech pathology, audiology, occupational therapy, and physical therapy."

1981 Amendment: Inserted definition of appropriate public education.

20-7-402. Special education to comply with board policies.

Compiler's Comments

2005 Amendment: Chapter 255 in (1)(a) at end substituted "environment" for "alternative setting"; in (1)(c) near beginning substituted "an evaluation team" for "child study teams" and before "to plan individual education programs" deleted "use of instructional teams"; substituted (1)(d) concerning evaluation process consistent with the Individuals With Disabilities Education Act for "comprehensive evaluation for each child with a disability"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1)(a), (1)(b), and (1)(c) the code commissioner changed references to children with disabilities to references to a child with a disability; and in (1)(d) changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1991 Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

1985 Amendment: In (1)(b) inserted "including the appointment of a surrogate parent if necessary".

Administrative Rules

Title 10, chapter 16, ARM Special education.

ARM 10.60.101 Board of Public Education policy statement.

Case Notes

Wrongful Placement of Special Education Child — Duty Owed by School District — Sovereign Immunity No Bar to Claim for Damages: The plaintiff, a minor child, was diagnosed as needing special education and was to be educated in a class with other "normal" children but was later removed to a class of retarded children and as a result regressed in development. The school district's action of placement of the child was subject to judicial review and was not barred from review by the doctrine of sovereign immunity merely because it was discretionary. The school authorities owed the child a duty of reasonable care in testing and placing her in an appropriate special education program, and the District Court therefore erred in dismissing the child's action for damages. B.M. v. St., 200 M 58, 649 P2d 425, 39 St. Rep. 1285 (1982). B.M. was followed in Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

State/Federal Law Conflict — Role of Superintendent of Public Instruction: When state regulations conflict with federal regulations, state regulations yield to federal regulations. A

Montana statute on out-of-state special education (20-7-422) implies that discretion is vested in the Superintendent of Public Instruction to grant or withhold approval for an out-of-state special education program. This implication runs counter to the language of the federal statutes which require that the decision of the hearing officer in the appeal to the Superintendent of Public Instruction is final. However, a position by the Superintendent that a decision of the District Court would be binding upon her and would be approved with no further claim of right of rejection is in harmony with the federal statutes and regulations. Therefore, there is no dual procedure arising out of the state regulations for special education programs as long as the Superintendent maintains that she is bound by the findings of the hearing officer and by the court if an appeal is taken from the hearing officer's findings. The hearing officer was therefore correct in dismissing the Superintendent as a party to the controversy, and the Superintendent is not a proper party in a court appeal as long as she claims no discretion once the court has acted. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-7-403. Duties of superintendent of public instruction.

Compiler's Comments

2005 Amendment: Chapter 255 substituted (5) concerning appropriate technical assistance documents for "recommending to districts the type of special education class or program needed to serve the child with a disability of the districts and preparing appropriate guides for developing individualized education programs"; in (6) near middle substituted "identifying" for "diagnosing"; deleted former (8) that read: "(8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction"; in (11) near beginning after "child with a disability" inserted "including a homeless child with a disability"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (4), (5), and (7) and in (12) in two places the code commissioner changed references to children with disabilities to references to a child with a disability. Amendment effective March 15, 1999.

1997 Amendment: Chapter 529 in (14), at beginning, inserted exception clause and at end substituted "placed in an in-state residential facility or children's psychiatric hospital" for "when a state agency places a child with disabilities who is in need of special education in:

(a) an in-state residential facility or children's psychiatric hospital; or

(b) an out-of-state public school or private residential facility". Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

1993 Amendment: Chapter 356 at beginning of (11) substituted "ensuring" for "preparing"; at beginning of (12) substituted "ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction" for "acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education" and at end inserted "or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state"; deleted former (13) that read: "administering regional special education services for children in need of

special education in accordance with policies of the board of public education"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment — Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

Chapter 765 throughout section substituted reference to child with disabilities for reference to handicapped child; inserted (15) requiring Superintendent to contract for the provision of a free appropriate public education for certain children with disabilities placed by a state agency; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: Inserted (11) relating to surrogate parents.

Statement of Intent — Surrogate Parent: The statement of intent attached to Ch. 618, L. 1985, section 3 of which is codified as 20-7-403(11), provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the superintendent of public instruction. In preparing instructional and training material to be given to a person appointed as a surrogate parent, the superintendent should look to the material used in the state of Connecticut, which developed the surrogate parent concept. The superintendent should tailor the material to carefully delineate the procedure used in Montana for evaluating and placing handicapped children [now children with disabilities] and devising educational programs for them. The material should specifically delineate the role of the surrogate in working with the child study team as early as possible.

Rules adopted by the superintendent concerning reimbursement of the surrogate parent should be aimed at fully reimbursing the surrogate while not creating a financial hardship to the school district. The rules should be such that people will not be financially discouraged from accepting appointment as a surrogate parent."

1981 Amendment: Substituted language of (13) relating to contracting for audiological services for former language of (13) to remove the requirement that the superintendent of public instruction contract directly with local school districts or cooperative service organizations for audiological services.

Administrative Rules

Title 10, chapter 16, ARM Special education.

Case Notes

State/Federal Law Conflict — Role of Superintendent of Public Instruction: When state regulations conflict with federal regulations, state regulations yield to federal regulations. A Montana statute on out-of-state special education (20-7-422) implies that discretion is vested in the Superintendent of Public Instruction to grant or withhold approval for an out-of-state special education program. This implication runs counter to the language of the federal statutes which require that the decision of the hearing officer in the appeal to the Superintendent of Public Instruction is final. However, a position by the Superintendent that a decision of the District Court would be binding upon her and would be approved with no further claim of right of rejection is in harmony with the federal statutes and regulations. Therefore, there is no dual procedure arising out of the state regulations for special education programs as long as the Superintendent maintains that she is bound by the findings of the hearing officer and by the court if an appeal is taken from the hearing officer's findings. The hearing officer was therefore correct in dismissing the Superintendent as a party to the controversy, and the Superintendent is not a proper party in a court appeal as long as she claims no discretion once the court has acted. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Attorney General's Opinions

Method of Establishing Regional Service Centers for Special Education: House Bill 145 (1977) (an uncodified appropriations bill) requires the Superintendent of Public Instruction to establish the regional special education services referred to in 20-7-403 (see 1993 amendment) and 20-7-415 (repealed 1993) by negotiating contracts with local school districts whereby the contracting local districts agree to furnish regional special education services to be compensated from the regional service centers' appropriation. 37 A.G. Op. 26 (1977).

Collateral References

Schools and School Districts *key* 164.

78A C.J.S. Schools and School Districts §485.

20-7-404. Cooperation of state agencies.

Compiler's Comments

1995 Amendment: Chapter 546 near beginning of first sentence substituted "department of public health and human services" for "state department of health, the department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Near beginning deleted references to Department of Institutions and Department of Social and Rehabilitation Services and inserted reference to Department of Family Services.

20-7-411. Regular classes preferred — obligation to establish special education program.

Compiler's Comments

2005 Amendment: Chapter 255 in (1) in first sentence at end substituted "environment" for "alternative setting"; inserted (4) allowing the board to establish a special education program for a child with a disability; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, throughout section the code commissioner changed references to children with disabilities to references to a child with a disability; and made minor changes in style. Amendment effective March 15, 1999.

1993 Amendment: Chapter 356 at beginning of (2) deleted "After September 1, 1977" and near middle substituted "each child" for "every person"; at beginning of (3) deleted "On or before September 1, 1990"; inserted (5) regarding availability of assistive technology devices and assistive technology services; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Throughout section substituted reference to disability for reference to handicap; and made minor changes in style. Amendment effective July 1, 1991.

1987 Amendment: Inserted (3) relating to special education for handicapped preschool children (now preschool children with disabilities).

Case Notes

Procedural Flaws in Individualized Education Program — Parents Entitled to Reimbursement for Private Tutoring: The parents of a handicapped student filed suit seeking reimbursement for the costs of private tutoring elected by the parents when the school district failed to comply with procedures under federal law in the preparation of an individualized education program (IEP). Affirming the District Court decision, the Ninth Circuit Court ruled that the district's failure to comply with procedures in preparing the IEP deprived the student of free appropriate public education and that the parents were entitled to reimbursement for private tutoring until the IEP was properly prepared. W.G. v. Bd. of Trustees of Target Range School District No. 23, 960 F2d 1479 (9th Cir. 1992).

Determination of Child's Condition and Needs — Necessary Evidence: Once the District Court found from the evidence that child A had not been making substantial progress as a participant in the mildly mentally retarded special education program and might be retrogressing and had also found that the child was severely emotionally disturbed, it was necessary that the child be placed in a special out-of-state school. The evidence supported no other choice, and substantial evidence supported the finding. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Reasonableness of Interpretative Regulation: An administrative regulation by the Superintendent of Public Instruction which restricted the use of special education funds to educational costs and provided that services such as psychiatric therapy or medical assistance must be deleted from those costs was reasonable and consistent with the carrying out of the legislative direction, and a school district could not use the funds to provide psychiatric-medical treatment outside of the state. Doe v. Colburg, 171 M 97, 555 P2d 753 (1976).

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

Law Review Articles

The Right to a Special Education, Monzie, 57 Mont. L. Rev. 151 (1996).

Special Education, Private Schools, and Vouchers: Do All Students Get a Choice?, Taylor, 34 J.L. & Educ. 1 (2005).

20-7-414. Determination of children in need and type of special education needed.

Compiler's Comments

2005 Amendment: Chapter 255 in (1) in second sentence near middle inserted "in accordance with 20-7-411"; and substituted (2) requiring procedures for special education that are consistent with the federal act and state law and rules for former (2) that read: "(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the allowable cost payment for special education." Amendment effective July 1, 2005.

1993 Amendment: Chapter 356 near middle of first sentence of (1) substituted "school district" for "trustees" and substituted second sentence regarding availability of free appropriate public education for former second and third sentences that read: "Whenever the trustees of a school district or the governing authority of an institution learn of a child with disabilities in their jurisdiction who is in need of special education, they shall determine that the child is in need of a surrogate parent if the parents or guardian cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution shall nominate a surrogate parent for the child as provided in 20-7-461." Amendment effective July 1, 1993.

Name Change — Short Form Amendment: Section 55(2), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers specifically to state funding for special education, to "allowable cost payment" in this section.

1991 Amendment: In (1), near middle, substituted reference to child with disabilities for reference to handicapped child and after "guardian" substituted "cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered" for "is unknown or unavailable"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Special Session Amendment: Near end of (2) substituted "foundation program" for "maximum-budget-without-a-vote"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1985 Amendment: In (1) inserted second, third, and fourth sentences relating to surrogate parents (see 1985 Session Law for text).

Administrative Rules

Title 10, chapter 16, ARM Special education.

Title 10, chapter 60, ARM Board of Public Education policies on special education.

Case Notes

Failure to Follow Procedural Requirements of Individuals With Disabilities Education Act Held Not to Deny Free Appropriate Public Education — Independent Cause of Action for Misdiagnosis and Misplacement Dismissed as Barred by Res Judicata: Brian Parini was diagnosed with a learning disability and was placed in special education pursuant to the requirements of the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. 1400, et seq. Subsequently, Brian's mother filed a petition with the Office of Public Instruction (OPI), alleging that Brian's condition had not been subjected to a 3-year reevaluation as required by IDEA and that Brian was therefore denied his right under IDEA to a free appropriate public education (FAPE). OPI found that while IDEA may not have been complied with as to certain procedural requirements, Brian was not denied a FAPE. Brian then filed a complaint with the District Court in which he alleged that OPI had erred and also asserted an independent cause of action for damages, claiming that school employees had negligently misdiagnosed and misplaced him, denying him a FAPE. Relying extensively upon federal case law interpreting and applying

IDEA, the Supreme Court held that the absence of a reevaluation did not deny Brian an educational opportunity because there was no causal linkage between the absence of the reevaluation and the educational opportunity afforded to Brian. The Supreme Court also concluded, in reliance upon its opinion in B.M. v. St., 200 M 58, 649 P2d 425 (1982), and Art. X, sec. 1, Mont. Const., that Brian was entitled to bring an independent tort action for negligent misdiagnosis and misplacement. However, the Supreme Court held that because a nearly identical claim had been brought before OPI and the District Court and decided against Brian, his independent tort action was barred by the doctrine of res judicata. Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

High School Association Enforcement of Sports Eligibility Rules — Learning Disabled Student Lacking Individualized Education Program — Injunction Improper: The Montana High School Association (MHSA) ruled that J.M., an alleged learning disabled student, was ineligible for participation in interscholastic sports activities during his senior year because he had already participated in four seasons of sports. The District Court, relying on T.H. v. Mont. High School Ass'n, CV-92-150-BLG-JFB (D.C. Mont. Sept. 24, 1992), enjoined MHSA from enforcing the four-season rule because J.M. had a federally protected right under the federal Individuals With Disabilities Education Act (IDEA), 20 U.S.C. 1400, et seq. On appeal, the Supreme Court found that it was improper to elevate J.M.'s privilege of participation in interscholastic sports to the level of a federally protected right under IDEA and to afford him individualized inquiry when J.M. had not followed the statutorily and administratively mandated mechanism for identification and qualification under IDEA and for developing a formal, written individualized education program. Because MHSA was not a state or local education agency, as defined in IDEA, MHSA had no obligation to identify or evaluate J.M.'s special education needs. The District Court's reliance on T.H. was in error, and the injunction was inappropriate absent evidence that J.M. was actually qualified for IDEA benefits. J.M. v. Mont. High School Ass'n, 265 M 230, 875 P2d 1026, 51 St. Rep. 401 (1994).

Procedural Flaws in Individualized Education Program — Parents Entitled to Reimbursement for Private Tutoring: The parents of a handicapped student filed suit seeking reimbursement for the costs of private tutoring elected by the parents when the school district failed to comply with procedures under federal law in the preparation of an individualized education program (IEP). Affirming the District Court decision, the Ninth Circuit Court ruled that the district's failure to comply with procedures in preparing the IEP deprived the student of free appropriate public education and that the parents were entitled to reimbursement for private tutoring until the IEP was properly prepared. W.G. v. Bd. of Trustees of Target Range School District No. 23, 960 F2d 1479 (9th Cir. 1992).

Determination of Child's Condition and Needs — Necessary Evidence: Once the District Court found from the evidence that child A had not been making substantial progress as a participant in the mildly mentally retarded special education program and might be retrogressing and had also found that the child was severely emotionally disturbed, it was necessary that the child be placed in a special out-of-state school. The evidence supported no other choice, and substantial evidence supported the finding. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Federal Law Compelling Exception to Hearsay Rule — Administrative Psychological Assessment Report Admitted: When an assessment of a child's psychologic and mental condition is made as part of administrative proceedings, the report is part of the administrative record and accordingly it is a part of the evidence that the District Court had to consider. Federal law requires this, and it overrides any other consideration with respect to the reception into evidence of the report, including the inherent evil in accepting hearsay evidence not subject to cross-examination. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

Collateral References

Requisite conditions and appropriate factors affecting educational placement of handicapped children. 23 ALR 4th 740.

20-7-419. Rules.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 375, L. 1993, provided: "A statement of intent is required for this bill because [section 7] [20-7-419] gives the superintendent of public instruction authority to adopt rules, including but not limited to the calculation of tuition, the calculation and distribution of funding, and the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools."

Effective Date: Section 9, Ch. 375, L. 1993, provided: "[This act] is effective July 1, 1993."

Administrative Rules

ARM 10.20.106 Students placed in education programs.

20-7-420. Residency requirements — financial responsibility for special education.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 132 in (1) in first sentence substituted "Except for a pupil attending a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215" for "In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased". Amendment effective July 1, 2005.

Chapter 255 in (2) in first sentence near end after "has been placed" deleted "by a state agency". Amendment effective July 1, 2005.

Chapter 463 in (2) in first and second sentences at beginning substituted "The superintendent of public instruction" for "The county of residence". Amendment effective July 1, 2005.

1999 Amendments — Composite Section: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (2) in first sentence and in (4) in two places the code commissioner changed references to children with disabilities to references to a child with a disability. Amendment effective March 15, 1999.

Chapter 343 in (2) after "20-5-323" inserted "and 20-5-324", after "20-7-401" deleted "including a child", and after "who" inserted "attends school outside the district and county of residence because the student"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 529 in (2), in second sentence after "child", deleted "with disabilities"; deleted former (4) that read: "(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and related services and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402"; in (4) inserted second sentence requiring the placing state agency to pay education fees of a child with disabilities who is placed out of state; and made minor changes in style. Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

1995 Amendment: Chapter 509 in (3), at end of third sentence and in fourth sentence substituted "available funds" for "the state equalization aid account"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments: Chapter 375 in first sentence of (1), after "guardian", inserted "if the parents are deceased"; at beginning of first sentence of (3) substituted "If an eligible child, as defined in 20-7-436, is receiving inpatient treatment" for "If a child with disabilities who is in

need of special education is placed", near middle substituted "educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435" for "educational placement is in a public school district", and at end substituted "the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from the state equalization aid account. However, the amount spent from the state equalization aid account for this purpose may not exceed $500,000 during any biennium" for former text that read: "the district of residence is responsible for tuition for the proportion of time the child is served in the public school district unless the public school district is operated primarily for the purpose of providing education to children who attend the residential facility or hospital"; near middle of (4), after "special education", inserted "and related services"; in (5), before "room", inserted "financial costs of"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 563 near beginning of first and second sentences of (2) and near middle of (3) substituted "county" for "district" and after "tuition" inserted "and transportation" (amendment in (3) rendered ineffective by amendment to (3) in ch. 375); in first sentence of (2), after "under", substituted "20-5-323" for "20-5-305 and 20-5-312"; and made minor changes in style.

Code Commissioner Correction: In (3) the Code Commissioner substituted "of direct state aid" for "paid on the foundation program schedules as provided in 20-9-318 through 20-9-320". Sections 20-9-318 through 20-9-320 were repealed by Ch. 633, L. 1993. The Code Commissioner has substituted "direct state aid" because that concept replaced foundation program schedules in Ch. 633, L. 1993. The authority for the correction is found in sec. 84, Ch. 10, L. 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (2), at end of first sentence, substituted "a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state" for "special education students" and inserted second sentence regarding lack of district financial responsibility for certain disabled children placed by a state agency; inserted (3) establishing tuition responsibility of district of residence for disabled child; inserted (4) requiring Superintendent of Public Instruction to provide funds for education fees required to provide free appropriate public education for certain children with disabilities placed by a state agency; and inserted (5) establishing state agency responsibility for a placed disabled child's room, board, and treatment. Amendment effective July 1, 1991.

Attorney General's Opinions

Residency of Special Education Student Following Termination of Parental Rights But Before Permanent Placement: For special education purposes, the school district of residence of a child for whom the Department of Family Services (now Department of Public Health and Human Services) has legal custody following termination of parental rights and before a permanent placement is accomplished is the same as that of the physical location of the District Court that ordered the termination. 43 A.G. Op. 36 (1989), overruling 40 A.G. Op. 69 (1984).

Residency of Special Education Student in Temporary Custody of Department: For special education purposes, the school district of residence of a child for whom the Department of Family Services (now Department of Public Health and Human Services) has temporary legal custody is the district of residence of the child's parents, regardless of whether the child is placed in a foster home in a separate school district. 43 A.G. Op. 36 (1989).

Residency of Special Education Student When Custodial Parent Imprisoned — District of Residence Responsible for Tuition: The school district of residence of a special education student whose custodial parent is imprisoned is the school district where the custodial parent resided prior to imprisonment. If a special education student is admitted to a school district that is not his district of residence, his district of residence is responsible for the student's tuition. 43 A.G. Op. 35 (1989).

20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.

Compiler's Comments

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1) near middle after "child with" the code commissioner changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1993 Amendments: Chapter 375 near end of (1), after "special education", inserted "and related services". Amendment effective July 1, 1993.

Chapter 563 in (2), after "Tuition", inserted "and transportation" and after "under" substituted "20-5-323" for "20-5-305 and 20-5-312".

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (1), at beginning, substituted "In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities" for "With the approval of the superintendent of public instruction" and near end, after "education", deleted "in a special education program". Amendment effective July 1, 1991.

Composite Section: This section was amended by Ch. 470, Ch. 481, and Ch. 661, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. All three chapters incorporated the same concept into this section. Since Ch. 470 was the most comprehensive, its language, with a few minor changes, was chosen.

Case Notes

State/Federal Law Conflict — Role of Superintendent of Public Instruction: When state regulations conflict with federal regulations, state regulations yield to federal regulations. A Montana statute on out-of-state special education (20-7-422) implies that discretion is vested in the Superintendent of Public Instruction to grant or withhold approval for an out-of-state special education program (see 1991 amendment). This implication runs counter to the language of the federal statutes which require that the decision of the hearing officer in the appeal to the Superintendent of Public Instruction is final. However, a position by the Superintendent that a decision of the District Court would be binding upon her and would be approved with no further claim of right of rejection is in harmony with the federal statutes and regulations. Therefore, there is no dual procedure arising out of the state regulations for special education programs as long as the Superintendent maintains that she is bound by the findings of the hearing officer and by the court if an appeal is taken from the hearing officer's findings. The hearing officer was therefore correct in dismissing the Superintendent as a party to the controversy, and the Superintendent is not a proper party in a court appeal as long as she claims no discretion once the court has acted. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

20-7-422. Out-of-state placement of child with disability — payment of costs.

Compiler's Comments

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, throughout section the code commissioner changed references to a child with disabilities to references to a child with a disability. Amendment effective March 15, 1999.

1997 Amendments: Chapter 529 in (3), near middle after "related services", deleted "is adjudicated by a court of competent jurisdiction to be an abused or neglected child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and", after "out-of-state" deleted "private", and after "facility, the" substituted "state agency making the placement shall pay the education costs resulting from the placement" for "superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program"; and substituted (4) regarding placement with a facility that will provide the child with a free appropriate public education for former language

that read: "Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation." Amendment effective July 1, 1997.

Chapter 550 in (3) substituted "youth in need of intervention" for "youth in need of supervision"; and made minor changes in style. Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 458 in (3), after "neglected", deleted "or dependent"; and made minor changes in style. Amendment effective April 14, 1995.

1993 Amendments: Chapter 375 in (3), after "special education", inserted "and related services". Amendment effective July 1, 1993.

Chapter 563 deleted second sentence of (1) that read: "The arrangements are not subject to the out-of-state attendance provisions in 20-5-301 and 20-5-311"; and deleted (2)(b) that read: "(b) If the placement of the child with disabilities has met the requirements of 20-7-402, the superintendent of public instruction shall approve the amount of special education instructional fees to be included as a contracted service. Only the special education instructional fees may be included as a contracted service for the purposes of 20-7-431(1)(a)(iii)(A)."

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (1), at beginning of first sentence, substituted "In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child" for "If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education" and in second sentence, after "provisions", substituted "in 20-5-301 and 20-5-311" for "of the laws governing the attendance of pupils in schools outside the state of Montana"; substituted present (2) regarding amount and manner of payment of costs associated with placement for former (2) that read: "(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, the superintendent of public instruction shall, in cooperation with the department of family services, negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition must be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the foundation program amount for special education"; inserted (3) requiring Superintendent to negotiate for payment of certain fees and costs; inserted (4) requiring payment of negotiated fees and costs from the special education appropriation; and made minor changes in style. Amendment effective July 1, 1991.

1989 Special Session Amendment: Near end of (2) substituted "foundation program amount" for "maximum-budget-without-a-vote"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendment: In middle of (2) deleted references to Department of Social and Rehabilitation Services and Department of Institutions and inserted reference to Department of Family Services.

Correction: In sec. 3, Ch. 661, L. 1979, the reference in subsection (2) was to 20-7-431(1)(b)(iii)(A) (nonexistent). The Code Commissioner changed the reference to "20-7-431(1)(a)(iii)(A)" to correct the error, which arose through amendments made by the Legislature in the course of enacting Ch. 661.

Case Notes

Determination of Child's Condition and Needs — Necessary Evidence: Once the District Court found from the evidence that child A had not been making substantial progress as a participant in the mildly mentally retarded special education program and might be

retrogressing and had also found that the child was severely emotionally disturbed, it was necessary that the child be placed in a special out-of-state school. The evidence supported no other choice, and substantial evidence supported the finding. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Federal Law Compelling Exception to Hearsay Rule — Administrative Psychological Assessment Report Admitted: When an assessment of a child's psychologic and mental condition is made as part of administrative proceedings, the report is part of the administrative record and accordingly it is a part of the evidence that the District Court had to consider. Federal law requires this, and it overrides any other consideration with respect to the reception into evidence of the report, including the inherent evil in accepting hearsay evidence not subject to cross-examination. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

State/Federal Law Conflict — Role of Superintendent of Public Instruction: When state regulations conflict with federal regulations, state regulations yield to federal regulations. A Montana statute on out-of-state special education (20-7-422) implies that discretion is vested in the Superintendent of Public Instruction to grant or withhold approval for an out-of-state special education program (see 1991 amendment). This implication runs counter to the language of the federal statutes which require that the decision of the hearing officer in the appeal to the Superintendent of Public Instruction is final. However, a position by the Superintendent that a decision of the District Court would be binding upon her and would be approved with no further claim of right of rejection is in harmony with the federal statutes and regulations. Therefore, there is no dual procedure arising out of the state regulations for special education programs as long as the Superintendent maintains that she is bound by the findings of the hearing officer and by the court if an appeal is taken from the hearing officer's findings. The hearing officer was therefore correct in dismissing the Superintendent as a party to the controversy, and the Superintendent is not a proper party in a court appeal as long as she claims no discretion once the court has acted. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

20-7-424. No tuition when attending state institution.

Compiler's Comments

1993 Amendment: Chapter 563 near end of first sentence, before "operating", deleted "or county" and before "or 20-7-421" substituted "20-5-321" for "20-5-305" and in third sentence, after "existing", deleted "special education"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993 provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Attorney General's Opinions

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.

Compiler's Comments

2005 Amendment: Chapter 255 in (1)(a)(vi) and (1)(b)(vi) substituted "evaluation team" for "child study team". Amendment effective July 1, 2005.

2001 Amendment: Chapter 145 deleted former (5)(b) that read: "(b) If the total special education allowable cost payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations"; and made minor changes in style. Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 145, L. 2001, provided: "WHEREAS, state funding for special education has not kept pace with school districts' required special education expenditures, which has caused a financial shift under the formula from providing districts with block grants to reimbursing districts for disproportionate special education costs; and

WHEREAS, this financial shift has made a school district's funding level less predictable, and those districts receiving reimbursements for disproportionate costs have not been adequately compensated for extraordinarily high special education costs; and

WHEREAS, a revision of the current special education funding formula is necessary to stabilize the proportion of the state appropriation for special education that is distributed through block grants and for special education cooperative administration and travel."

Effective Date — Applicability: Section 3, Ch. 145, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for fiscal school years beginning on or after July 1, 2001."

1993 Amendment: Chapter 466 in (1), near beginning, substituted "allowable costs and reports must be reviewed" for "schedule or allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and", after "superintendent of public instruction" deleted "in his review and approval of the budget", and at end substituted "payments and a district's special education expenditures" for "for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313"; in (1)(a)(i), at beginning, inserted "the cost of", after "teacher aids" deleted "special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost", and near end deleted "entire" before "working"; in (1)(a)(ii), at beginning, inserted "the total cost of", after "textbooks" deleted "if used exclusively", and after "programs" deleted "the actual total cost"; inserted (1)(a)(iii) concerning equipment and (1)(a)(iv) concerning activities providing prereferral intervention; deleted former (1)(a)(iii) that read: "(iii) other expenses"; in (1)(a)(v), at beginning, inserted "the cost of" and at end deleted "the actual total cost"; in (1)(a)(vi), before "personnel", inserted "instructional" and at end deleted "the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes"; in (1)(b) substituted "related" for "supportive"; in (1)(b)(i), at beginning, inserted "the cost of", substituted "corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists" for "the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program. Professional supportive personnel may include"; in (1)(b)(ii), at beginning, inserted "the cost of" and at end substituted "corresponding to the working time that each person devotes to the special program" for "the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program"; deleted (1)(c) that read: "(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(iv) repair and maintenance of equipment—the actual total cost"; inserted (1)(b)(iii) concerning supplies, (1)(b)(iv) concerning prereferral interventions, (1)(b)(v) concerning contracted services, (1)(b)(vi) concerning transportation costs, (1)(b)(vii) concerning equipment, and (1)(b)(viii) concerning cooperatives; deleted (2)(b) and (2)(c) that read: "(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section"; deleted former (4) that read: "(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the foundation program for special education"; in (5)(b), near beginning, substituted "special education allowable cost payment, as determined in 20-9-321" for "allowable cost of the special education budgets" and at end, after "appropriations", deleted "based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the foundation program for special education and is the responsibility of the school district"; and made minor changes in style. Amendment effective July 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 466, L. 1993, provided: "A statement of intent is required for this bill because 20-7-431 gives the superintendent of public instruction rulemaking authority to implement changes in special education funding distribution.

It is the intent of the legislature to enhance student and taxpayer equity by revising the method of distributing special education state funding to school districts and special education cooperatives. A revision in funding distribution methods may necessitate transitional steps to minimize disruption of program services to students. It is intended that the superintendent of public instruction implement the changes in the funding provisions of this bill to assist a smoother transition and to minimize the impact of the changes to students and districts."

Name Change — Short Form Amendment: Section 55(2), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers specifically to state funding for special education, to "allowable cost payment" in this section.

1991 Amendment: Deleted (1)(d) that read: "(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction". Amendment effective July 1, 1991.

1989 Special Session Amendment: Throughout section substituted "foundation program" or "foundation program amount" for "maximum-budget-without-a-vote"; in (1)(b)(ii), after "clerical personnel", substituted "who assist" for "for"; in (2) substituted "adopt rules" for "prior to September 1, 1977, revise the rules"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendment: Inserted (1)(c)(iv) relating to repair and maintenance of equipment.

1985 Amendment: In (6)(a) after "legislative appropriations", inserted "however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation"; and near beginning of (6)(b) after "budgets", deleted "approved by the superintendent of public instruction".

1983 Amendment: In (6)(b), in first sentence after "If" inserted "the total allowable cost of the" and after "based upon" substituted "prioritized budget items as established by the superintendent of public instruction" for "its budget as a percent of all approved special education budgets".

Statement of Intent: The statement of intent attached to HB 444 (Ch. 548, L. 1983) provided: "A statement of intent is required of this bill because it grants authority to the Superintendent of Public Instruction to prioritize budget items to determine total amounts to be distributed to districts for special education.

It is intended that the prioritization be aimed at providing maximum funding for basic required or mandated services and least funding for other allowable services. The priorities must be structured to provide the most services to the greatest number of students within the limitations of local conditions. The priorities should be established by a combination of mandated services, student/teacher ratios, and local conditions that affect costs of providing services. The district's share of the funding is not intended to be line-itemed by the Office of Public Instruction; the bill provides a manner for determining the funding to be received by the districts. The manner in which the funds are to [be] used by the district is to be done within the allowable cost schedule provided in 20-7-431."

1981 Amendment: Inserted "or to in-state child study team meetings or in-state individualized education program meetings" after "must travel on an itinerant basis from school to school or district to district" in (1)(a)(iii)(B).

Composite Section: This section was amended by Ch. 481 and Ch. 661, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Subsections (6)(a) and (6)(b) represent apparently conflicting provisions enacted by the above chapters.

Correction: In sec. 1, Ch. 661, L. 1979, the reference in subsection (2)(b) was to subsection (1)(c), and the reference in subsection (2)(c) was to subsection (1)(d)(i) (nonexistent). The Code Commissioner changed the references to "subsection (1)(b)" and "subsection (1)(c)(i)", respectively, to correct the errors which arose through amendments made by the Legislature in the course of enacting Ch. 661.

Administrative Rules

Title 10, chapter 16, subchapter 38, ARM Special education funding.

Case Notes

State/Federal Law Conflict — Psychotherapeutic Services: When state regulations conflict with federal regulations, state regulations yield to federal regulations. Therefore, the federal regulations allowing for psychological services, which include psychotherapy, override the state

regulations that exclude psychotherapy. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979), distinguishing Doe v. Colburg, 171 M 97, 555 P2d 753 (1976).

Attorney General's Opinions

Rental of Land and Buildings as Allowable Cost: Rental of land and buildings is an allowable cost unless used only by special education pupils, in which case specific authorization by the Superintendent is required. The allowable costs for special education may not exceed the proportion of special pupils to regular pupils in the district in the previous year unless rental occurred prior to 1974-75 school year. 37 A.G. Op. 34 (1977).

20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children.

Compiler's Comments

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1) in first sentence the code commissioner changed "children with disabilities" to "child with a disability"; and made minor changes in style. Amendment effective March 15, 1999.

1993 Amendments: Chapter 375 at end of (1) inserted "including the provision of a free appropriate public education for eligible children with disabilities that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109"; in (3)(a), at beginning, substituted "ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children" for "monitor the provision of an appropriate educational opportunity for the child"; deleted former (3)(c) that required 100% funding of approved allowable costs under this section from appropriated funds and that required an excess appropriation to revert to the state equalization aid account; inserted (3)(c) requiring funding of approved allowable costs from appropriations with exception of services reimbursed under state or federal law or an insurance policy; inserted (3)(d) requiring funding for allowable costs according to proration based on average daily membership; in (4), after "treatment", inserted "and an education under contract with"; near beginning of (5), in first sentence after "provide an", substituted "education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part" for "appropriate educational opportunity" and near end, after "educational program", substituted "that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children" for "for a child" and substituted second sentence providing that the amount negotiated with the school district must include all education and related services costs that may be negotiated under subsection (3) and all education and related services costs necessary to fulfill requirements for providing child with an education for former second sentence that read: "The amount negotiated with the school district must be consistent with allowable costs that may be negotiated under the provisions of subsection (3)"; in (6), at end, inserted "including funds received under the provisions of 20-7-420"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 633 in (6)(b) substituted "20-9-308" for "20-9-315"; deleted (6)(c) that read: "(c) may not be included in the foundation program amount of the district"; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date: Section 15, Ch. 765, L. 1991, provided: "[This act] is effective July 1, 1991."

20-7-436. Definitions.

Compiler's Comments

2003 Amendment: Chapter 479 in definition of children's psychiatric hospital in (a)(ii) near middle after "standards of" substituted "the centers for medicare and medicaid services" for "the health care financing administration"; in definition of eligible child near beginning before "child" inserted "Montana resident" and after "age" deleted "who is emotionally disturbed as defined in 20-7-401"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 4, Ch. 479, L. 2003, provided: "[This act] is effective on the date by which congress, in the reauthorization of the Individuals With Disabilities Education Act, requires all states to implement the changes required by reauthorization." In a letter dated April 11, 2005, the Office of Public Instruction informed the Code Commissioner that July 1, 2005, is "the date by which Congress, in the reauthorization of the Individuals With Disabilities Education Act, requires states to implement the changes required by reauthorization".

1995 Amendments: Chapter 18 in definition of children's psychiatric hospital, in (a)(i) after "children", inserted "and youth"; in definition of eligible child, after "20-7-401", deleted "or

52-2-101"; in definition of residential treatment facility, in (a)(i) after "children", inserted "or youth"; and made minor changes in style.

Chapter 418 in definition of residential treatment facility, in (a)(iii) and (a)(v), substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of residential treatment facility, in (a)(iii) and (a)(v), substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1993 Amendment: Chapter 375 in definition of eligible child, before "52-2-101", inserted "20-7-401 or"; in definition of residential treatment facility, in (a)(i) after "disturbances", deleted "and that is licensed by the state and operated for the primary purpose of providing long-term treatment services for mental illness, in a residential setting, to persons under 21 years of age", inserted (a)(ii) to include operating for the primary purpose of providing residential psychiatric care to persons under 21, inserted (a)(iii) requiring licensure by Department of Health and Environmental Sciences, inserted (a)(iv) requiring participation in Montana Medicaid program for psychiatric services for persons under 21, and inserted (a)(v) to include a facility that notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv) has received a certificate of need from Department of Health and Environmental Sciences prior to January 1, 1993; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date: Section 15, Ch. 765, L. 1991, provided: "[This act] is effective July 1, 1991."

20-7-443. Financial assistance for under-six-year-old special education class or program.

Compiler's Comments

2005 Amendment: Chapter 255 near beginning substituted "providing special education services" for "operating an approved special education class or program" and at end substituted "in accordance with Title 20, chapters 7 and 10, and rules adopted by the superintendent of public instruction" for "under 20-7-442"; and made minor changes in style. Amendment effective July 1, 2005.

20-7-451. Authorization to create full service education cooperatives.

Compiler's Comments

1991 Amendment: In (1), near middle of first sentence after "perform", substituted "any or all education" for "all special education". Amendment effective July 1, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 343, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [20-7-457] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] [20-7-458, repealed 1994] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4] [20-7-457]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board."

1989 Amendment: Deleted former (3) that read: "(3) The superintendent of public instruction may pay directly to a cooperative the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of such payments must be within the limit set by the legislature for approved special education budgets"; and made minor change in punctuation. Amendment effective July 1, 1989.

1985 Amendment: In (3) near beginning of first sentence, after "may", substituted "pay" for "transfer", after "cooperative the", substituted "approved allowable" for "state and federal portion of a district's budgeted", and after "education services", inserted "from the state special revenue fund for state equalization aid as provided in 20-9-343" and second sentence concerning the total of payments of allowable costs.

20-7-452. Detailed contents of full service education cooperative contracts.

Compiler's Comments

1991 Amendment: At end of (1) inserted "for purposes of providing special education services". Amendment effective July 1, 1991.

1989 Amendment: In (1) inserted "which may not be less than 3 years"; near beginning of (6) substituted "a management board" for "an administrator or a joint board", near middle, after "cooperative", substituted "and that is comprised of trustees" for "including representation", and at end substituted "or their authorized representatives" for "on the joint board"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 343, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [20-7-457] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] [20-7-458, repealed 1994] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4] [20-7-457]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board."

Administrative Rules

Title 10, chapter 16, subchapter 39, ARM Special education cooperatives.

20-7-454. Final approval and filing of full service education cooperative contract.

Compiler's Comments

1991 Amendment: In introductory clause, after "full service", deleted "special". Amendment effective July 1, 1991.

20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract.

Compiler's Comments

1991 Amendment: Near beginning, after "full service", deleted "special" and near middle, after "administrative officer", inserted "management board". Amendment effective July 1, 1991.

20-7-456. Tenure of teachers employed by cooperatives.

Compiler's Comments

1991 Amendment: In (4), before "cooperative contract", deleted "special education". Amendment effective July 1, 1991.

20-7-457. Funding provisions for special education purposes of cooperatives or joint boards.

Compiler's Comments

1993 Amendment: Chapter 466 in (1), after "20-3-361", substituted "prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321" for "for special education purposes the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of the payments must be within the limit set by the legislature for approved special education budgets"; in (4), at beginning, deleted "After June 30, 1990" and at end deleted "formed after June 30, 1990"; and inserted (6) concerning boundaries for cooperatives and (7) concerning restructuring of cooperatives.

1993 Statement of Intent: The statement of intent attached to Ch. 466, L. 1993, provided: "A statement of intent is required for this bill because 20-7-431 gives the superintendent of public instruction rulemaking authority to implement changes in special education funding distribution.

It is the intent of the legislature to enhance student and taxpayer equity by revising the method of distributing special education state funding to school districts and special education cooperatives. A revision in funding distribution methods may necessitate transitional steps to minimize disruption of program services to students. It is intended that the superintendent of public instruction implement the changes in the funding provisions of this bill to assist a smoother transition and to minimize the impact of the changes to students and districts."

1991 Amendments: Chapter 136 in (2), after "cooperative", inserted "for special education purposes"; and in second sentence of (4), after "full service", deleted "special". Amendment effective July 1, 1991.

Chapter 568 inserted (5) authorizing a full service education cooperative to establish certain funds to provide for purposes of the cooperative contract and purposes allowed by law. Amendment effective April 23, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 343, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [20-7-457] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] [20-7-458, repealed 1994] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4] [20-7-457]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board."

Effective Date: Section 8, Ch. 343, L. 1989, provided: "[This act] is effective July 1, 1989."

Administrative Rules

Title 10, chapter 16, subchapter 38, ARM Special education funding.

Title 10, chapter 16, subchapter 39, ARM Special education cooperatives.

20-7-461. Appointment and termination of appointment of surrogate parent.

Compiler's Comments

2005 Amendment: Chapter 255 in (1) at end substituted requirement that a surrogate parent be nominated and the documentation be given the youth court within 10 days of determining that a child is in need of a surrogate parent for: "The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination"; and in (3) in second sentence near end decreased the time period from 45 to 20 days and inserted last sentence providing that the nominated person is the surrogate parent if the court does not act within 20 days. Amendment effective July 1, 2005.

2003 Amendment: Chapter 16 in (2) at end of first sentence after "agency" inserted "that is providing educational services to the child". Amendment effective February 11, 2003.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1) in first sentence in two places the code commissioner changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

1993 Amendment: Chapter 356 substituted present (1) regarding assignment of surrogate parent for former subsection that read: "Any person may advise the trustees of a school district or the governing authority of an institution of a child with disabilities within the district who may be in need of a surrogate parent. The trustees of a school district or the governing authority of an institution shall determine whether the child is in need of a surrogate parent as provided in 20-7-414. If the trustees of a school district or the governing authority of an institution

determine that the child is in need of a surrogate parent, they shall nominate a surrogate parent for the child within 30 days of that determination"; in (3), in two places after "district", inserted "or their designee" and in two places, after "institution", inserted "or its designee"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), near middle, substituted reference to child with disabilities for reference to handicapped child; in (3), at beginning of second sentence, deleted "If the court does not appoint the nominee", at end substituted "shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents" for "must make another nomination under this section", and inserted third sentence regarding nomination when the court denies appointment; inserted (4) requiring adoption of rules for an appointment termination procedure; and made minor changes in style. Amendment effective July 1, 1991.

Statement of Intent: The statement of intent attached to Ch. 618, L. 1985, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the superintendent of public instruction. In preparing instructional and training material to be given to a person appointed as a surrogate parent, the superintendent should look to the material used in the state of Connecticut, which developed the surrogate parent concept. The superintendent should tailor the material to carefully delineate the procedure used in Montana for evaluating and placing handicapped children (now children with disabilities) and devising educational programs for them. The material should specifically delineate the role of the surrogate in working with the child study team as early as possible.

Rules adopted by the superintendent concerning reimbursement of the surrogate parent should be aimed at fully reimbursing the surrogate while not creating a financial hardship to the school district. The rules should be such that people will not be financially discouraged from accepting appointment as a surrogate parent."

20-7-462. Responsibilities of surrogate parent.

Compiler's Comments

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in introductory clause the code commissioner changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

1991 Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

20-7-470. Blind persons' literacy rights and education — short title.

Compiler's Comments

Preamble: The preamble attached to Ch. 490, L. 2005, provided: "WHEREAS, Article X, section 1(1), of the Montana Constitution establishes the state's goal of providing a system of education that will develop the full educational potential of each person and guarantees equality of educational opportunity to each person; and

WHEREAS, according to an article in a 1998 edition of Star Student, a preliminary study evaluating the correlation between adult literacy skills and employment conducted by Dr. Ruby Ryles, the founding coordinator of the master's program in orientation and mobility at the Louisiana Tech University, found that in a study of 74 adults who were born legally blind and were patrons of the Library for the Blind, 44% of the participants who had learned to read in Braille were unemployed, while those who had learned to read using print had a 77% unemployment rate; and

WHEREAS, the preliminary unemployment results prompted Dr. Ryles to conduct a study to establish the correlations between present literacy rates and the early reading education by comparing the results of 45 legally blind high school students from 45 cities, towns, and rural communities in 11 eastern and southern states with those of 15 sighted students attending the same schools as the legally blind students; and

WHEREAS, Dr. Ryles discovered that early Braille readers outperformed sighted students in vocabulary by a 5% margin on the comprehension, vocabulary, and other subtests of the Stanford achievement test and nearly matched their sighted classmates on the Woodcock Johnson R (revised) test; and

WHEREAS, in the capitalization and punctuation portion of the Woodcock Johnson R (revised) test, early Braille reading students who received Braille instruction 4 to 5 days each week in the 1st through 3rd grades produced a mean score that was 7 percentage points higher

than their sighted classmates, 25 percentage points higher than students who received Braille instruction fewer than 4 days each week, and 42 percentage points higher than their legally blind classmates who received no Braille instruction; and

WHEREAS, in the spelling portion of the Woodcock Johnson R (revised) test, early Braille learners averaged 1 percentage point higher than fully sighted readers, 32 percentage points higher than students who received Braille instruction fewer than 4 days each week in 1st through 3rd grades, and 38 percentage points higher than legally blind students who received no instruction in reading Braille; and

WHEREAS, the studies performed by Dr. Ryles lead to the inescapable conclusion that early Braille education is crucial to literacy and that literacy is crucial to employment."

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-471. Blind persons' literacy rights and education — definitions.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-472. Individualized education program for child with blindness.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-473. Standards of competency and instruction — Braille reading and writing.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-474. Instructional materials and Braille equipment — Braille equipment loan program.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-475. Blind persons' literacy rights and education — personnel training.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

Part 5
Traffic Education

Part Administrative Rules

ARM 10.13.307 through 10.13.314 Traffic education.

20-7-501. Definitions.

Compiler's Comments

1999 Amendment: Chapter 181 deleted definition of instructor of motorcycle safety training that read: ""Instructor of motorcycle safety training" means an instructor approved by the superintendent of public instruction to instruct motorcycle safety training"; deleted definition of motorcycle safety training course that read: ""Motorcycle safety training course" means a course for beginning and experienced motorcycle riders with both classroom and on-road components that has been approved by the superintendent of public instruction and that is designed to teach motorcyclists how to safely operate their vehicles"; and made minor changes in style. Amendment effective July 1, 1999.

Repeal of Termination Date: Section 1, Ch. 63, L. 1993, repealed sec. 2, Ch. 428, L. 1991, which provided that the 1991 amendments to this section terminated October 1, 1993. Repealer effective February 19, 1993.

1991 Amendments: Chapter 428 in definition of traffic education, near beginning of first sentence, inserted references to bicycle, pedestrian, and school bus traffic laws and at end, before "motor vehicles", inserted "bicycles and" and inserted last sentence relating to how the

instruction should be designed; and made minor change in style. Amendment terminates October 1, 1993.

Chapter 701 in definition of traffic education, near beginning, inserted "or motorcycle laws" and at end of first sentence inserted "or motorcycles"; and inserted definitions of motorcycle safety training course and instructor of motorcycle safety training. Amendment effective July 1, 1991.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Collateral References

Schools and School Districts *key* 164.
78A C.J.S. Schools and School Districts §485.
68 Am. Jur. 2d Schools §303.

20-7-502. Duties of superintendent of public instruction.

Compiler's Comments

1999 Amendment: Chapter 181 in (3) after "education" deleted "and an instructor of motorcycle safety training. Qualifications for an instructor of motorcycle safety training must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the superintendent"; in (4) after "education" deleted "and instructors of motorcycle safety training" and after "teachers" deleted "or instructors"; in (5) after "education" deleted "and motorcycle safety training"; in (9) after "reviews" deleted "and motorcycle safety training course monitoring"; and made minor changes in style. Amendment effective July 1, 1999.

1991 Amendment: In (2), before "instruction", deleted "classroom instruction and behind-the-wheel"; in (3), near beginning before "qualifications", deleted "classroom instruction and the behind-the-wheel instruction", after "education" inserted "and an instructor of motorcycle safety training", and inserted second sentence regarding qualifications for an instructor of motorcycle safety training; in (4), in two places, inserted references to instructors of motorcycle safety training; in (5), near beginning after "education", inserted "and motorcycle safety training"; inserted (9) requiring periodic reviews and monitoring; and made minor changes in style. Amendment effective July 1, 1991.

Administrative Rules

ARM 10.13.307 through 10.13.314 Traffic education.

20-7-504. State traffic education account — proceeds earmarked for account — transmittal.

Compiler's Comments

2001 Amendment: Chapter 237 near beginning of (2) substituted "county" for "court". Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Code Commissioner Instruction: Pursuant to sec. 47, Ch. 257, L. 2001, in (2) in two places the code commissioner changed "state treasurer" to "department of revenue".

1999 Amendment: Chapter 181 deleted former (2) that read: "(2) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 42 inserted (3) relating to transmittal of fees from the court to the State Treasurer for deposit in the traffic education account. Amendment effective March 12, 1997.

1995 Amendment: Chapter 509 deleted former (2) that read: "(2) Money paid into the account pursuant to 3-10-601 must be distributed to approved traffic education courses as provided in 20-7-506"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 39 in (1), after first sentence, deleted: "There must be paid into this account a portion of the fines and forfeitures collected in any court except a justice's court from persons apprehended or arrested by highway patrol officers or department of transportation peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, 25% of the fine imposed;
(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;
(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and
(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail"; deleted former (2) providing that all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses be contributed to the traffic education account; inserted (2) that read: "(2) Money paid into the account pursuant to 3-10-601 must be distributed to approved traffic education courses as provided in 20-7-506"; and made minor changes in style. Amendment effective July 1, 1994.

1992 Special Session Amendment: Chapter 11, Sp. L. July 1992, in (1), at beginning of second sentence, inserted exception clause; and inserted (4) transferring $300,000 from the state traffic education account to the general fund. Amendment effective August 6, 1992, and terminates September 2, 1992.

Severability: Section 7, Ch. 11, Sp. L. July 1992, was a severability clause.

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Chapter 701 inserted (3) regarding accrual and dispensation of funds in the state traffic education account; and made minor changes in style. Amendment effective July 1, 1991.

Transfer of Money: Section 3, Ch. 701, L. 1991, provided: "Any money remaining in the motorcycle safety training account after [the effective date of this act] [effective July 1, 1991] is transferred into the state traffic education account provided for in 20-7-504."

1987 Amendment: In second sentence of (1), after "court", inserted "except a justice's court".

1985 Amendment: In (2) substituted language relating to a portion of fees collected pursuant to 61-5-121 for former provision that 35% of all money received from motor vehicle driver's license fees be deposited in the traffic education account.

1981 Amendment: Changed "fines assessed and bails forfeited on all offenses involving a violation" to "fines and forfeitures collected in any court from persons apprehended or arrested by highway patrol officers or department of highways peace officers for any violation" in (1); deleted "or a city ordinance" after "Title 61" and "except offenses relating to parking of vehicles" after "motor vehicles" in the second sentence of (1); increased "20%" to "25%" in (1)(a) through (1)(d); and increased "5%" to "35%" at the beginning of (2).

Interim Study Committee Bill: Chapter 487, L. 1981 (HB 675), was introduced at the request of the Study Committee on State Mandates and the Effects of State-Owned Property on Local Governments. See committee report, Legislative Council, 1980.

Case Notes

Penalty Assessment on Bail: Statute providing for penalty assessment on bail violated Due Process Clause in that assessment amounted to tax on right to bail, revenue being earmarked for high school driver education. State ex rel. Sanders v. Butte, 151 M 171, 441 P2d 190 (1968).

Attorney General's Opinions

Allocation of Justice's Court Fines and Costs: Money which has been collected as fines and costs in Justice's Court and paid to the County Treasurer by the Justice of the Peace and which remains after the specific allocations made in this section should be credited to the county general fund pursuant to 46-18-235 (prior to 1987 amendment). 41 A.G. Op. 39 (1985).

Payments to Crime Victims Compensation Account: Payments to the Crime Victims Compensation Account are to be calculated as 6% of the total of all nonparking motor vehicle fines and bail forfeitures, including fines and forfeitures for violations of the 55-mile-per-hour speed limit. 37 A.G. Op. 64 (1977).

20-7-506. Annual allocation and distribution of traffic education account proceeds.

Compiler's Comments

1995 Amendment: Chapter 509 in (1), at beginning, inserted "Subject to the provisions of subsection (2)"; inserted (2) concerning activities to be funded by funds in the traffic education account; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 39 deleted (2) that read: "(2) Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include:
(a) development, printing, and distribution of essential materials;
(b) preparation of teachers of traffic education;
(c) state supervision of the program; and

(d) any and all other activities deemed necessary by the superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1994.

20-7-507. District traffic education fund.

Compiler's Comments

1993 Special Session Amendment: Chapter 39 at beginning of second sentence substituted "All nontax receipts" for "The state traffic education reimbursement and all nontax receipts"; and made minor changes in style. Amendment effective July 1, 1994.

Part 6
Textbook Regulation

20-7-601. Free textbook provisions.

Collateral References

Schools and School Districts *key* 168.
78A C.J.S. Schools and School Districts §489.
68 Am. Jur. 2d Schools §305.
Furnishing free textbooks to sectarian school or student therein. 93 ALR 2d 986.

20-7-602. Textbook selection and adoption.

Compiler's Comments

2005 Amendment: Chapter 490 inserted (2) relating to availability of textbooks to blind and visually impaired children; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 490, L. 2005, provided: "WHEREAS, Article X, section 1(1), of the Montana Constitution establishes the state's goal of providing a system of education that will develop the full educational potential of each person and guarantees equality of educational opportunity to each person; and

WHEREAS, according to an article in a 1998 edition of Star Student, a preliminary study evaluating the correlation between adult literacy skills and employment conducted by Dr. Ruby Ryles, the founding coordinator of the master's program in orientation and mobility at the Louisiana Tech University, found that in a study of 74 adults who were born legally blind and were patrons of the Library for the Blind, 44% of the participants who had learned to read in Braille were unemployed, while those who had learned to read using print had a 77% unemployment rate; and

WHEREAS, the preliminary unemployment results prompted Dr. Ryles to conduct a study to establish the correlations between present literacy rates and the early reading education by comparing the results of 45 legally blind high school students from 45 cities, towns, and rural communities in 11 eastern and southern states with those of 15 sighted students attending the same schools as the legally blind students; and

WHEREAS, Dr. Ryles discovered that early Braille readers outperformed sighted students in vocabulary by a 5% margin on the comprehension, vocabulary, and other subtests of the Stanford achievement test and nearly matched their sighted classmates on the Woodcock Johnson R (revised) test; and

WHEREAS, in the capitalization and punctuation portion of the Woodcock Johnson R (revised) test, early Braille reading students who received Braille instruction 4 to 5 days each week in the 1st through 3rd grades produced a mean score that was 7 percentage points higher than their sighted classmates, 25 percentage points higher than students who received Braille instruction fewer than 4 days each week, and 42 percentage points higher than their legally blind classmates who received no Braille instruction; and

WHEREAS, in the spelling portion of the Woodcock Johnson R (revised) test, early Braille learners averaged 1 percentage point higher than fully sighted readers, 32 percentage points higher than students who received Braille instruction fewer than 4 days each week in 1st through 3rd grades, and 38 percentage points higher than legally blind students who received no instruction in reading Braille; and

WHEREAS, the studies performed by Dr. Ryles lead to the inescapable conclusion that early Braille education is crucial to literacy and that literacy is crucial to employment."

Collateral References

Schools and School Districts *key* 167.
78A C.J.S. Schools and School Districts §487.
68 Am. Jur. 2d Schools §304, et seq.

Propriety, under First Amendment, of school board's censorship of public school library or coursebooks. 64 ALR Fed. 771.

20-7-605. Notification and processing of complaint against licensed textbook dealer.

Compiler's Comments

1995 Amendment: Chapter 509 in (2), at end, substituted "general fund" for "public school equalization aid account"; and made minor changes in style. Amendment effective July 1, 1995.

Part 7
Adult Education

20-7-701. Definition of adult basic education and adult education.

Compiler's Comments

1995 Amendment: Chapter 308 deleted former (2) that read: "(2) Neither definition may include the instruction in vocational-technical centers"; and made minor changes in style. Amendment effective July 1, 1995.

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

20-7-702. Authorization to establish adult education program.

Compiler's Comments

2001 Amendment: Chapter 133 in second sentence substituted "K-12 career and vocational/technical education, vocational-technical education" for "vocational education". Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

20-7-705. Adult education fund.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 220 at beginning of (3) deleted "Subject to 15-10-420" and substituted "1.1 mills" for "1 mill", "2.2 mills" for "2 mills", and "3.3 mills" for "3 mills" (Ch. 574 rendered the mill levy increases by Ch. 220 void); and made minor changes in style. Amendment effective April 11, 2001.

Chapter 574 in (3) near middle substituted "levy of a tax on the taxable value of all taxable property within the district" for "levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312, authorize a levy of not more than 2 mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 3 mills on the district". Amendment effective July 1, 2001.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

1999 Amendment: Chapter 584 at beginning of (3) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 211 in (3), near end of second sentence (voided by Ch. 430), and near end of first sentence of (4) substituted "final budget" for "preliminary budget". Amendment effective April 7, 1997.

Chapter 430 at end of (3), after "program", deleted "when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for the approval"; and near beginning in (5), after "program", deleted "that has been approved by the superintendent of public instruction". Amendment effective July 1, 1997.

1995 Amendment: Chapter 38 in (3), near beginning of first sentence after "high school district", substituted "may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312" for "that is not unified with an elementary district may". Amendment effective February 8, 1995.

Applicability: Section 2, Ch. 38, L. 1995, provided: "[This act] does not apply to a unification of a county high school district with an elementary district that was effective prior to the school fiscal year beginning July 1, 1994."

1993 Special Session Amendment: Chapter 34 in (3), in first sentence, substituted "may authorize a levy of not more than 2 mills on the district and" for "or of" and after "not more than" substituted "3 mills" for "2 mills". Amendment effective January 3, 1994.

1993 Amendment: Chapter 133 in (5), near end, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

1991 Amendments: Chapter 555 in (3), near middle of first sentence, inserted "or of a K-12 school district formed under the provisions of 20-6-701"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 568 in (2), in second sentence after "all", deleted "federal, state, and" and inserted third sentence requiring federal and state adult education program money to be deposited in the miscellaneous programs fund; in (3), in second sentence before "approval", inserted "trustees shall obtain the" and after "instruction" deleted "shall have been acquired by the trustees"; and made minor changes in style. Amendment effective April 23, 1991.

1981 Amendment: Inserted "except that trustees of a county high school district that is not unified with an elementary district may authorize a levy of not more than 2 mills on the district" in the first sentence of (3).

20-7-712. Adult basic education fund and its distribution.

Compiler's Comments

2001 Amendment: Chapter 148 at end of (1) inserted "or accredited tribal college located in Montana"; in (2) in second sentence inserted "or tribal college"; and made minor changes in style. Amendment effective July 1, 2001.

20-7-713. Adult education fund operating reserve.

Compiler's Comments

1991 Amendments: Chapter 568 in five places, after "adult", deleted "basic"; in two places substituted "operating reserve" for "cash reserve"; in first sentence, before "end-of-the-year", deleted "fund" and after "end-of-the-year" substituted "fund balance" for "cash balance"; in second sentence, before "balance", deleted "cash"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 in two places substituted "operating reserve" for "cash reserve"; in first sentence, after "end-of-the-year", substituted "fund balance" for "cash balance"; in second sentence, before "balance", deleted "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-7-714. County adult literacy programs — authorization to levy tax and establish fund.

Compiler's Comments

2001 Amendment: Chapter 574 in (1)(a) near middle of first sentence substituted "levy a tax on the taxable value of all taxable property" for "levy up to 1 mill on each dollar of taxable property". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 at beginning of (1)(a) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 264 in (2)(c), at end, substituted "16 years of age or older and who are not regularly enrolled, full-time pupils for the purposes of ANB computation" for "at least 19 years of age and whose high school class has graduated".

Part 8
Public Recreation

20-7-802. How program operated — independently or cooperatively — delegation.

Case Notes

Leases of Trust Property Unauthorized: Chapter 71, L. 1939 (20-7-801 through 20-7-805), does not authorize the leasing of trust property. Hames v. Polson, 123 M 469, 215 P2d 950 (1950).

No Delegation of Municipal Functions: Legislature could not authorize city to delegate such municipal functions as leasing of park grounds to special park board composed of member of City Council and two members of private club to whom grounds were leased. Hames v. Polson, 123 M 469, 215 P2d 950 (1950).

20-7-804. Authority of board of public education.

Collateral References

Schools and School Districts *key* 47.

78 C.J.S. Schools and School Districts §86.

Part 9
Gifted and Talented Children

20-7-902. School district programs to identify and serve the gifted and talented child.

Case Notes

Accreditation Standard Mandating Gifted and Talented Program Within Board's Constitutional Powers of "General Supervision": After the Board of Public Education refused to amend its rule requiring all districts to identify and provide programs for gifted and talented students, the Legislature, claiming the rule conflicted with 20-7-902, which authorized rather than mandated gifted and talented programs, enacted House Bill No. 116 (1991) at the request of the Administrative Code Committee (now appropriate administrative rule review committee) to repeal the rule. In invalidating House Bill No. 116, the District Court held that the Board, pursuant to its exercise of general supervision powers under Art. X, sec. 9(3), of the Montana Constitution, is vested with constitutional rulemaking authority that is self-executing and independent of any power delegated to the Board by the Legislature. Bd. of Pub. Educ. v. Administrative Code Comm., Cause No. BDV-91-1072 (1992), First Judicial District, Lewis & Clark County.

Attorney General's Opinions

Rule Requiring Every School District to Provide Educational Services to Gifted and Talented Children Invalid: The adoption of 20-2-121 did not provide a statutory grant of authority to the Board of Public Education to require the creation of gifted and talented children programs. Rather, this section makes the creation of gifted and talented children programs optional for individual school districts. Therefore, ARM 10.55.804, promulgated pursuant to the Board's statutory authority to adopt accreditation standards and making the creation of such programs mandatory, conflicts with this section and is thus invalid. 44 A.G. Op. 4 (1991). (See case note Bd. of Pub. Educ. v. Administrative Code Comm. at this section.)

20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding.

Compiler's Comments

1983 Amendment: Substituted (1) relating to policies recommended by the Superintendent of Public Instruction and adopted by the Board of Public Education for former language, which read "The superintendent of public instruction shall adopt criteria for gifted and talented children's program proposals and the procedures for submission of such proposals."; in (2) inserted "in accordance with policies of the board of public education".

20-7-904. Review and recommendations of proposals.

Compiler's Comments

1983 Amendment: In (1), substituted "The policies of the board of public education must assure that program proposals submitted by school districts to the superintendent of public instruction contain" for "Program proposals submitted by school districts to the superintendent of public instruction shall contain"; and inserted (3) relating to supervision and coordination by the Superintendent of Public Instruction (see 1983 Session Law for text) for former subsection, which read "The superintendent of public instruction must establish a procedure for proposed review and approval."

CHAPTER 8
MONTANA SCHOOL FOR THE DEAF AND BLIND

Chapter Compiler's Comments

Salary Schedule and Appropriation: Chapter 604, L. 1987, provided for a salary adjustment for certified or licensed faculty of the Montana School for the Deaf and Blind for the biennium ending June 30, 1989.

Chapter Administrative Rules

Title 10, chapter 61, ARM Montana School for the Deaf and Blind.

Part 1
General Provisions

Part Case Notes

Deaf and Blind School Employee Contracts Not Personal Services Contracts — Employees Entitled to Annual Leave and Holiday Pay Accrued: Employees of the Montana School for the Deaf and Blind signed standard form year-to-year employment contracts that granted them "all holidays and annual leave to which [the employee] is entitled under state law" and "all employee benefits to which [the employee] is entitled under the laws of the State of Montana". The employees were required to work evenings and to be on call much of the time. Nevertheless, the employees were required to complete time cards showing employment for only 8-hour days and were paid for only that time. The employees submitted a claim to the Board of Public Education for annual leave and holiday pay accrued but not paid and sued the Board when it refused to pay them. The Board defended, claiming that the employees' contracts were personal services contracts and that therefore the employees were exempt from the definition of an "employee" under 2-18-601. The Supreme Court held that the District Court properly granted summary judgment for the employees because the employees were not hired on an ad hoc basis because of the highly technical nature of their employment—rather, the employees are year-round employees given the benefit of the state group health plan and given grade and pay increases on state payroll accounting forms. The Supreme Court concluded that to hold otherwise would mean that all state employees are hired under personal services contracts and no state employee is entitled to annual leave and holiday pay, a construction that the Supreme Court determined would be unreasonable. Corwin v. Bd. of Pub. Educ., 272 M 14, 898 P2d 1227, 52 St. Rep. 589 (1995).

20-8-101. Montana school for deaf and blind — state-supported special school.

Compiler's Comments

2003 Amendment: Chapter 72 near middle of first sentence substituted "located in the city of Great Falls" for "formerly located at Boulder in connection with the Montana state training school but transferred before July 1, 1943, to the city of Great Falls" and near end after "unit" substituted "and special school" for "and institution"; at end of second sentence deleted "prior to July 1, 1943"; and made minor changes in style. Amendment effective March 17, 2003.

1983 Amendment: In first sentence, deleted "state" before "school for the deaf and blind" and following "board of public education" deleted "with a local executive board to be appointed in the manner and to have the powers, authority, and duties granted to and required of that board by the provisions of 20-25-303 and 20-25-304".

Administrative Rules

ARM 10.51.106 Agency functional chart.

20-8-102. Objects and purposes — assistance to programs — tracking sensory impaired children — fee.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 73 inserted (3) requiring tracking system; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 74 in (2) in last sentence near beginning substituted "may" for "shall" and deleted former last sentence that read: "The fee must be in an amount sufficient to cover the cost of services provided"; and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendment: Chapter 537 in (2) inserted second through fourth sentences regarding programs for hearing and visually impaired children and fees for services; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Near beginning, before "school", substituted "day" for "boarding", inserted second sentence that read: "The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled", near middle of third sentence substituted "an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school" for "ordinary public school education and to teach such trades and vocations as will enable children attending such", and at end deleted former language that read: "Increased and additional facilities shall be provided from time to time for the more thorough and successful training of those who show a special aptitude for becoming proficient at such trades or vocations. In the interest of economy and increased opportunities for vocational education and training and in order that pupils may be practically taught such trades and vocations, so much of all carpentering, printing, painting, baking, sewing, and other or similar work necessary to be done for and in and about the school, as the superintendent of the school may deem practical, shall be done by such pupils under competent teachers and specialists employed for such purpose, and this requirement shall apply to both male and female pupils"; and made minor changes in phraseology.

1983 Amendment: At beginning of section, after "Montana" deleted "state"; near end of section, after "competent teachers and" substituted "specialists" for "foremen, permanently or temporarily".

Collateral References

Tort liability of public schools and institutions of higher learning for educational malpractice. 1 ALR 4th 1139.

20-8-103. Board of public education rules.

Compiler's Comments

1989 Amendment: At end, after "language", deleted "and must have taught 3 or more years in a school for the deaf"; and made minor changes in phraseology.

Administrative Rules

ARM 10.51.104 Responsibility assigned by statute.

Title 10, chapter 61, ARM Montana School for the Deaf and Blind.

20-8-104. Eligibility of children for admittance.

Compiler's Comments

2005 Amendment: Chapter 41 substituted present eligibility criteria for former language that read: "Upon proper application for admittance, as prescribed by the rules of the board of public education, and either pursuant to an individualized educational plan developed jointly by a child's local educational agency and the Montana school for the deaf and blind or by direct application by the child's parents, hearing impaired or visually impaired children who are not more than 21 years of age residing within the state of Montana and nonresident children who are not more than 21 years of age may be admitted to the Montana school for the deaf and blind if the child's local educational agency and the Montana school for the deaf and blind determine that the admittance constitutes the most appropriate educational placement for the child." Amendment effective March 24, 2005.

1995 Amendment: Chapter 291 near beginning, after "public education", substituted "and either pursuant to an individualized educational plan developed jointly by a child's local educational agency and the Montana school for the deaf and blind or by direct application by the child's parents, hearing impaired or visually impaired" for "deaf and blind", in two places increased age limit from 18 years to 21 years, and at end substituted "may be admitted to the Montana school for the deaf and blind if the child's local educational agency and the Montana school for the deaf and blind determine that the admittance constitutes the most appropriate educational placement for the child" for "who are not mentally deficient, dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability may be admitted to such school". Amendment effective March 30, 1995.

1983 Amendment: Near beginning of section, after "being made therefor" inserted "as prescribed by the rules of the board of public education".

Statement of Intent: The statement of intent attached to SB 158 (Ch. 151, L. 1983) provided: "Sections 3 [20-8-104] and 5 [20-8-105] [now repealed] of the bill delegate rulemaking authority to the Board of Public Education. The board has already adopted rules in these areas of

procedures for admission to the School for the Deaf and Blind (ARM 10.61.201) and of transfers into another educational placement (ARM 10.61.204). The committee would contemplate that the board republish these rules, citing the proper statutory authorities after SB 158 is enacted. The board would, of course, retain the power to amend these rules in the future in such manner as it deemed proper for the governance of the school.

Section 13 [20-8-120] gives the board authority to establish employment criteria in the area of communications skills for school staff who work with deaf children. Rules in this area should recognize that teachers need a high level of skills such as sign language in order to communicate to deaf pupils, while some custodial or administration employees may be able to work well for the school with a lower level of communications skills. The board should establish a relatively informal procedure for establishing compliance with its criteria, such as certification by the superintendent and one deaf adult, and it may reserve the right to grant waivers from its policy."

Collateral References

Liability of university, college, or other school for failure to protect student from crime. 1 ALR 4th 1099.

20-8-106. Duration of attendance at school — suspension or expulsion — transfer.

Compiler's Comments

1995 Amendment: Chapter 291 in (1), after "21 years", substituted "if attendance at the Montana school for the deaf and blind is the most appropriate educational placement for the child" for "unless the board of public education and superintendent determine that attendance at the school will not benefit the child"; in (2), after "superintendent", inserted "of the Montana school for the deaf and blind if the suspension or expulsion complies with other applicable state and federal law"; and made minor changes in style. Amendment effective March 30, 1995.

1983 Amendment: Inserted (2) relating to transfer from the school to another educational placement.

Statement of Intent: The statement of intent attached to SB 158 (Ch. 151, L. 1983) provided: "Sections 3 [20-8-104] and 5 [20-8-105] [now repealed] of the bill delegate rulemaking authority to the Board of Public Education. The board has already adopted rules in these areas of procedures for admission to the School for the Deaf and Blind (ARM 10.61.201) and of transfers into another educational placement (ARM 10.61.204). The committee would contemplate that the board republish these rules, citing the proper statutory authorities after SB 158 is enacted. The board would, of course, retain the power to amend these rules in the future in such manner as it deemed proper for the governance of the school.

Section 13 [20-8-120] gives the board authority to establish employment criteria in the area of communications skills for school staff who work with deaf children. Rules in this area should recognize that teachers need a high level of skills such as sign language in order to communicate to deaf pupils, while some custodial or administration employees may be able to work well for the school with a lower level of communications skills. The board should establish a relatively informal procedure for establishing compliance with its criteria, such as certification by the superintendent and one deaf adult, and it may reserve the right to grant waivers from its policy."

20-8-107. Admission of nonresident children and advance payment of cost — Indian children.

Compiler's Comments

2005 Amendment: Chapter 151 inserted (5) providing that statutory requirements for the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the Montana school for the deaf and blind. Amendment effective April 8, 2005.

1995 Amendment: Chapter 291 in (1), at beginning, substituted "Hearing impaired or visually impaired" for "Deaf and blind"; inserted (2) regarding the negotiation for placement of out-of-state students at the school; in (3), after "residents", deleted "and wards of the United States"; inserted (4) regarding deposit and statutory appropriation of money paid by out-of-state institutions; and made minor changes in style. Amendment effective March 30, 1995.

1983 Amendment: Deleted last sentence of (2), which read: "The school for the deaf and blind is hereby authorized to collect reimbursement from the United States government for expenses incurred in providing services for Indian children who are wards of the United States government."

20-8-108. Provisions for indigent students.

Collateral References

Asylums *key* 5.
7 C.J.S. Asylums §7.

20-8-109. Time of regular school term.

Compiler's Comments

1983 Amendment: After "term of school shall" substituted "be as provided in 20-1-301" for "begin on the second Wednesday of September and close on the second Wednesday of June following, provided that the superintendent of such school, with the consent and approval of the board of public education, may provide for the opening of the school on another day and for the closing of the same on another day, provided that the term fixed shall be for a period of 9 months".

20-8-110. Property vested in school.

Compiler's Comments

1983 Amendment: Near middle of section, deleted "state" before "school for the deaf and blind"; near end of section, deleted "all donations, gifts, devises, or grants which have been heretofore or may hereafter be made by any person or corporation to said school" before "shall vest in the state".

Attorney General's Opinions

Gift to Private Nonprofit Corporation: Under 20-8-111, the Board of Public Education, in its discretion, may give money that has been donated for the use and benefit of the Montana School for the Deaf and Blind to a private nonprofit corporation created and controlled by the Board and operated for the benefit of that school. However, the Board remains accountable for the money until it is used directly for the general support, maintenance, or improvement of the Montana School for the Deaf and Blind. (Decided prior to 1983 amendments.) 38 A.G. Op. 111 (1980).

20-8-111. Duty of board of public education as to property of school.

Compiler's Comments

1997 Amendment: Chapter 422 near beginning of first sentence, after "education", deleted "has a statutory appropriation, as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: Near beginning of first sentence, after "public education", inserted "has a statutory appropriation, as provided in 17-7-502, and".

1983 Amendment: In first sentence, after "shall" substituted "either directly or through a contract with a nonprofit corporation" for "have the power and it shall be its duty to"; inserted last sentence requiring donations, gifts, devises, or grants to the school to vest in the Board for the use and benefit of the school and its students; and made minor changes in phraseology.

Administrative Rules

Title 10, chapter 59, ARM School for the Deaf and Blind Foundation.

Attorney General's Opinions

Gift to Private Nonprofit Corporation: Under 20-8-111, the Board of Public Education, in its discretion, may give money that has been donated for the use and benefit of the Montana School for the Deaf and Blind to a private nonprofit corporation created and controlled by the Board and operated for the benefit of that school. However, the Board remains accountable for the money until it is used directly for the general support, maintenance, or improvement of the Montana School for the Deaf and Blind. (Decided prior to 1983 amendments.) 38 A.G. Op. 111 (1980).

20-8-112. Expenditure of school moneys.

Compiler's Comments

1983 Amendment: Near middle of section, deleted "state" before "school for the deaf and blind".

Attorney General's Opinions

Gift to Private Nonprofit Corporation: Under 20-8-111 (before 1983 amendment), the Board of Public Education, in its discretion, may give money that has been donated for the use and benefit of the Montana School for the Deaf and Blind to a private nonprofit corporation created and controlled by the Board and operated for the benefit of that school. However, the Board

remains accountable for the money until it is used directly for the general support, maintenance, or improvement of the Montana School for the Deaf and Blind. 38 A.G. Op. 111 (1980).

20-8-113. Duties of superintendent of school for the deaf and blind.

Compiler's Comments

1983 Amendment: After "deaf and blind" substituted (1) through (5) relating to itemized general duties of the Superintendent (see 1983 Session Law for text) for "is hereby authorized to add to his present duties that of acting as combined employment placement officer and school field worker temporarily for the sake of economy in order to set up this office and operate same until such time as in his opinion evidence warrants employing a part-time employment officer and school field worker and part-time instructor"; and made minor changes in phraseology.

20-8-116. Employment placement — continuing education.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 291 in (1), near beginning of first sentence after "superintendent", inserted "of the Montana school for the deaf and blind or the superintendent's designee", near middle, after "employment for", substituted "hearing impaired or visually impaired persons in attendance" for "blind, deaf, and hard of hearing persons not in attendance", and at end, after "school", deleted "or for those who have been trained by the department of social and rehabilitation services when it so requests such assistance" and at beginning of second sentence and at beginning of (2) inserted reference to the superintendent's designee; and made minor changes in style. Amendment effective March 30, 1995.

Chapter 546 in (1) and (1)(a) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995. The amendment in (1) was rendered void by Ch. 291.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1983 Amendment: At beginning of section, substituted "The superintendent shall" for "As employment placement officer, it shall be his duty to"; deleted "such" before "data and statistics"; after "suitable employment for" deleted "such" and inserted "blind"; at end of (1), substituted "by this part" for "under this law"; and inserted (2) relating to other educational offerings.

20-8-120. Communications skills required of certain employees.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 158 (Ch. 151, L. 1983) provided: "Sections 3 [20-8-104] and 5 [20-8-105] [now repealed] of the bill delegate rulemaking authority to the Board of Public Education. The board has already adopted rules in these areas of procedures for admission to the School for the Deaf and Blind (ARM 10.61.201) and of transfers into another educational placement (ARM 10.61.204). The committee would contemplate that the board republish these rules, citing the proper statutory authorities after SB 158 is enacted. The board would, of course, retain the power to amend these rules in the future in such manner as it deemed proper for the governance of the school.

Section 13 [20-8-120] gives the board authority to establish employment criteria in the area of communications skills for school staff who work with deaf children. Rules in this area should recognize that teachers need a high level of skills such as sign language in order to communicate to deaf pupils, while some custodial or administration employees may be able to work well for the school with a lower level of communications skills. The board should establish a relatively informal procedure for establishing compliance with its criteria, such as certification by the superintendent and one deaf adult, and it may reserve the right to grant waivers from its policy."

20-8-121. Transportation of students at school.

Compiler's Comments

1989 Amendment: Near middle of (1), after "residential", deleted "and boarding"; near beginning of (4), after "residential", deleted "and boarding", after "limited to" substituted "the number of round trips to the student's residence as specified in the school calendar approved by the board of public education" for "one round trip to the student's residence each month during such times as the school is in session", and near end of second sentence, after "provided", substituted "for travel in excess of the total number of trips approved" for "more than nine times"; and made minor changes in phraseology.

1987 Statement of Intent: The statement of intent attached to Ch. 396, L. 1987, provided: "A statement of intent is required for this bill because section 1 [20-8-121] provides for rulemaking by the board of public education with regard to the method of and reimbursement for

transportation of residential and boarding students at the Montana school for the deaf and blind to and from the student's residence during the school year.

It is the intent of the legislature that the board of public education adopt rules that consider the most cost-effective and convenient method of providing for the transportation of each residential student at the school, within the limitations of the act."

CHAPTER 9
FINANCE

Chapter Compiler's Comments

State Guaranteed Tax Base Aid Adjustments for Protested Valuation: Section 1, Ch. 540, L. 2005, provided: "For any school district that has taxable valuation that was protested for tax year 2002 through 2004 that exceeds 10% of the district's taxable valuation in each respective year, upon resolution of the protest, the superintendent of public instruction shall compare the amount that the school district would have been eligible to receive, using the revised valuation, to the amount of guaranteed tax base aid that the district general fund actually received. If the calculation exceeds the amount of guaranteed tax base aid paid to the school district's general fund, the superintendent of public instruction shall request an appropriation for the difference."

Effective Date — Retroactive Applicability. Section 2, Ch. 540, L. 2005, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning after June 30, 2002."

Preamble: The preamble attached to Ch. 633, L. 1993, provided: "WHEREAS, it is the intent of the Legislature to enhance both student equity and taxpayer equity for Montana public K-12 education by restructuring the funding and budget mechanisms for school district general fund budgets; and

WHEREAS, for these purposes, the Legislature determines that the foundation program funding mechanism of the past 4 decades be replaced with a public school funding system designed to yield greater equalization of both district general fund budgets per-ANB and district taxpayer efforts within a reasonable number of years; the Legislature has structured the base amount for school equity (BASE) funding program to contain components that can be modified to meet a number of state and school district objectives and economic realities but that will still maintain the essential elements of equalization as required by the Montana Constitution; and

WHEREAS, it is the intent of the Legislature that for the year of implementation of [this act], the Office of the Superintendent of Public Instruction focus first on implementing procedures and processes within [this act] and on assisting school districts to calculate and adopt adequate general fund budgets in compliance with [this act] and that, as soon as practical after the adoption of district final budgets, the Office of the Superintendent of Public Instruction implement essential rulemaking procedures; and

WHEREAS, the Legislature recognizes that school districts and the Office of the Superintendent of Public Instruction will need assistance in order to implement [this act] before the school fiscal year beginning July 1993 and intends that the Office of the Legislative Auditor provide available computer models and consultation, as necessary and as approved by the Legislative Audit Committee, to the Office of Public Instruction to ensure that a transition to the provisions of [this act] is accomplished with a minimum of delay and inconvenience to the districts; and

WHEREAS, the Legislature intends that the implementation of [this act] be accomplished with a minimum of additional reporting workload at the district and state level and that the Office of the Superintendent of Public Instruction, school districts, and county superintendents be strongly encouraged to implement electronic reporting and transmitting of data and information as soon as practical, using existing telecommunications networks, computer diskettes, or any other standardized means practicable; and

WHEREAS, in developing any request for proposals for software and data processing development, the superintendent of public instruction shall solicit input from school officials and organizations to accomplish the intent of [this act]."

Preamble: The preamble attached to Ch. 11, Sp. L. June 1989, provided: "WHEREAS, it is the intent of the Legislature to enhance equality of educational opportunity for students in the elementary schools and secondary schools of Montana by revising the school funding laws to provide greater equalization of the funding available to school districts and to promote

equalization of school district expenditures per student. It is the further intent of the Legislature to preserve local control of the public school system, as guaranteed by Montana's Constitution.

For these purposes, the Legislature determines to equalize funding aid to the school districts through the foundation program [renamed 1993] for the school fiscal year ending June 30, 1991, in an amount equal to the following percentages of the total costs incurred by all the districts in the state in school fiscal year 1988: 90% of comprehensive insurance and 90% of general fund expenditures. The Legislature also determines to equalize funding for retirement costs by providing a guaranteed property tax mill value for those counties with a mill value per ANB less than the statewide mill value per ANB. The superintendent of public instruction is required to adopt rules to implement distribution of guaranteed tax base aid as provided in [sections 60 through 63] [20-9-366 through 20-9-369]. It is intended that the rules adopted ensure the eligibility of the requesting school districts and the accountability of the districts for the guaranteed tax base aid payments they receive.

The Legislature recognizes its responsibility to devise an equalized system of school funding and recognizes that measures in addition to the provisions in this bill are necessary to fully address equalization of funding and expenditures for transportation, retirement, capital improvements, and other needs of the districts. Because it is necessary to identify those factors that affect disparate expenditure patterns, to determine whether those factors are educationally relevant, and to develop data not currently available to devise methods of equitably funding those needs, the Legislature determines that a study should be conducted, as provided in [sections 53 through 59] [not codified], and that equitable funding methods for these needs should be addressed by the 52nd Legislature. It is not intended by the Legislature that the individual income tax surtax provide a long-term solution to the school equalization funding problems of Montana.

The Legislature acknowledges the constitutional guarantee of equal educational opportunity for each public school pupil in Montana. The Legislature also acknowledges the sound policy considerations for empowering local trustees to supervise and control the schools in the district, as required by the Montana Constitution. Therefore, to guarantee more equal expenditures per student in similarly sized schools throughout Montana, while also providing each district board of trustees the power to determine and meet the unique and individual needs of students and schools in the district, the Legislature determines that it is reasonable and necessary to establish a maximum general fund budget limitation for each district, except as provided in 20-9-315 [repealed 1993], of 135% of the district's foundation program [renamed 1993] amount. Because of different circumstances that exist from district to district, the Legislature finds that it is reasonable and necessary to permit that range of disparity in expenditures by similarly sized districts throughout the state.

The Legislature intends that the current system of funding county equalization with elementary and high school levies and other revenue sources be maintained without change in order to preserve the current method of providing equalized local support of schools. The statutory appropriation of all revenue earmarked to fund county equalization does not affect the manner in which that revenue is collected, controlled, and distributed to districts by the county. It is intended that a district eligible for federal funds under Title I of Public Law 81-874 will be able to maintain the local contribution rate as required by 20 U.S.C. 238(d)(3)(C) for continuing eligibility.

It is intended that while school districts may conduct more than 180 days of instruction, a school district may not receive foundation program [renamed 1993] support for more than 180 days of pupil instruction.

Under 20-3-106, 20-9-102, 20-9-201, 20-9-211, and 20-9-213, the Superintendent of Public Instruction is authorized to supervise school financial administration and to adopt rules establishing requirements for budgeting and financial administration of public school districts, including accounting and reporting requirements. Under 20-9-344, the Board of Public Education has authority to require any reports it considers necessary. It is intended that school districts be required to maintain accounting systems based on generally accepted accounting principles and that the Superintendent of Public Instruction adopt rules necessary to implement the requirement. The Superintendent of Public Instruction shall provide training and assistance to the districts as necessary to enable the districts to comply.

It is intended that the districts be required to file accurate and timely reports with the Superintendent of Public Instruction. Districts must be required to provide student and school district data as may be required by the Superintendent of Public Instruction concerning the condition of education in Montana, including personnel information, student and school district demographics, assessment of student and school district achievement, and other appropriate

educational factors necessary to enable the Legislature to assess the equality of educational opportunity being provided by the public school districts and to determine the amount of state aid to be distributed to school districts. Districts shall also provide data to meet grant requirements and other national reporting needs.

It is intended that the Superintendent of Public Instruction conduct training and provide forms for the personnel responsible for completing reports. Whenever possible, the Superintendent of Public Instruction shall develop methods for collecting educational data electronically, using formats consistent with school district data processing capabilities. The educational data must be maintained in an electronic format easily accessible by other state agencies and the Legislature.

State equalization aid and county equalization money may be withheld from school districts, as provided by 20-9-344, that do not comply with accounting and reporting requirements.

It is intended that the Superintendent of Public Instruction employ additional personnel during fiscal year 1990 and fiscal year 1991, not to exceed the appropriation, for the purpose of establishing standard accounting and reporting practices in the public school districts and for implementing the additional provisions of this bill.

The Legislature determines that if county equalization revenue is deficient because of noncollected tax payments, state equalization aid may be provided to offset the delinquency."

Chapter Case Notes

Failure of Legislature to Define Quality Education — Inability of Court to Determine That Education System Adequately Funded: The District Court held that the state system of funding public education was unconstitutional under Art. X, sec. 1(3), Mont. Const., but did not violate the equal protection clause in Art. II, sec. 4, Mont. Const. On appeal, the Supreme Court held that because the Legislature has not defined what "quality" means, it was not possible to conclude that the current funding system was designed to provide a quality education. Although deferring to the Legislature to provide a definition of a quality education, given the unchallenged findings of the District Court regarding Art. X, sec. 1(3), Mont. Const., the Supreme Court nevertheless concluded that whatever definition the Legislature devises, the current system was not sufficiently grounded in principles of quality to be considered constitutional. Because the unconstitutionality of the present funding system was affirmed, the Supreme Court held that the District Court need not have addressed the equal protection issue, so the District Court was directed to vacate its conclusion that the present system did not violate equal protection. Columbia Falls Elementary School District No. 6 v. St., 2005 MT 69, 326 M 304, 109 P3d 257 (2005).

Public School Funding System Unconstitutional: The guarantee of equality of educational opportunity applies to each person in the state and is binding on all branches of government, whether at the state, local, or school district level. As a result of the failure to adequately fund the foundation program (renamed 1993), thereby forcing an excessive reliance on permissive levies, the state failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed under the Montana Constitution. Spending disparities among Montana school districts further resulted in a denial of equality of educational opportunity. Therefore, the 1985-86 system of funding public elementary and secondary schools was a violation of Art. X, sec. 1, Mont. Const. (See 1989 and 1993 amendments.) School District v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Chapter Attorney General's Opinions

Allocation of Proceeds Under Settlement Agreement: Proceeds under a settlement agreement may be allocated in proper portion to any appropriately established building reserve fund of school districts within a county. The proceeds may not be allocated to any building fund of those school districts. 41 A.G. Op. 67 (1986).

Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance: A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).

Chapter Law Review Articles

Classroom v. Courtroom: Is the Right to Education Fundamental?, Harper, 51 Mont. L. Rev. 509 (1990).

Interpretations of the Montana Constitution: Education, Goetz, 51 Mont. L. Rev. 340 (1990).

Ethics and the Legitimation of the Pursuit of Equity in School Finance, Ward, 23 St. Louis U. Pub. L. Rev. 487 (2004).

Leaving Equality Behind: New Directions in School Finance Reform, Enrich, 48 Vand. L. Rev., 100 (1995).

Rethinking Statewide Taxation of Nonresidential Property for Public Schools, Stark, 102 Yale L.J. 805 (1992).

The Emerging Right to Education Under State Constitutional Law, Hubsch, 65 Temp. L. Rev. 1325 (1992).

Chapter Collateral References

Public School Finance Programs of the United States and Canada 1993-94, Vol. 1, American Education Finance Association and Center for the Study of the States, the Nelson A. Rockefeller Institute of Government, St. U.N.Y. (1995) (includes analysis of Montana).

Legislative Responses to Remaining School Funding Equity Issues, Interim Report, Mont. Leg. Council (1992).

The Montana School Foundation Program and State Equilization Aid: A Legislative and Financial History, 1949-1991, Interim Report, Mont. Leg. Council (1992).

Moving Toward School Funding Equity: Implementation of HB 28, Interim Report, Mont. Leg. Council (1990).

Montana School Finance, Interim Report, Mont. Leg. Council (1982).

Education for a New Century, Report to the 1993 Montana State Legislature, Office of Public Instruction (1993).

Summary of House Bill 667, Office of Public Instruction (1993).

Part 1
School Budgets

Part Collateral References

Montana School Accounting Manual, Office of Public Instruction.

20-9-101. Application of budget system for districts and counties.

Compiler's Comments

2003 Amendment: Chapter 276 near middle of first sentence after "school districts" inserted "to county funds supporting school district transportation and retirement obligations"; and made minor changes in style. Amendment effective April 9, 2003.

Effective Date — Applicability: Section 5, Ch. 276, L. 2003, provided: "[This act] is effective on passage and approval [approved April 9, 2003] and applies to school fiscal years beginning on or after July 1, 2003."

Collateral References

Schools and School Districts *key* 93.

78 C.J.S. Schools and School Districts §343.

20-9-102. General supervision of school budgeting system.

Administrative Rules

Title 10, chapter 10, subchapter 3, ARM Special accounting practices.

Title 10, chapter 10, subchapter 4, ARM Generally accepted accounting principles (GAAP).

Title 10, chapter 10, subchapter 5, ARM Monthly and annual reports.

Title 10, chapter 10, subchapter 6, ARM Investments.

Title 10, chapter 20, subchapter 1, ARM Average number belonging (ANB).

Title 10, chapter 21, subchapter 1, ARM Guaranteed tax base (GTB).

Title 10, chapter 22, subchapter 1, ARM Spending and reserve limits.

Title 10, chapter 22, subchapter 2, ARM Budget amendments.

Title 10, chapter 23, subchapter 1, ARM Permissive and voted amounts — levies.

Attorney General's Opinions

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the state Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-9-103. School budget form.

Compiler's Comments

1989 Amendment: Near middle of (2), after "district may", inserted "in addition". Amendment effective July 1, 1989.

Attorney General's Opinions

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the state Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-9-104. General fund operating reserve.

Compiler's Comments

2001 Amendment: Chapter 237 deleted former (5)(b) that read: "(b) a district was entitled to as a general bonus payment prior to July 1, 1994"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1999 Amendment: Chapter 554 deleted former (5)(a)(iv) that read: "(iv) received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

1995 Amendments: Chapter 18 at end of (3) deleted "except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514"; and at beginning of (5) deleted "For fiscal year 1994 and subsequent fiscal years".

Chapter 451 inserted (5)(a)(iv) regarding severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 506 inserted (5)(b) that read: "(b) any amount a district was entitled to as a general bonus payment prior to July 1, 1994"; and made minor changes in style. Amendment effective April 15, 1995.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendments: Chapter 35 at end of (4), after "20-9-141(1)(b)", deleted "(iii)". Amendment effective July 1, 1994.

Chapter 36 in (5), after "less than", deleted "one or more of the following"; deleted former (5)(b) that read: "(b) any amount received as a general bonus payment under 20-6-401"; and made minor changes in style. Amendment effective July 1, 1994.

Applicability: Section 3, Ch. 35, Sp. L. November 1993, provided that this section applies to school district general fund budgets for the school fiscal year beginning July 1, 1994.

Saving Clause: Section 5, Ch. 36, Sp. L. November 1993, was a saving clause.

1993 Amendment: Chapter 633 in (1), in second sentence after "(5)", substituted "and (6)" for "through (7)"; in (3) substituted "BASE budget levy, the over-BASE budget levy, or the additional" for "permissive levy provided by 20-9-145 or to reduce the voted" and after "20-9-353" inserted exception clause; deleted former (5)(a) providing that limitation is not applicable to "any amount received under Public Law 81-874"; and deleted (7) that read: "(7) For fiscal year 1993, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the amounts identified by a school district as one or more of the following:

(a) any amount received under Public Law 81-874;

(b) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401." Amendment effective July 1, 1993.

Contingent Effective Date: Section 11, Ch. 633, L. 1993, deleted the version of this section that was effective on occurrence of contingency.

Effective Date — Retroactive Applicability: Section 59(2), Ch. 633, L. 1993, provided: "(2) [Section 11] [20-9-104] is effective July 1, 1993, and the provisions of [section 11(3)] [20-9-104(3)] relating to excess reserves and Public Law 81-874 money apply retroactively, within the meaning of 1-2-109, to district general fund reserves for the school fiscal year beginning July 1, 1992."

1992 Special Session Amendments: Section 2, Ch. 6, Sp. L. July 1992, in (1), in second sentence, substituted "subsections (5) through (7)" for "subsections (5) and (6)" and near end substituted "10%" for "the following percentages"; deleted (1)(a) through (1)(c) limiting the general fund budget to 35% for a district not receiving state equalization aid, 30% for a district receiving aid equal to 25% or less of the foundation program schedule, and 20% for a district receiving aid equal to more than 25% of the foundation program schedule; at beginning of (3) deleted "Any unreserved fund balance that is equal to or less than the prior year's" and substituted "appropriated" for "used"; at beginning of (5) inserted reference to fiscal year 1994 and subsequent fiscal years; and inserted (7) concerning the 1993 fiscal year. Amendment effective July 24, 1992.

Section 12, Ch. 6, Sp. L. July 1992, in (1), in second sentence, substituted "subsections (5) through (7)" for "subsections (5) and (6)" and near end substituted "10%" for "the following percentages"; deleted (1)(a) through (1)(c) limiting the general fund budget to 35% for a district not receiving state equalization aid, 30% for a district receiving aid equal to 25% or less of the foundation program schedule, and 20% for a district receiving aid equal to more than 25% of the foundation program schedule; at beginning of (5) inserted reference to fiscal year 1994 and subsequent fiscal years; in (5)(a), at end, inserted "in the current school fiscal year"; and inserted (7) concerning unreserved balance as an excess amount due to receipt of P.L. 81-874 money.

Retroactive Applicability: Section 15(3), Ch. 6, Sp. L. July 1992, provided that the amendments in section 2 apply retroactively to school district general fund end-of-the-year fund balances for the school fiscal year ending June 30, 1992.

Contingent Effective Date — Applicability: Section 15(5)(a), Ch. 6, Sp. L. July 1992, provided that this section is effective on the date that the Superintendent of Public Instruction certifies to the Governor that written approval of this section has been received from the U.S. Department of Education and applies to the school fiscal year beginning July 1, 1993.

Section 13, Ch. 6, Sp. L. July 1992, provided that within 30 days of July 24, 1992, the Superintendent of Public Instruction shall request an opinion from the U.S. Department of Education as to whether this section complies with federal law for the use of P.L. 81-874 funds.

Termination: Section 15(5)(b), Ch. 6, Sp. L. July 1992, provided that the amendments made by section 2 are void on the date section 12 is effective.

1991 Amendment: In (1), in two places, and in (2) and (6), before "reserve", substituted "operating" for "cash"; in (1), in first sentence before "balance", substituted "fund" for "cash" and in second sentence changed subsection references; inserted (3) allowing use of certain unreserved fund balances to reduce the permissive or voted levy; in (4), after "end-of-the-year", substituted "fund" for "cash" and after "not" substituted "reserved under subsection (2) or reappropriated under subsection (3) is fund balance" for "earmarked for cash reserve purposes is cash"; in (5), at end, inserted "one or more of the following"; in (5)(a), after "received", deleted "during the current school fiscal year"; in (5)(b)(i), after "protested", substituted "in a prior school fiscal year" for "prior to July 1, 1990"; inserted (5)(b)(ii) regarding taxes received as a result of a tax audit; inserted (5)(b)(iii) regarding delinquent taxes; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: At beginning of second sentence of (1) inserted exception clause and near middle of second sentence substituted "the following percentages" for "35%"; inserted (1)(a) allowing 35% cash reserve for a district not receiving equalization aid; inserted (1)(b) allowing 30% cash reserve for a district receiving equalization aid of 25% or less of its foundation program entitlement; inserted (1)(c) allowing 20% cash reserve for a district receiving equalization aid of more than 25% of its foundation program entitlement; at beginning of (2) inserted "The amount held as cash reserve may"; inserted (3) providing exceptions to cash reserve limits; inserted (4) providing exception for amounts of $10,000 or less; and made minor changes in phraseology and form. Amendment effective July 1, 1990.

Attorney General's Opinions

Transfer of End-of-the-Year General Fund Balance Required: There is no basis for the conclusion that school district trustees may establish or maintain the compensated absence liability fund only with the positive difference between initially budgeted and actually expended amounts. Rather, school district trustees may transfer any portion of the end-of-the-year general fund balance, as that term is used in this section, into the compensated absence liability fund subject to the limitations in 20-9-512. 45 A.G. Op. 27 (1994).

20-9-115. Notice of final budget meeting.

Compiler's Comments

2001 Amendment: Chapter 376 near beginning after "Between" substituted "July 1" for "July 24", near middle after "stating the" inserted "date", and after "trustees will meet" deleted "on the second Monday in August"; and made minor changes in style. Amendment effective April 26, 2001.

1997 Amendments: Chapter 22 changed notice publication dates from July 10 to July 24 and from July 20 to August 4 and changed meeting date from fourth Monday in August to second Monday in August. Amendment effective July 1, 1997.

Chapter 42 substituted "second Monday in August" for "fourth Monday in August". Amendment effective March 12, 1997.

Chapter 211 near middle, after "in the district, stating" deleted "that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in the clerk's office and open to inspection by all taxpayers. The notice must also state". Amendment effective April 7, 1997.

1995 Amendment: Chapter 18 in second sentence substituted reference to fourth Monday in August for reference to fourth Monday in July; and made minor changes in style.

1989 Amendment: Near beginning of first sentence substituted clause relating to a newspaper having widest circulation in the district for "the official newspaper of the county"; and made minor changes in phraseology and punctuation.

20-9-121. County treasurer's statement of cash balances and bond information.

Compiler's Comments

1997 Amendment: Chapter 211 in (3), at end, substituted "forward the information to each district" for "attach the district statements to the applicable district's preliminary budget". Amendment effective April 7, 1997.

1995 Amendment: Chapter 260 in (1), in first sentence after "maintained by the district", deleted "and the amount of the outstanding obligations against each fund"; and made minor changes in style. Amendment effective July 1, 1995.

Attorney General's Opinions

Increase in Preliminary Budget Limited to Amount of Bonds and Assessments in Treasurer's Statement: A County Superintendent may increase the preliminary budget amount in the debt service fund only to the amount of obligations for bonds and special improvement district assessments contained in the County Treasurer's statement pursuant to this section. 43 A.G. Op. 21 (1989).

Collateral References

Schools and School Districts *key* 92(3).
78 C.J.S. Schools and School Districts §345.

20-9-122. Statement of district, city, and town valuations.

Compiler's Comments

2003 Amendment: Chapter 34 in (1) at beginning after "By the" substituted "first Monday of August" for "second Monday of July". Amendment effective February 18, 2003.

Retroactive Applicability: Section 9(4), Ch. 34, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified."

1993 Special Session Amendment: Chapter 27 in (1), near beginning after "revenue", substituted "shall deliver" for "or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of 15-8-705, also deliver" and at end substituted "property tax record" for "completed assessment book"; deleted former (2) that read: "(2) The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of 15-10-306, prepare a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk"; in (2), after "revenue", deleted "or its agent and the county clerk"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Collateral References

Schools and School Districts *key* 101, 103(4).
78 C.J.S. Schools and School Districts §385.

20-9-130. District obligation for students in youth detention facility.

Compiler's Comments

2005 Amendment: Chapter 462 in second sentence at end inserted "or impact aid fund". Amendment effective April 28, 2005.

2001 Amendment: Chapter 237 at end of second sentence substituted "district's tuition fund" for "district's general fund". Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Effective Date: Section 8, Ch. 536, L. 1999, provided that this section is effective April 29, 1999.

20-9-131. Final budget meeting.

Compiler's Comments

2005 Amendment: Chapter 462 in (2) in first sentence before "determine" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective April 28, 2005.

2001 Amendment: Chapter 376 in (1) at beginning substituted "On or before August 15, on the date" for "On the second Monday in August"; inserted (3) requiring the trustees to deliver the budget to the county superintendent of schools within 5 days of the trustees' approval; and made minor changes in style. Amendment effective April 26, 2001.

1999 Amendment: Chapter 584 in (2) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 211 in (1), after "meet to consider", substituted "all budget information" for "the preliminary budget submitted to or prepared by the county superintendent, including all information". Amendment effective April 7, 1997.

1993 Amendment: Chapter 133 in (1) substituted reference to second Monday of August for reference to fourth Monday of July; in (2) substituted reference to fourth Monday of August for reference to second Monday of August; and made minor changes in style. Amendment effective July 1, 1993.

20-9-132. Final budget adjustment procedures.

Compiler's Comments

1997 Amendment: Chapter 211 near middle of first sentence, before "budget", deleted "preliminary", near middle of second sentence substituted "final budget" for "preliminary budget", and inserted last sentence regarding appropriations for wages or salary in the final budget; and made minor changes in style. Amendment effective April 7, 1997.

20-9-133. Adoption and expenditure limitations of final budget.

Compiler's Comments

2001 Amendment: Chapter 480 in (2) near middle of second sentence inserted "or transfers between different funds or between the final budget and a budget amendment"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 5, Ch. 480, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001."

1991 Amendment: In (1), near beginning of first sentence after "trustees", substituted "determine and set the amount of the budget for each budgeted fund" for "have caused the amount of an item of the budget for the district to be determined and set" and near end, before "the chairman", deleted "upon completion of all the items"; in (2), in first sentence, substituted "total amount of each fund's budget" for "amount of such appropriations", at end of second sentence substituted "20-9-208" for "law", in third sentence, after "subsection (3)", inserted "money of the district may not be used to pay", after "excess of" deleted "any of", and after "budget" substituted "established for each budgeted fund" for "appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district, and no money of the district shall ever be used to pay the same"; and made minor changes in style. Amendment effective April 23, 1991.

1987 Amendment: In (2) inserted "Except as provided in subsection (3)" in two places; and inserted (3) relating to bonded debt payments.

Case Notes

Approval of Budget Prerequisite to Issuing Warrants: Under former statute, where County Commissioners had refused to approve school district budget on the grounds that the district had not been legally created, which contention was found invalid by the court, although time for action on the budget and levy of taxes had passed, the board was compelled to act by mandamus since approval of the budget was a necessary prerequisite to the issuance of warrants. Because the district was valid and had funds available from other sources, it should be enabled to issue warrants to meet its expenses. State ex rel. School District v. Lensman, 108 M 118, 88 P2d 63 (1939).

Separation of Appropriation Items Required: Under former School District Budget Act, each item in the district's budget constituted an appropriation for a definite and specific purpose and could not be paid out for another, except that a part of an appropriation for one item might be transferred to another when it appears that there was an excess appropriation for the one and a deficiency in the other. State ex rel. McHose v. District Court, 95 M 230, 26 P2d 345 (1933).

Collateral References

Schools and School Districts *key* 93.

78 C.J.S. Schools and School Districts §343.

20-9-134. Completion, filing, and delivery of final budgets.

Compiler's Comments

1999 Amendment: Chapter 343 at end of (1) substituted "the second Monday in September" for "September 1". Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1995 Amendment: Chapter 260 deleted (3) that read: "(3) deliver a copy of the final budget for the district to the county treasurer on or before September 1"; and made minor changes in style. Amendment effective July 1, 1995.

Attorney General's Opinions

Appropriations to Community Colleges — Budget Procedure: The budget for community college districts must be approved by the Board of Regents and fit into the Budget Act procedure of 17-7-101, et seq. It is a budget request which may be altered by the chief budget officer and which is ultimately subject to legislative approval. While 65% state funding of community colleges is the goal, the Legislature may or may not appropriate an amount equal to 65% of the districts' proposed budgets. If it does not, an additional levy, which must be approved by the voters in the district, is authorized to make up the deficiency. The General Appropriation Act of 1979 does no more than reflect this entire statutory scheme, especially the requirements of 20-15-301, et seq. The General Appropriation Act of 1979 properly appropriates state funds to the community colleges. 38 A.G. Op. 54 (1979).

20-9-141. Computation of general fund net levy requirement by county superintendent.

Compiler's Comments

2005 Amendment: Chapter 130 in (1)(b)(v) substituted "20-9-630" for "section 244, Chapter 574, Laws of 2001". Amendment effective October 1, 2005.

2001 Amendments — Composite Section: Chapter 191 in (1)(b)(ii) at end inserted "as that section read on December 31, 1998"; in (1)(b)(iii)(A) inserted "61-3-537"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

(Version effective July 1, 2002) Chapter 464 deleted former (1)(b)(iv) that read: "(iv) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2)"; in (1)(d) at beginning substituted "Determine the sum of" for "Subtract" and after "subsection (1)(c)" inserted "and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2)"; at beginning of (1)(e) inserted "Subtract the amount determined in subsection (1)(d)"; and made minor changes in style.

(Both versions) Chapter 574 deleted former (1)(b)(ii) that read: "(ii) 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504"; deleted former (1)(b)(iii)(A) that read: "(A) revenue from taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204"; substituted (1)(b)(vi) in temporary version and (1)(b)(v) in version effective July 1, 2002, concerning block grants for "and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999"; deleted former (1)(b)(vii) that read: "(vii) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702"; at end of (4) deleted "and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Applicability: Section 11(2), Ch. 464, L. 2001, provided: "[Section 5] [20-9-141] is applicable to budgets for the school fiscal year beginning on or after July 1, 2002."

Block Grants: Section 244, Ch. 574, L. 2001, provided: "(1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate a portion of the block grant amount into each district's fiscal year 2002 budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the biennial appropriation provided in [section 248(1)] [not codified] is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed. If the appropriation for block grants is greater than or less than the amount received by schools from the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue.

(4) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year."

Appropriation: Section 248, Ch. 574, L. 2001, provided: "(1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244] [not codified].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245] [not codified].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246] [not codified].

(4) If Senate Bill No. 176 [Ch. 585, L. 2001] is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] [15-1-121(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176."

Inclusion of Appropriations in Budget: Section 249, Ch. 574, L. 2001, provided: "The governor shall include the appropriation in [section 248(1)] [not codified] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

2000 Amendment by Referendum — Code Commissioner Correction: Chapter 515, L. 1999, in (1)(b)(iii)(A) inserted references to 61-3-560 through 61-3-562 and 61-3-570. Amendment effective November 7, 2000. The amendment made by Ch. 515 was originally made to subsection (1)(b)(ii)(B), which became subsection (1)(b)(iv) after the codification of the coordination provision contained in Ch. 584, L. 1999. Subsection (1)(b)(iv) was stricken by Ch. 9, Sp. L. May 2000. However, the substance of former subsection (1)(b)(ii)(B) was moved into subsection (1)(b)(ii)(A) of the 1999 MCA. Because Ch. 11, Sp. L. May 2000, inserted subsection (1)(b)(ii), the code commissioner has inserted the Ch. 515 amendment into subsection (1)(b)(iii)(A) to reflect the content of the change made to the original text of this section.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

2000 Amendment: Chapter 11 inserted (1)(b)(ii) relating to 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504; deleted former (1)(b)(ii)(D) that read: "(D) reimbursements for unrealized motor vehicle tax revenue, as provided in 61-3-509(1)"; deleted former (1)(b)(iv) that read: "(iv) anticipated revenue from taxes and fees imposed under 61-3-504 and 61-3-537, which for the fiscal year beginning July 1, 2000, may not be less than 75% of the previous year's revenue from these sources"; and made minor changes in style. Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning

on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

2000 Amendment: Chapter 11 inserted (1)(b)(ii) relating to 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504; deleted former (1)(b)(ii)(D) that read: "(D) reimbursements for unrealized motor vehicle tax revenue, as provided in 61-3-509(1)"; deleted former (1)(b)(iv) that read: "(iv) anticipated revenue from taxes and fees imposed under 61-3-504 and 61-3-537, which for the fiscal year beginning July 1, 2000, may not be less than 75% of the previous year's revenue from these sources"; and made minor changes in style. Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendments — Composite Section: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1)(b)(iii) the code commissioner changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

Chapter 180 inserted (1)(b)(ii)(D) pertaining to reimbursements for unrealized motor vehicle tax revenue; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 584 inserted (1)(b)(ii)(A) regarding revenue from certain taxes and fees; inserted (1)(b)(ii)(B) concerning interest; inserted (1)(b)(ii)(C) regarding any other revenue; at beginning of (1)(b)(iii), (1)(b)(iv), (1)(b)(v), and (1)(b)(vii) inserted "anticipated"; in (1)(b)(iv) after "under" deleted references to 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, and 67-3-204 and after "61-3-537" inserted "which for the fiscal year beginning July 1, 2000, may not be less than 75% of the previous year's revenue from these sources"; inserted (1)(b)(vi) regarding anticipated revenue from coal gross proceeds and property tax reimbursements; deleted former (1)(b)(ii)(D) that read: "(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4)"; deleted former (1)(b)(ii)(F) that read: "(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid"; deleted former (1)(b)(iii) that read: "(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703"; in (2)(b) inserted "current total" and after "district" inserted "as certified by the department of revenue under 15-10-202"; at end of (4) inserted "and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999"; and made minor changes in style. Amendment effective May 10, 1999.

The amendments to this section made by sec. 1, Ch. 561, L. 1999, were rendered void by sec. 170(3), Ch. 584, L. 1999, a coordination section.

The amendments to this section made by sec. 106, Ch. 584, L. 1999, were rendered void by sec. 170(3), Ch. 584, L. 1999, a coordination section.

Applicability: Section 6, Ch. 180, L. 1999, provided: "[This act] applies to registration periods beginning after December 31, 1999, and to fleet registrations after December 31, 1999."

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 389 at end of (1)(b)(ii)(A), after "20-5-323", inserted exception clause regarding excess tuition. Amendment effective April 25, 1997.

Chapter 496 in (1)(b)(ii)(B), after "revenue from", deleted "property", after "61-3-504" deleted "(2)", and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (1)(b)(ii)(C) concerning oil and gas production taxes for "net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601"; deleted (1)(b)(iii)(A) that read: "(A) pursuant to subsection (4), anticipated revenue from local government severance taxes as provided in 15-36-112"; in (4), after "fiscal year from", deleted "local government severance taxes, as provided in 15-36-112, and from"; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 580 in (1)(b)(ii)(B) inserted reference to 61-3-527; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendments: Chapter 9 in (1)(b)(ii)(C), after "new production", inserted "production from horizontally completed wells, and incremental production". Amendment effective December 17, 1993.

Chapter 35 deleted former (1)(b)(ii)(D) and (1)(b)(ii)(E) that read: "(D) revenue from local government severance taxes as provided in 15-36-112;

(E) revenue from coal gross proceeds under 15-23-703"; inserted (1)(b)(iii) allowing school districts to use anticipated revenue from local government severance taxes and coal gross proceeds taxes to determine revenue available for property tax reduction in support of district general fund budgets; inserted (4) requiring the Department of Revenue to calculate and report anticipated local severance taxes and coal gross proceeds revenue to County Superintendents; and made minor changes in style. Amendment effective July 1, 1994.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee [now revenue and transportation interim committee] regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

Applicability: Section 3, Ch. 35, Sp. L. November 1993, provided that this section applies to school district general fund budgets for the school fiscal year beginning July 1, 1994.

1993 Amendments: Chapter 133 in (3), near middle, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 325 deleted former (1)(b)(iv) that read: "anticipated or reappropriated state impact aid received under the provisions of 20-9-304". Amendment effective July 1, 1993.

Chapter 563 at end of (1)(b)(ii)(A) substituted "20-5-321 through 20-5-323" for "20-5-303, 20-5-307, 20-5-312, and 20-5-313".

Chapter 633 in (1)(a) substituted "sum of direct state aid and the special education allowable cost payment for the district" for "amount established by the schedules in 20-9-316 through 20-9-321"; in (1)(a)(i) substituted "BASE budget" for "foundation program"; in (1)(a)(ii) and (1)(c), before "general fund", deleted "additional"; in (1)(a)(ii), after "provisions of", substituted "20-9-308" for "20-9-145" and substituted "funding for a general fund budget that exceeds the

maximum general fund budget" for "levies authorized by the electors of the district"; substituted (1)(b)(i) and (1)(b)(ii) concerning determining property tax reduction for former language that read: "(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund balance reappropriated, as established under the provisions of 20-9-104"; in (1)(b)(ii)(B), at beginning, deleted "anticipated or reappropriated"; in (1)(b)(ii)(C), (1)(b)(ii)(D), (1)(b)(ii)(E), and (1)(b)(ii)(G), at beginning, deleted "anticipated"; in (1)(b)(ii)(F), before "interest", deleted "anticipated interest to be earned or reappropriated"; in (1)(b)(ii)(H), after "revenue", deleted "anticipated by the trustees to be" and before "school" deleted "ensuing"; in (1)(c), after "district", substituted "up to the BASE budget amount" for "as the permissive amount under the provisions of 20-9-145" and before "levy" substituted "BASE budget" for "permissive net"; in (1)(d), after "met by", inserted "an over-BASE budget amount", before "20-9-353" inserted "any additional financing as provided in", and after "determine" substituted "any" for "the"; in (2), after "general fund", deleted "permissive net" and after "requirement" inserted "for any amount that does not exceed the BASE budget amount for the district"; in (3), before "general fund", deleted "general fund permissive net levy requirement and the additional" and after "general fund" inserted "net"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendments: Chapter 267 in (1)(b)(vi), before "new production", deleted "interim production and". Amendment effective March 29, 1991.

Chapter 767 in (1)(a)(ii) inserted reference to 20-9-145; in (1)(b)(iii) substituted "balance" for "cash"; at end of (1)(b)(xi) inserted "excluding any guaranteed tax base aid"; in (1)(c), at beginning, inserted "Notwithstanding the provisions of subsection (2)" and at end substituted "any additional general fund budget amount adopted by the trustees of the district as the permissive amount under the provisions of 20-9-145 to determine the general fund permissive net levy requirement" for "the total requirement determined in subsection (1)(a)"; inserted (1)(d) requiring subtraction of remaining amount from any additional funding requirement to be met by a district levy; inserted (2) requiring County Superintendent to calculate the number of mills to finance the general fund permissive net levy requirement according to the given formula; in (3) inserted reference to subsection (1)(d) and after "general fund" inserted "permissive net levy requirement and the additional general fund"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendments: Section 21, Ch. 11, near beginning of (1)(a), before "funding", deleted "total of the"; deleted former (1)(a)(ii) relating to the permissive levy as provided in 20-9-352; at beginning of (1)(a)(ii), before "general fund", inserted "additional"; in (1)(b)(v), before "property taxes", deleted "vehicle", after "property taxes" inserted "and fees", and in list of sections inserted references to 23-2-517, 23-2-803, 61-3-521, and 67-3-204; inserted (1)(b)(x) referring to revenue from corporate license taxes from financial institutions; and made minor changes in phraseology. Amendment effective July 1, 1990.

Section 83, Ch. 11, inserted (1)(b)(vii) relating to anticipated revenue from local government severance taxes; inserted (1)(b)(viii) relating to anticipated revenue from coal gross proceeds; and made minor changes in phraseology. Amendment effective August 11, 1989.

1989 Amendment: In (1)(b)(v) inserted "or reappropriated". Amendment effective July 1, 1989. Amendment effective and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1987 Amendments: Chapter 611 in (1)(b)(v), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 655 in (1)(b)(vi), before "new production", inserted "interim production and".

1985 Amendments: Chapter 110 near beginning of (1)(a) after "total of" inserted "the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:"; in (1)(a)(iii) at beginning, inserted "any general fund budget amount adopted by the trustee of the district under the provisions of 20-9-353, including" and at end, deleted "under the provisions of 20-9-353, except that the total of the permissive and additional levies shall not exceed the total amount of the final general fund budget less the foundation program"; near end of (1)(c) before "requirement" deleted "levy".

Chapter 265, in (1)(b)(iv) and (1)(b)(v) inserted "or reappropriated"; and in middle of (1)(b)(vii) inserted "or reappropriated interest earned".

Chapter 695 inserted (1)(b)(vi) relating to net proceeds taxes for new production under 15-23-601.

1983 Amendment: Inserted (1)(b)(v) relating to motor vehicle fees and reimbursement under 61-3-532 and 61-3-536.

20-9-142. Fixing and levying taxes by board of county commissioners.

Compiler's Comments

2005 Amendment: Chapter 462 in second sentence at beginning deleted "Subject to 15-10-420"; and made minor changes in style. Amendment effective April 28, 2005.

1999 Amendment: Chapter 584 at beginning of second sentence inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Amendment: Chapter 133 at beginning substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

1991 Amendment: At end of first sentence deleted "and any emergency budget adopted by the district during the previous school fiscal year" and at end of second sentence deleted "and any emergency budget of the district"; and made minor change in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1986 Amendment: Near middle of second sentence after "within the district", deleted "except as provided in subsection (2)"; and deleted former (2) that read: "(2) (a) The taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year may be excluded from the district's taxable valuation if the taxable value of such property remaining under protest exceeds 5% of the district's taxable valuation in computing the mill levies to fund the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year.

(b) If tax money that was collected on property excluded under subsection (2)(a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money shall be used to reduce subsequent property tax levies. The district shall calculate such levies by crediting the revenue from released protest funds directly to the revenue section of the budget and not to the cash reserves. If the crediting of such revenue reduces to zero the amount necessary to be raised by tax levy, the county treasurer shall refund on behalf of the district any excess protest fund revenue to the taxpayers. If a taxpayer is delinquent in the payment of prior taxes, the county treasurer may offset the delinquency rather than make a refund. A copy of the calculations made in fixing the tax levies under this subsection and calculations of any refunds must be delivered to the legislative auditor, the office of public instruction, and the department of revenue."

Revenue Oversight Committee (now Revenue and Transportation Interim Committee) Bill: Chapter 26, Sp. L. June 1986, was introduced by request of the Revenue Oversight Committee (now Revenue and Transportation Interim Committee). See committee report entitled "Property Tax Delinquencies, Tax Sales, and Tax Deeds". Mont. Leg. Council (Dec. 1986).

1985 Amendment: Near middle of second sentence inserted exception clause; and inserted (2) (see 1986 amendment for text).

Case Notes

Special Tax Levy — Teachers' Retirement: Under the applicable 1974 statutes the Flathead County Board of County Commissioners had authority to levy a special tax to finance the Flathead Valley Community College district's teachers' retirement fund contribution separate

from other levies made to finance the general fund, building debt service, and adult education program. Burlington N., Inc. v. Flathead County, 176 M 9, 575 P2d 912 (1978).

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in this section requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

Collateral References

Schools and School Districts *key* 103.
78 C.J.S. Schools and School Districts §383.
68 Am. Jur. 2d Schools §§87 through 94.
Montana School Finance, Interim Report, Montana Legislative Council (1982).

20-9-143. Allocation of federal funds in lieu of property taxation.

Compiler's Comments

1997 Amendment: Chapter 22 near middle substituted "impact aid, as provided in 20 U.S.C. 7701, et seq." for "Title I of Public Law 81-874"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 633 after "United States" substituted "must be deposited in the impact aid fund established in 20-9-514" for "may be allocated to the various operating budgets of the district by the trustees". Amendment effective July 1, 1993.

Public Law Reference: Title I of Public Law 81-874, referred to in this section, is compiled in the U.S.C. as Title 20, §236, et seq.

Case Notes

Factoring of "874" Money Into Equalization Formula: A state may factor Pub. L. No. 81-874 revenue into its school finance equalization system only if the system meets the federal definition of an equalized program, subject to the determination of the Secretary of Education. School District v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Attorney General's Opinions

PRIOR TO 1993 SCHOOL FINANCE REVISION

Federal Funds to Be Applied to Permissive Levy:

No statutory changes since the issuance of 38 A.G. Op. 97 (1980), have affected the basis that under state law, a school district may deposit Pub. L. No. 81-874 money into any operating budget. However, the conclusion that if that money is allocated to the general fund budget, it must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. 240(d)(2)(i) as a state that may consider that money in determining the amount of state aid available to a school district. 44 A.G. Op. 41 (1992).

Federal funds received under P.L. 81-874, intended to relieve increased tax burdens due to federal installations or activity, may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount. 38 A.G. Op. 97 (1980).

20-9-151. Budgeting procedure for joint districts.

Compiler's Comments

2005 Amendment: Chapter 462 in (3) in first sentence near beginning after "law" deleted "and subject to 15-10-420" and in second sentence near end before "Monday" substituted "fourth" for "second". Amendment effective April 28, 2005.

1999 Amendment: Chapter 584 in (3) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Collateral References

Schools and School Districts *key* 93.

78 C.J.S. Schools and School Districts §343.

20-9-152. Fixing and levying taxes for joint districts.

Compiler's Comments

2005 Amendment: Chapter 462 in (1) near middle before "Monday" substituted "fourth" for "second" and after "shall" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective April 28, 2005.

1999 Amendment: Chapter 584 in (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Collateral References

Schools and School Districts *key* 103.

78 C.J.S. Schools and School Districts §383.

68 Am. Jur. 2d Schools §§87 through 94.

Montana School Finance, Interim Report, Montana Legislative Council (1982).

20-9-161. Definition of budget amendment for budgeting purposes.

Compiler's Comments

1999 Amendment: Chapter 554 deleted former (5)(d) that read: "(d) local government severance tax payments for calendar year 1995 production as provided in 15-36-325(7)"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

1997 Amendment: Chapter 22 in (5)(e), at end after "district", deleted "as a result of the protested taxes". Amendment effective July 1, 1997.

1995 Amendment: Chapter 451 inserted (5)(d) concerning local government severance taxes; in (5)(e) inserted "or (5)(d)"; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1991 Amendment: In introductory clause substituted "budget amendment" for "emergency" and after "budgeting" substituted "means an amendment to an adopted budget of the district for the following reasons" for "shall be"; in (1), near beginning after "district", deleted "over the

immediately preceding school fiscal year" and near middle substituted "current" for "then-current"; inserted (5) including as a reason for a budget amendment various tax-related conditions; in (6), near beginning after "any other", substituted "unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district" for "reason of similar consequences that has been approved by the superintendent of public instruction upon petition by the trustees of the district or by the board of regents upon petition by the trustees of a community college district"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

Title 10, chapter 22, subchapter 2, ARM Budget amendments.

Case Notes

Judgment Debt as Emergency: A judgment secured by a teacher against a school district in December 1932 was not paid, and in August 1933 she instituted mandamus proceedings to compel payment. At that time the district, working under the former statutory budget system, had funds on hand no longer covered by appropriations made under the 1932-33 budget, to pay the claim. The District Court erred in dismissing mandamus proceeding, in that the claim of relatrix constituted an emergency which it was the duty of the board of trustees to meet by payment even though it had in the meantime attempted to utilize such funds in making up the budget for 1933-34. State ex rel. McHose v. District Court, 95 M 230, 26 P2d 345 (1933).

Collateral References

Schools and School Districts *key* 94.

78 C.J.S. Schools and School Districts §344.

20-9-162. Authorization for budget amendment adoption.

Compiler's Comments

1993 Amendment: Chapter 633 in (1)(a), after "increase", deleted "that could not have been anticipated at the time of the adoption of the regular budget"; in (1)(b), at beginning, deleted "If a budget amendment for the reasons provided in 20-9-161(1) through (4) does not cause the district general fund budget to exceed the limitations in 20-9-315", inserted "pursuant to 20-9-161(2) through (6)", and after "resolution" deleted "as provided in 20-9-163"; inserted (1)(c) relating to budget amendment proclamation; in (2) substituted "proclamation" for "resolution"; in (3), after "submit", substituted "a budget amendment for an enrollment increase" for "the following"; deleted (3)(a) and (3)(b) that read: "(a) a budget amendment for the reasons provided in 20-9-161(5) and (6); and

(b) a budget amendment for any reason provided in 20-9-161(1) through (4) that causes the district general fund budget to exceed the limitations in 20-9-315"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), at beginning, substituted "Notwithstanding the provisions of subsections (2) and (3), a budget amendment" for "Emergency budgets", near middle, before "required", substituted "a budget amendment" for "emergency budgets", and at end substituted "October 1" for "December 31"; inserted (2) allowing approval of a budget amendment by resolution under certain circumstances; and inserted (3) requiring submission of a budget amendment under certain circumstances. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-163. Resolution for budget amendment — petition to superintendent of public instruction.

Compiler's Comments

2001 Amendment: Chapter 237 in (3) at beginning of second sentence deleted "If the petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1)"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1993 Amendment: Chapter 633 in (1), at beginning of first sentence, deleted "Notwithstanding the provisions of subsection (3)", after "necessary" inserted "because of an enrollment increase", after "may" inserted "petition the superintendent of public instruction to", and after "resolution" substituted "for" for "proclaiming", and at beginning of second sentence

inserted "The petition must be signed" and after "majority" deleted "vote"; in (2), near beginning, substituted "petition must" for "budget amendment resolution must also" and near middle, after "budget amendment", substituted "the anticipated source of financing for the budget amendment, and the current year enrollment" for "and the time and place the board will meet for the purpose of considering and adopting a budget amendment for funds for the current school fiscal year"; deleted former (2) that read: "(2) If the trustees of a school district determine that the proposed budget amendment will cause the district general fund to exceed the limitations of 20-9-315 or is for the reasons provided in 20-9-161(5) and (6), the trustees shall petition the superintendent of public instruction for permission to adopt a resolution for a budget amendment. The petition must set forth in writing the reasons for the request, the district funds affected by the budget amendment, the estimated amount of money required for the budget amendment for each affected fund, the anticipated sources of financing for the budget amendment expenditures, and any other information required by the superintendent of public instruction. The petition must be signed by a majority of the trustees"; in (3), in first sentence after "amendment", inserted "because of increased enrollment" and inserted second and third sentences relating to adjustment of budget by Superintendent for enrollment increase; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Throughout section substituted reference to budget amendment for reference to emergency; in (1), at beginning of first sentence, inserted "Notwithstanding the provisions of subsection (3)", near middle, before "vote of", substituted "majority" for "unanimous", and after "vote of" substituted "the trustees" for "all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding such meeting"; in (2), at beginning after "If the trustees", substituted present language regarding petition for a budget amendment for former language regarding petition for a resolution of emergency (see 1989 MCA for text); in (3), in first sentence after "instruction", deleted "or, in the case of a community college district, the board of regents" and in third sentence, after "instruction", substituted "authorizes" for "or the board of regents shall merely authorize"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

Title 10, chapter 22, subchapter 2, ARM Budget amendments.

20-9-164. Notice of budget amendment resolution.

Compiler's Comments

1991 Amendment: Throughout section substituted reference to budget amendment for reference to emergency; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-165. Budget amendment limitation, preparation, and adoption procedures.

Compiler's Comments

1997 Amendment: Chapter 211 in (1), in two places, and in (3) substituted "final budget" for "preliminary budget"; in (4), near beginning after "adopt a", deleted "preliminary"; and made minor changes in style. Amendment effective April 7, 1997.

1995 Amendment: Chapter 260 in (5), after "county superintendent", deleted "the county treasurer"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 in (1), in second sentence before "setting", deleted "on the regular budget form" and in last sentence, at end after "item", deleted "as required on the budget form". Amendment effective July 1, 1993.

1991 Amendment: Throughout section substituted reference to budget amendment for reference to emergency; in (2)(a), near middle, substituted "enrollment increase" for "emergency" and near end, before "reserve", substituted "operating" for "cash"; deleted (2)(e) that read: "(e) In the case of a community college district, by budget amendment"; in (5) deleted second sentence that read: "In the case of a community college district, copies of the emergency budget shall be sent to the county superintendent, the county treasurer, and the board of regents"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1987 Amendment: At end of (2)(e) deleted "in accordance with 20-15-302".

20-9-166. State financial aid for budget amendments.

Compiler's Comments

1999 Amendment: Chapter 343 near beginning of first sentence after "general fund" deleted "or the transportation fund" and at end after "state aid" deleted "or for state transportation reimbursement, or both"; inserted second sentence authorizing trustees to apply to superintendent of public instruction for increased transportation reimbursement payment when final transportation fund budget amendment adopted; and in fourth sentence substituted "direct state aid" for "state aid from the state" and at end inserted "or additional pupil transportation obligations". Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 22 near end of first sentence substituted "direct state aid" for "the BASE funding program". Amendment effective July 1, 1997.

1995 Amendment: Chapter 509 in first and fourth sentences, after "aid from the state", deleted "public school equalization aid account". Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 in first sentence, after "enrollment", deleted "or any other reason approved by the superintendent of public instruction under the provisions of 20-9-163"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning of first sentence substituted reference to budget amendment for reference to emergency budget and near middle, after "cost of an", substituted "amendment resulting from" for "emergency due to an", in second sentence substituted "adopt" for "publish", in third sentence inserted reference to 20-9-314, and in fourth sentence, before "increase", deleted "emergency caused by an"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-168. Emergency budget amendment tax levy.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 237 near middle of first sentence after "district may" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Chapter 574 near middle after "district may" deleted "subject to 15-10-420". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 near middle of first sentence inserted reference to 15-10-420. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Amendment: Chapter 633 in first sentence, after "been", substituted "adopted by the board of trustees" for "approved by the superintendent of public instruction" and after "proceeds" inserted "and reserves". Amendment effective July 1, 1993.

Effective Date: Section 15(4), Ch. 6, Sp. L. July 1992, provided that this section is effective on passage and approval. Approved July 24, 1992.

Part 2
Administration of Finances

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

Part Administrative Rules

Title 10, chapter 10, subchapter 3, ARM Special accounting practices.

Title 10, chapter 10, subchapter 4, ARM Generally accepted accounting principles (GAAP).

Title 10, chapter 10, subchapter 5, ARM Monthly and annual reports.

Part Attorney General's Opinions

Permissible Alternatives for Deposit — School District Funds: The permissible alternatives for deposit or investment of school district money are governed by 20-9-213(4). 42 A.G. Op. 25 (1987).

Part Collateral References

Montana School Accounting Manual, Office of Public Instruction.

20-9-201. Definitions and application.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 356 in (3)(a) in exception clause near beginning inserted reference to subsection (3)(b); inserted (3)(b) requiring trustees determining that a tuition fund is inactive and will not be used to close the fund and transfer any money in the fund to the district's miscellaneous programs fund; and made minor changes in style. Amendment effective April 23, 2001.

Chapter 480 in (3)(a) near end after "balances to" substituted "any fund considered appropriate by the trustees" for "the general fund". Amendment effective July 1, 2001.

Effective Date — Applicability: Section 5, Ch. 480, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001."

1995 Amendment: Chapter 493 in (1)(b), near end of second sentence after "endowment fund", inserted "litigation reserve fund". Amendment effective April 15, 1995.

Effective Date — Retroactive Applicability: Section 4, Ch. 493, L. 1995, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1994." Effective April 15, 1995.

1993 Amendment: Chapter 633 in definition of nonbudgeted fund inserted "impact aid fund". Amendment effective July 1, 1993.

1991 Amendments: Chapter 568 in (1)(b) inserted "internal service fund, enterprise fund, agency fund"; and made minor change in style. Amendment effective April 23, 1991.

Chapter 767 in (1), in first sentence of introductory clause after "law", inserted "or by the superintendent of public instruction under the provisions of subsection (2)"; in (1)(a), in second sentence before "tuition", deleted "elementary" and deleted reference to leased facilities fund; in (1)(b), in second sentence after "miscellaneous", deleted "federal" and inserted reference to extracurricular fund, metal mines tax reserve fund, and endowment fund; in (2), at end of first sentence, deleted "except the extracurricular money realized from pupil activities"; inserted (3) regarding closure of an inactive fund; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendments: Chapters 1 and 11 in definition of budgeted fund deleted "vocational-technical center fund"; in (2) inserted second sentence relating to recording receipt and disbursement of money in accordance with generally accepted accounting principles and in third sentence, after "authority", inserted "as prescribed by law"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Rules: Section 98(1)(b), Ch. 11, Sp. L. June 1989, provided: "The superintendent of public instruction may, prior to July 1, 1990, adopt rules and conduct training necessary to implement [section 22] [20-9-201]."

1987 Amendments: Chapter 135 in (1)(b) changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

Chapter 658 in (1)(a), before "vocational-technical", deleted "postsecondary".

Attorney General's Opinions

AFTER 1993 SCHOOL FINANCE REVISION

Conditions for Transfer of School District Bus Depreciation Reserve Fund: Resolving an apparent statutory conflict regarding the transfer of a school district bus depreciation reserve fund, a budgeted fund, the Attorney General applied the specific provisions of 20-10-147 over the general provisions of 20-9-208 and this section in holding that before a school district may transfer any money in the district's bus depreciation reserve fund to any other district fund, the school district trustees must have sold all of the district's buses and submitted the proposed fund transfer to the electors of the district. 51 A.G. Op. 6 (2005).

PRIOR TO 1993 SCHOOL FINANCE REVISION

Federal Funds to Be Applied to Permissive Levy:

No statutory changes since the issuance of 38 A.G. Op. 97 (1980), have affected the basis that under state law, a school district may deposit Pub. L. No. 81-874 money into any operating budget. However, the conclusion that if that money is allocated to the general fund budget, it

must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. 240(d)(2)(i) as a state that may consider that money in determining the amount of state aid available to a school district. 44 A.G. Op. 41 (1992).

Federal funds received under P.L. 81-874, intended to relieve increased tax burdens due to federal installations or activity, may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount. 38 A.G. Op. 97 (1980).

Use of School Bus Depreciation Fund: The trustees of a school district may pay for the cost of replacement of a bus or radio from a bus depreciation reserve fund established under 20-10-147 if depreciation taken on the bus or radio since its acquisition has been credited to the reserve fund. In replacing any such bus or radio, the trustees are not limited to paying an amount from the fund which equals the accumulated depreciation credited to the fund on account of the replaced vehicle. 37 A.G. Op. 153 (1978).

20-9-203. Examination of district accounting records.

Compiler's Comments

2001 Amendment: Chapter 483 near middle of second sentence after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1991 Amendment: In first sentence, after "districts", deleted "that maintain a high school" and inserted second sentence requiring filing of the completed audit report; deleted former (2) that read: "(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:

(a) return the accounting records to the district no later than August 15;

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the superintendent of public instruction, the county superintendent, and the county clerk and recorder"; and made minor changes in style. Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

1985 Amendment: In (2)(c) inserted "the superintendent of public instruction".

1981 Amendments: Section 7, Ch. 274, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 20-9-203 . . . are transferred to the department of administration."

Chapter 573 deleted "annually by the department of community affairs" following "shall be audited" in (1).

20-9-204. Conflicts of interests, letting contracts, and calling for bids.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 162 in (3) in first sentence near beginning after "provided in" substituted "subsections (4) and (7)" for "subsection (4)"; inserted (7) providing that subsection (3) does not apply to certain energy audits or energy performance contracts; and made minor changes in style. Amendment effective April 7, 2005.

Chapter 574 in (3) in second sentence at beginning inserted exception clause; inserted (3)(h) relating to a project in which an alternative project delivery contract is used; and in (5) at

beginning inserted exception clause and near end inserted "any or". Amendment effective October 1, 2005.

2001 Amendments — Composite Section: Chapter 75 in (3) in first sentence of introductory clause after "20-3-322(5)" inserted "or as provided in subsection (4) of this section" and in sixth sentence after "requirements" substituted "applicable to services performed for the benefit of the district under this section" for "of this subsection"; inserted (4) regarding a district's entry into a cooperative purchasing contract with one or more districts; and made minor changes in style. Amendment effective March 19, 2001.

Chapter 103 in first sentence in (3) increased amount from $15,000 to $25,000; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date — Applicability: Section 2, Ch. 75, L. 2001, provided: "[This act] is effective on passage and approval [approved March 19, 2001] and applies to bids let on or after [the effective date of this act]."

1999 Amendment: Chapter 368 at end of (3) inserted introductory language and (3)(a) through (3)(g) providing that this section's bidding requirements do not apply to engineers, surveyors, real estate appraisers, architects, health care providers, attorneys, consulting actuaries, private investigators, claims adjusters, and accountants. Amendment effective April 20, 1999.

Applicability: Section 2, Ch. 368, L. 1999, provided that this section applies to contracts bid on or after April 20, 1999.

1995 Amendment: Chapter 39 in (3), in first sentence, increased from $7,500 to $15,000 the amount in excess of which work done or purchase made must be by contract; and made minor changes in style. Amendment effective February 8, 1995.

1991 Amendment: At beginning of (3) inserted exception clause; and made minor changes in style. Amendment effective March 25, 1991.

1983 Amendment: In (3), increased the estimated cost cutoff point from $4,000 to $7,500; and inserted (5) allowing routine repair done by staff.

Case Notes

No Standing to Challenge to Award of Public School Transportation Contract on Statutory Grounds: Plaintiff provided bus service to a school district for about 24 years, but in 2001, the district elected to accept bids for the service. Plaintiff submitted the lowest bid, but the district decided to reject the bid on grounds that plaintiff was not a responsible bidder. The contract was awarded to another bidder, and plaintiff challenged the contract on statutory grounds, claiming that the district violated 18-1-201, 20-10-125, and this section. The Supreme Court declined to address any statutory violations because plaintiff lacked standing to bring the complaint under the criteria in Debcon, Inc. v. Glasgow, 2001 MT 124, 305 M 391, 28 P3d 478 (2001). Hickey v. Baker School District No. 12, 2002 MT 322, 313 M 162, 60 P3d 966 (2002), distinguishing State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973), and E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Transportation Contracts Not Within Statute: Section 1016, Rev. Codes 1935 (now repealed), did not require the trustees of a school district to call for bids for transportation of pupils. In re Transportation of School Children, 117 M 618, 161 P2d 901 (1945).

Transportation for Trustee's Child Not Within Statute: Statute was not violated by an agreement between the board of trustees and member thereof, upon closing a school, to furnish his children with transportation to or board, rent, and tuition at the location of the school to which they were transferred. State ex rel. Lien v. School District, 106 M 223, 76 P2d 330 (1938).

County High School Trustees: Section 1016, Rev. Codes of 1935 (now repealed), was inapplicable to county high school trustees. Missoula County Free High School v. Smith, 91 M 419, 8 P2d 800 (1932).

Taxpayer's Action Allowed: A taxpayer may maintain an action in behalf of a school district against its board of trustees to procure the cancellation of a contract for supplies alleged to have been fraudulently let by it. School District v. Richards, 62 M 141, 205 P 206 (1922).

Attorney General's Opinions

Sale and Installation of Carpet in School — Public Contractor's License Required: Title 37, ch. 71, which requires a person performing public construction work to have a public contractor's license, and ARM 8.115.301 (now repealed), which broadly construed the definition of public construction work, apply to persons or firms that contract to sell and install carpeting on school district property when the value of the contract exceeds $5,000. 43 A.G. Op. 67 (1990).

Public School District Trustee as Private School Employee — No Conflict of Interest: There is no direct link between being employed by a private school and acting as a trustee for a public

school district. The mere fact that a school trustee is employed by a private school located in the public school district results in no inherent conflict of interest, ethical problem, or breach of fiduciary duty. 42 A.G. Op. 44 (1987).

School Contracts — Trustee's Delegation of Power to Superintendent: A School District Superintendent does not have the inherent power to enter a contract on behalf of the school district. A Superintendent is the executive officer of the board of trustees and in this capacity merely acts to execute policy adopted by the board. A school district board of trustees may delegate a portion of its exclusive power to contract to the Superintendent if the delegated power involves only the performance of administrative nondiscretionary acts. 40 A.G. Op. 41 (1984).

Health Insurance Plan — No Requirement for Bid: A school district is not required by this section to let bids on employer-provided employee health plans. 40 A.G. Op. 37 (1984).

School Trustees — Conflict of Interest: It is unlawful for a corporate business in which a school board trustee is a minor stockholder to furnish supplies for the operation and maintenance of the school. 37 A.G. Op. 78 (1977). See also 34 A.G. Op. 31 (1972).

Collateral References

Schools and School Districts *key* 80(1), (2).

78 C.J.S. Schools and School Districts §§279, 285, 289.

Services: contract for personal services as within requirement of submission of bids as condition of public contract. 15 ALR 3d 733.

Revocation, prior to execution of formal written contract, of vote or decision of public body awarding contract to bidder. 3 ALR 3d 864.

Rejection of bids: right of public authorities to reject all bids for public work or contract. 31 ALR 2d 469.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in contract with the public. 73 ALR 1352.

20-9-208. Transfers among appropriation items of fund — transfers from fund to fund.

Compiler's Comments

2001 Amendment: Chapter 480 in (2) at beginning of introductory clause substituted "Unless otherwise restricted by a specific provision of this title, transfers may" for "Transfers may not" and after "budget amendment" substituted "under the following circumstances" for "or between similar funds of different districts except as specifically provided by this title"; inserted (2)(a) providing authority for trustees to make transfers from one budgeted fund to another budgeted fund or between the final budget and a budget amendment, subject to certain requirements or restrictions; inserted (2)(b) pertaining to authority of trustees to make transfers from one nonbudgeted fund to another nonbudgeted fund, subject to certain restrictions or requirements; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 5, Ch. 480, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001."

1993 Amendment: Chapter 633 in (2), in first sentence after "district", inserted "between the final budget and a budget amendment". Amendment effective July 1, 1993.

1991 Amendment: In (1), near middle, substituted reference to budget amendment for reference to emergency budget; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Attorney General's Opinions

Conditions for Transfer of School District Bus Depreciation Reserve Fund: Resolving an apparent statutory conflict regarding the transfer of a school district bus depreciation reserve fund, a budgeted fund, the Attorney General applied the specific provisions of 20-10-147 over the general provisions of 20-9-201 and this section in holding that before a school district may transfer any money in the district's bus depreciation reserve fund to any other district fund, the school district trustees must have sold all of the district's buses and submitted the proposed fund transfer to the electors of the district. 51 A.G. Op. 6 (2005).

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under 20-9-443 when all bonds and interest have been fully paid, no authority exists for

financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under this section, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. (See 2001 amendment.) A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-9-209. Lapse of budgeted appropriations and provision for unpaid claims.

Compiler's Comments

1995 Amendment: Chapter 260 in (1)(b), at end, deleted "and recorded with the county treasurer in the manner and on forms prescribed by the superintendent of public instruction"; and in (2), after "for the next", deleted "ensuing". Amendment effective July 1, 1995.

1991 Amendment: In (1), near beginning after "regular", deleted "or emergency" and after "budget" inserted "or for a budget amendment"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1983 Amendment: Inserted (1)(b) allowing payment for previously ordered personal property.

1983 Title: The title to HB 224 (Ch. 478, L. 1983) read: "An act to allow school districts to use an accrual accounting system for budgeted funds; amending section 20-9-209, MCA."

Collateral References

Schools and School Districts *key* 93.

78 C.J.S. Schools and School Districts §339.

20-9-210. Expenditure limitation of nonbudgeted fund.

Compiler's Comments

1991 Amendment: Deleted second sentence that read: "The cash balance of a nonbudgeted fund shall remain to the credit of such nonbudgeted fund from year to year unless a transfer is specifically authorized by this title"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-211. Annual financial report of county superintendent.

Compiler's Comments

1993 Amendment: Chapter 133 near beginning substituted reference to second Monday in September for reference to September 1; and made minor changes in style. Amendment effective July 1, 1993.

Collateral References

Schools and School Districts *key* 92(3).

78 C.J.S. Schools and School Districts §345.

20-9-212. Duties of county treasurer.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 196 in (12) inserted third and fourth sentences requiring at least 30 hours' notice in advance of cash demands by a clerk of the district to meet certain transactions in excess of $50,000 and requiring assessment of a late fee for failure to meet the notice requirement. Amendment effective October 1, 2005.

Chapter 463 in (13) in first sentence near middle after "earned" deleted "and excluding any amount required for tuition paid under the provisions of 20-5-324(6) or (7)". Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 257 in (11) and (13) substituted references to department of revenue for references to state treasurer; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 464 in (13) near middle of first sentence after "amount required for" substituted "tuition paid under the provisions of 20-5-324(6) or (7)" for "high school out-of-county tuition under the provisions of 20-9-334". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1999 Amendment: Chapter 102 in (9) substituted "when directed by the trustees of a district, invest the money of the district" for "invest the money of any district as directed by the trustees of the district". Amendment effective July 1, 1999.

1997 Amendment: Chapter 22 in (1)(a), after "tax", substituted "for elementary equalization" for "in support of the elementary BASE aid"; in (1)(b), after "basic", substituted "county tax for high school equalization" for "special tax for high schools in support of the high school BASE aid"; and in (12), near beginning, substituted "basic county taxes for elementary and high school equalization" for "basic county tax, the basic special tax". Amendment effective July 1, 1997.

1995 Amendments — Composite Section: Chapter 260 in (4), at end, deleted "and properly endorsed by their holders"; in (10), after "the paid warrants", deleted "outstanding warrants" and inserted "interest distribution"; and in (11) substituted "program within a unit of the university system" for "center". Amendment effective July 1, 1995.

Chapter 308 in (11) substituted "education" for "center" and substituted "20-25-439" for "20-16-202"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1993 Amendments: Chapter 133 in (3), after "each", deleted "budgeted" and after "fund" deleted "included in the final budget of each district and for each nonbudgeted fund"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 633 in (1), at end of first sentence after "superintendent", inserted "or by the superintendent of public instruction"; in (1)(a) and (1)(b), at end, substituted "BASE aid" for "foundation programs"; in (2), at end, inserted "or the superintendent of public instruction"; deleted former (3) that read: "keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district"; in (3), at end after "fund", deleted "included in the final budget of each district and for each nonbudgeted fund established by each district"; in (12), near beginning after "county tax", deleted "in support of the elementary foundation programs and", after "special tax" substituted "the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules" for "in support of the high school foundation programs", and at end substituted "through (1)(d)" for "and (1)(b)"; in (13), after "20-9-333", deleted "for elementary and high school district foundation program support"; and made minor changes in style. Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, inserted (14) concerning monthly remittance of county equalization revenue in repayment of a state advance for county equalization. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendment: At end of (1)(c) substituted "transportation schedules" for "county's high school transportation obligation". Amendment effective July 1, 1991.

1989 Special Session Amendment: In (1)(d) substituted "elementary and high school district retirement obligations" for "high school obligations to the retirement systems of the state of Montana"; deleted former (1)(e) relating to additional county tax for deficiency financing of elementary foundation programs; deleted former (1)(f) relating to additional county tax for deficiency financing of high school foundation programs; at end of (12), after "commissioners", inserted "under the provisions of 20-16-202"; inserted (13) establishing requirements for the investment of money received from the basic county taxes; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

1985 Amendments: Chapter 438 in (10) at end inserted "within 3 working days of such direction".

Chapter 481 inserted (8) relating to sale of tax and revenue anticipation notes.

1983 Amendment: In (10) provided for monthly instead of quarterly reporting.

Administrative Rules

ARM 10.10.501 County Treasurer's financial reports.

Case Notes

Effect of Special Deposit Requirement: Effect of former statute requiring County Treasurer to keep school money as a "special deposit" was not to make the county a bailee thereof but was to constitute the deposit a general one kept in a special account for school purposes. State ex rel. School District v. McGraw, 74 M 152, 240 P 812 (1925).

Collateral References

Schools and School Districts *key* 18, 19.

78 C.J.S. Schools and School Districts §§19 through 21.

68 Am. Jur. 2d Schools §95, et seq.

20-9-213. Duties of trustees.

Compiler's Comments

2001 Amendment: Chapter 205 near middle of first clause of (1) after "fund" inserted "and account"; in (2) and (3) after "warrants" inserted "or checks, as applicable"; in (4) at end of third full sentence inserted "including those investments authorized by the board of investments under Title 17, chapter 6" and in fifth full sentence after "company" substituted "complying with" for "licensed to do business in Montana under"; and made minor changes in style. Amendment effective April 5, 2001.

Effective Date — Applicability: Section 5, Ch. 205, L. 2001, provided: "[This act] is effective on passage and approval [approved April 5, 2001] and applies to the transfer of funds on or after [the effective date of this act]."

1999 Amendment: Chapter 102 in (4) in first sentence after "money of the district" inserted "or by directly investing the money of the district", substituted "identified in 7-6-202" for "authorized in 7-6-202", and near end substituted "that meets the criteria provided for in 7-6-213" for "as authorized in 7-6-213", in fourth sentence relating to investments under the state unified investment program inserted "with other school districts, or with any other political subdivision if the unified investment program is limited to investments", and at end inserted sentence requiring a school district that enters into a unified investment program with another school district or political subdivision to do so under the provisions governing interlocal cooperative agreements and educational cooperative agreements and sentence requiring a school district to either contract for investment services with a company licensed to do business in Montana or with the state board of investments. Amendment effective July 1, 1999.

1995 Amendments: Chapter 260 in (4), at end, inserted reference to unified investment program meeting requirements of subsection (4); and made minor changes in style. Amendment effective July 1, 1995.

Chapter 406 at end of first clause of (4) substituted "eligible securities, as authorized in 7-6-202" for "direct obligations of the United States government". Amendment effective April 13, 1995.

Applicability: Section 5, Ch. 406, L. 1995, provided: "This act does not apply to and does not require the sale of securities that were legal investments before [the effective date of this act] [effective April 13, 1995]. Upon the liquidation of an investment authorized prior to [the effective date of this act] [effective April 13, 1995], the proceeds must be invested pursuant to [this act]."

Saving Clause: Section 4, Ch. 406, L. 1995, was a saving clause.

1993 Amendments: Chapter 10 in (4), near end of first sentence after "FDIC", deleted "FSLIC"; and made minor changes in style.

Chapter 133 in (6), in first sentence, substituted reference to August 15 for reference to August 1 and in second sentence, after "submitted", inserted "not later than September 1"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (8), after "audited", deleted "biennially". Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

1989 Special Session Amendments: Chapters 1 and 11 in (1), before "rules", inserted "generally accepted accounting principles and the"; and inserted (5) relating to recordation of all transactions in appropriate accounts before accounts are closed. Amendment effective July 1, 1990.

Chapter 11 in (8) substituted "biennially as required by 2-7-503" for "annually as required by law"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1989 Amendment: In (4), near middle of first sentence, after "United States government", deleted "payable within 180 days from the time of investment, or" and at end of first sentence inserted "or in a repurchase agreement as authorized in 7-6-213". Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 1, Sp. L. June 1989, provided: "It is the intent of the legislature that school districts be required to maintain accounting systems based on generally accepted accounting principles and that the superintendent of public instruction adopt rules necessary to implement this requirement. Under 20-3-106, 20-9-102, 20-9-201, 20-9-211, and 20-9-213, the superintendent of public instruction is authorized to supervise public school financial administration and is required to adopt rules establishing requirements for budgeting and financial administration of public school districts, including accounting and reporting requirements. Under 20-9-344, the board of public education has authority to require any reports it considers necessary.

It is further intended that the districts be required to file accurate and timely reports with the superintendent of public instruction. Districts must be required to provide student and school district data as may be required by the superintendent of public instruction concerning the condition of education in Montana, including personnel information, student and school district demographics, assessment of student and school district achievements, and other appropriate educational factors necessary to enable the legislature to assess the equality of educational opportunity provided by the public school districts and to determine the amount of state aid to be distributed to school districts. Districts shall also provide data to meet grant requirements and other national reporting needs.

It is intended that the superintendent of public instruction provide training, forms, and assistance to the districts as necessary to enable the districts to comply with [this act]. Whenever possible, the superintendent of public instruction shall develop methods for collecting educational data electronically, using formats consistent with school district data processing capabilities. The educational data must be maintained in an electronic format easily accessible by other state agencies and the legislature.

It is intended that the superintendent of public instruction employ two additional full-time-equivalent personnel during fiscal year 1990 and three full-time-equivalent personnel during fiscal year 1991 for the purpose of establishing standard accounting and reporting practices in the public school districts."

1987 Amendment: At end of first sentence in (4) substituted "state" for "county in which the district is located; provided, however, that if no such bank, building and loan association, savings and loan association, or credit union is located in the county where the district is situated, such investment may be made in said banks or associations located in adjacent counties".

1985 Amendment: In (4) in two places, after "savings and loan association", inserted "or credit union"; near middle of (4) after "FSLIC", inserted "NCUA"; and made minor changes in phraseology.

1981 Amendment: Moved the language "direct obligations of the United States government, payable within 180 days from the time of investment, or in" from the proviso clause to the first part of (4) so as to allow the investment even if there are banks, building and loans, or savings and loans located in the county.

Case Notes

Warrants Drawn in Anticipation of Revenue — Legislative Intent: Although sections 964 and 1012, Rev. Codes of 1921 (now repealed), authorized school trustees to issue warrants in anticipation of school money from uncollected taxes to the extent of the sum levied, the Legislative Assembly did not extend the privilege of going on the pay-as-you-go plan to school districts, as it did to cities and towns. Farbo v. School District, 95 M 531, 28 P2d 455 (1933).

Attorney General's Opinions

Advancement of Annual Annuity Premium — Method of Recovery: A school district may advance the annual premium for a tax-sheltered annuity on behalf of its participating employees and then recover the amount advanced by means of salary withholding. 44 A.G. Op. 26 (1992).

Permissible Alternatives for Deposit — School District Funds: The permissible alternatives for deposit or investment of school district money are governed by subsection (4) of this section. 42 A.G. Op. 25 (1987).

School Contracts — Trustee's Delegation of Power to Superintendent: A School District Superintendent does not have the inherent power to enter a contract on behalf of the school district. A Superintendent is the executive officer of the board of trustees and in this capacity merely acts to execute policy adopted by the board. A school district board of trustees may delegate a portion of its exclusive power to contract to the Superintendent if the delegated power involves only the performance of administrative nondiscretionary acts. 40 A.G. Op. 41 (1984).

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

Collateral References

Schools and School Districts *key* 78, et seq., 92, et seq.

78 C.J.S. Schools and School Districts §270, et seq.; 78 C.J.S. Schools and School Districts §331, et seq.

68 Am. Jur. 2d Schools §§56, et seq., 95, et seq.

20-9-214. Fees.

Compiler's Comments

1991 Amendment: In (2) inserted reference to subsection (a) of subsection (1) and after "deposited in" inserted "the general fund, and the fees collected pursuant to subsection (1)(b) must be deposited in"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1985 Amendment: Inserted (1)(b) relating to noneducation course or activity fee; and inserted (2) relating to deposit of fees.

Collateral References

Schools and School Districts *key* 171.

78A C.J.S. Schools and School Districts §456.

20-9-215. Destruction of certain financial records.

Compiler's Comments

1983 Amendment: At end of section, changed "25 years" to "5 years".

Collateral References

Records *key* 13.

76 C.J.S. Records §34.

20-9-221. Procedure for issuance of warrants.

Compiler's Comments

1995 Amendment: Chapter 260 in (1) deleted reference to budgeted fund or nonbudgeted fund; deleted (1)(b) that read: "(b) the warrant as a budget amendment warrant if it is drawn on a budget amendment"; in (3), at beginning of first sentence, substituted "may" for "shall" and after "issue warrants in" deleted "single copy or in triplicate copy", deleted former second and third sentences requiring trustees to take certain actions when warrants issued in single or triplicate copies (see 1995 Session Law for text), and near end substituted references to multiple copies for duplicate and triplicate copies; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In (1)(b) substituted reference to budget amendment warrant for reference to emergency warrant and substituted reference to budget amendment for reference to emergency budget; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Amendment: Deleted former (1)(b) that read: "(b) the appropriation item of the budgeted fund or the type of expenditure for a nonbudgeted fund on which the warrant is drawn". Amendment effective July 1, 1989.

Collateral References

Schools and School Districts *key* 95(2).

78 C.J.S. Schools and School Districts §347.

20-9-231. Metal mines tax reserve fund.

Compiler's Comments

1999 Amendment: Chapter 144 in first sentence of (1) substituted "15-37-117(1)(e)" for "15-37-117(1)(f)". Amendment effective July 1, 1999.

The amendment to this section made by sec. 6, Ch. 552, L. 1999, was rendered void by sec. 12(2), Ch. 552, L. 1999, a contingent voidness provision.

1995 Amendment: Chapter 577 in (1) substituted reference to 15-37-117(1)(f) for reference to 15-37-117(1)(d). Amendment effective July 1, 1995.

1991 Amendment: Throughout section substituted reference to reserve fund for reference to reserve account; in (1), in last sentence, substituted "fund balance" for "cash balance"; inserted (4) requiring administration of the fund as a nonbudgeted fund; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

20-9-235. Authorization for school district investment account.

Compiler's Comments

2003 Amendment: Chapter 411 in (1) deleted former second sentence that read: "The trustees shall establish a separate account for each fund from which transfers are made"; in (4)(a)(ii) at end substituted "negotiated period of time" for "period of not less than 5 years"; and in (5) near beginning substituted "debt service money that the county treasurer is required by law to collect and report to the districts, all other revenue may be" for "electronic transfers of BASE aid and state advances for county equalization" and at end deleted "under 20-9-346(3), the county treasurer shall, as required by law, continue to collect money and report to the districts that elect to establish a school district investment account". Amendment effective October 1, 2003.

Effective Date — Applicability: Section 5, Ch. 205, L. 2001, provided: "[This act] is effective on passage and approval [approved April 5, 2001] and applies to the transfer of funds on or after [the effective date of this act]."

Administrative Rules

Title 10, chapter 10, subchapter 6, ARM Investments.

Part 3
Funding of Basic System of Quality Public Schools

Part Compiler's Comments

Audit During Biennium: Section 53, Ch. 633, L. 1993, provided: "(1) The legislative audit committee, in accordance with its constitutional authority to supervise legislative postaudits, shall ensure the independence of the audit of the office of the superintendent of public instruction conducted pursuant to Title 5, chapter 13, during the 1994-95 biennium. It is the intent of the legislature that the biennial financial compliance audit for the 2 fiscal years ending June 30, 1994, be contracted. To the extent that the legislative audit committee contracts with a private firm to conduct a portion of the audit or the entire audit, including audit work required to complete the statewide audit and the federal single audit, the total cost of all audit work during the biennium must be paid first from the line item appropriation to the office of the superintendent of public instruction for audit costs.

(2) There is appropriated from the general fund to the legislative auditor $40,000 for the biennium ending June 30, 1995, to be used if the line item appropriation to the office of the superintendent of public instruction is insufficient to pay the total audit costs."

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

Interim Study: Section 63, Ch. 633, L. 1993, provided: "(1) The legislative council is requested to assign the revenue oversight committee [now revenue and transportation interim committee], the legislative finance committee, or an appropriate interim committee to conduct an interim study of certain taxes and property valuation for the purpose of enhancing equalized school funding and of equalizing tax burdens among the state's school districts. The study should include but is not limited to:

(a) exploring the best means of including revenue from local government severance taxes, new and interim production of oil and natural gas, the "flat tax" on coal, corporation license taxes collected from financial institutions, and motor vehicle fees in the formula for equalizing funding per ANB and for equalizing tax burden among the state's school districts; and

(b) identifying measures that would allow the value of all centrally assessed property to be included in the formula for equalizing funding per ANB and for equalizing tax burden among the state's school districts.

(2) In conducting the study, the committee may request assistance from the:

(a) superintendent of public instruction;

(b) board of public education;

(c) department of revenue;

(d) representatives of local government entities, including the Montana association of counties and the Montana league of cities and towns;

(e) representatives of schools and teachers and other interested persons and organizations; and

(f) staff of the legislative council, legislative fiscal analyst, and the legislative auditor.

(3) If the legislative council does not assign an appropriate interim committee to conduct the study requested in this section, the superintendent of public instruction is requested to conduct the study and may request assistance from any of the entities referred to in subsection (2) or from any other entity having relevant knowledge, insight, or information."

Applicability Date Amended — Termination: Section 1, Ch. 573, L. 1989, provided: "This act is applicable during school fiscal years 1990 through 1995 in the following manner:

(1) one-fifth of the reduction in the maximum general fund budget resulting from the aggregation of ANB required by this act, as calculated from school attendance during school fiscal year 1990, applies in budgeting for school fiscal year 1991;

(2) two-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1991, applies in budgeting for school fiscal year 1992;

(3) three-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1992, applies in budgeting for school fiscal year 1993;

(4) four-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1993, applies in budgeting for school fiscal year 1994;

(5) 100% of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1994, applies in budgeting for school fiscal year 1995." Amendment effective April 20, 1989.

Section 4, Ch. 573, L. 1989, provided: "[This act] terminates on the effective date of a new equalized school funding system."

School Funding Lawsuit — District Court Opinion With Appeal Pending: A District Court decision rendered January 13, 1988, held unconstitutional the method of funding Montana's school system. The schools were to continue operating under existing statutes until October 1, 1989, to allow the Legislature time to correct the deficiencies. Helena Elementary School District No. 1 v. State of Montana, Cause No. ADV-85-370, First Judicial District, Lewis and Clark County. On appeal, the Montana Supreme Court affirmed in part the District Court decision, ruling that the state's failure to adequately fund the foundation program forced an excessive reliance on permissive levies and violated Art. X, sec. 1, Mont. Const., by denying equality of educational opportunity to each student. School District No. 1 v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Part Case Notes

PRIOR TO 1993 SCHOOL FINANCE REVISION

Constitutionality: Although enacted in anticipation of constitutional change, 20-9-301 (repealed 1993) did not become effective until after the effective date of the new constitution and is therefore constitutionally valid. State ex rel. Woodahl v. Straub, 164 M 141, 520 P2d 776 (1974); certiorari denied, Straub v. Woodahl, 419 US 845, 42 L Ed 2d 73, 95 S Ct 79 (1974).

Part Attorney General's Opinions

PRIOR TO 1993 SCHOOL FINANCE REVISION

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under 20-9-443 when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under 20-9-208, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

Budgeting for Seventh and Eighth Grade Students: The amount of general fund budget per ANB for the 7th and 8th grade students in an elementary school should be the same as that computed for the high school district within which the elementary school is located. 37 A.G. Op. 154 (1978).

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

Part Collateral References

Legislative Responses to Remaining School Funding Equity Issues, Interim Report, Mont. Leg. Council (1992).

The Montana School Foundation Program and State Equalization Aid: A Legislative and Financial History, 1949-1991, Interim Report, Mont. Leg. Council (1992).

Moving Toward School Funding Equity: Implementation of HB 28, Interim Report, Mont. Leg. Council (1990).

Montana School Finance, Interim Report, Mont. Leg. Council (1982).

Education for a New Century, Report to the 1993 Montana State Legislature, Office of Public Instruction (1993).

Summary of House Bill 667, Office of Public Instruction (1993).

20-9-302. School isolation.

Compiler's Comments

2001 Amendment: Chapter 105 in (1) at beginning inserted exception clause; in (2) in first sentence after "commissioners" deleted "(budget board)" and at beginning of second and third sentences substituted "board" for "budget board"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: In (1), increased the time when enrollment must fall below the specified amount before a school is classified as an isolated school from 1 year to 2 consecutive years; changed the time for submitting an application from "May 1 each year" to "May 1 of the second consecutive year that enrollment falls below the amount specified in this subsection" in the second sentence of (1).

Administrative Rules

Title 10, chapter 13, subchapter 1, ARM Isolation classification.

20-9-303. Nonisolated school BASE budget funding — special education funds.

Compiler's Comments

2005 Amendment: Chapter 208 in (2) near end of second sentence before "20-9-308" deleted "20-9-307 and". Amendment effective April 7, 2005.

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

1993 Amendment: Chapter 633 deleted former (1) and (2) that read: "As used in this title, the term "foundation program" means the minimum expenditures that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and may not include expenditures from any other fund. It is financed by:

(a) county equalization money, as provided in 20-9-331 and 20-9-333;

(b) state equalization aid, as provided in 20-9-343;

(c) appropriations for special education; and

(d) a district levy as provided in subsection (3) for support of a school not approved as an isolated school under the provisions of 20-9-302.

(2) The foundation program includes:

(a) amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320; and

(b) payments in support of special education programs under 20-9-321"; in two places in (1) substituted "direct state aid" for "foundation program", substituted "BASE budget" for "schedule", after "shall" substituted "provide" for "participate in financing", and after "remaining one-half" inserted "of the direct state aid"; in (2), in first sentence before "may", substituted "program" for "accounting budget", in second sentence, after "from", inserted "and in addition to" and at end, after "fund", inserted "budgeting requirements provided in 20-9-307 and 20-9-308", deleted former third sentence that read: "Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title", and in last sentence, near beginning, substituted "amount" for "unexpended balance", after "education" substituted "allowable cost payments that is not matched with district funds, as required in 20-9-321, will" for "accounting budget carries over to the next year to", after "reduce" substituted "by a like amount" for "the amount of funding required to finance", and after "year's" substituted "allowable cost payment" for "foundation program amount"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Special Session Amendment: Near beginning of (1) substituted "means the minimum expenditures" for "shall mean the minimum operating expenditures, as established herein"; in (1)(a) inserted reference to 20-9-331 and 20-9-333; in (1)(b) inserted reference to 20-9-343; inserted (1)(c) relating to appropriations for special education; inserted (1)(d) relating to a district levy for a school not approved as an isolated school; deleted former first sentence of (2) providing that the dollar amount of the foundation program was 80% of the maximum-general-fund-budget-without-a-voted-levy limitation; inserted (2)(a) relating to the schedule amounts for general education programs; inserted (2)(b) relating to payments for special education programs; in first sentence of (3), after "20-9-302", substituted "may budget and spend" for "shall be 80% of"; near end of (4) substituted "foundation program amount" for "maximum-budget-without-a-vote"; and made minor changes in phraseology and form. Amendment effective July 1, 1990.

1981 Amendments: Chapter 317 deleted former subsection (1)(c) that read "when required, moneys from an additional state levy for a state deficiency".

Chapter 347 inserted "for 2 consecutive years" after "an elementary school having an ANB of nine or fewer pupils" in the second sentence of (2).

20-9-305. Proration and calculation of BASE funding program for joint district.

Compiler's Comments

1993 Amendment: Chapter 633 throughout section substituted "direct state aid" or "direct state aid amount" for "foundation program"; in (1), near beginning, substituted "direct state aid of a joint district must" for "foundation program shall"; in (2), near end of first sentence, substituted "BASE funding" for "foundation"; and made minor changes in style. Amendment effective July 1, 1993.

20-9-306. Definitions.

Compiler's Comments

2005 Amendment: (Temporary version) Chapter 462 in definition of base budget before "140%" deleted "up to"; in definition of basic entitlement in (a) increased entitlement from $220,646 to $225,273, in (b) increased entitlement from $19,859 to $20,275, in (c) at end after "follows" inserted "using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (c)(i) increased the entitlement from $19,859 to $20,275, and in (c)(ii) increased the entitlement from $220,646 to $225,273; inserted definition of budget unit; in definition of total per-ANB entitlement in introductory clause at end after "calculations" inserted "and using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (a) near beginning after "rate of" increased rate from $5,371 to $5,584, in (b) near middle after "rate of" increased rate from $4,031 to $4,366, in (c)(i) near beginning increased rate from $4,031 to $4,366, and in (c)(ii) near beginning increased rate from $5,371 to $5,584; and made minor changes in style. Amendment effective July 1, 2005, and terminates June 30, 2006.

(Version effective July 1, 2006) In definition of base budget before "140%" deleted "up to"; in definition of basic entitlement in (a) increased entitlement from $220,646 to $230,199, in (b) increased entitlement from $19,859 to $20,718, in (c) at end after "follows" inserted "using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (c)(i) increased the entitlement from $19,859 to $20,718, and in (c)(ii) increased the entitlement from $220,646 to $230,199; inserted definition of budget unit; in definition of total per-ANB entitlement in introductory clause at end after "calculations" inserted "and using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (a) near beginning after "rate of" increased rate from $5,371 to $5,704, in (b) near middle after "rate of" increased rate from $4,031 to $4,456, in (c)(i) near beginning increased rate from $4,031 to $4,456, and in (c)(ii) near beginning increased rate from $5,371 to $5,704; and made minor changes in style. Amendment effective July 1, 2006, and terminates June 30, 2007.

Effective Date — Applicability: Section 24(4) provided: "(4) [Section 10] [20-9-306, temporary version] is effective July 1, 2005, and applies to school budgets for the school fiscal year beginning July 1, 2005."

Section 24(5), Ch. 462, L. 2005, provided: "(5) [Section 11] [20-9-306, version effective July 1, 2006] is effective July 1, 2006, and applies to school budgets for the school fiscal year beginning July 1, 2006."

2003 Amendments: (Temporary version) Chapter 550 in (2)(b) before "40%" deleted "up to"; in (6)(a) increased amount from $213,819 to $216,171; in (6)(b) increased amount from $19,244 to $19,456; in (6)(c)(i) increased amount from $19,244 to $19,456; in (6)(c)(ii) increased amount from $213,819 to $216,171; in (10)(a) increased amount from $5,205 to $5,262; in (10)(b) increased amount from $3,906 to $3,949; in (10)(c)(i) increased amount from $3,906 to $3,949; in (10)(c)(ii) increased amount from $5,205 to $5,262. Effective July 1, 2003, and terminates June 30, 2004.

(Version effective July 1, 2004) In (2)(b) before "40%" deleted "up to"; in (6)(a) increased amount from $213,819 to $220,646; in (6)(b) increased amount from $19,244 to $19,859; in (6)(c)(i) increased amount from $19,244 to $19,859; in (6)(c)(ii) increased amount from $213,819 to $220,646; in (10)(a) increased amount from $5,205 to $5,371; in (10)(b) increased amount from $3,906 to $4,031; in (10)(c)(i) increased amount from $3,906 to $4,031; in (10)(c)(ii) increased amount from $5,205 to $5,371. Effective July 1, 2004.

Effective Dates — Applicability: For temporary version, sec. 17(2), Ch. 550, L. 2003, provided: "[Section 2] [20-9-306] is effective July 1, 2003, and applies to school budgets for the school fiscal year beginning July 1, 2003."

For version effective July 1, 2004, sec. 17(3), Ch. 550, L. 2003, provided: "[Section 3] [20-9-306] is effective July 1, 2004, and applies to school budgets for the school fiscal years beginning on or after July 1, 2004."

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

Contingency: Section 2, Ch. 556, L. 2001, was a coordination section. Subsection (1) provided: "If Senate Bill No. 495 is passed and approved and is not enjoined or determined to be unconstitutional by April 1, 2002, and if Senate Bill No. 390 is passed and approved, then section 20-9-306, MCA, must read as follows". Senate Bill No. 495 and Senate Bill No. 390 were passed and approved. The version set forth in subsection (1) is the version labeled: "Effective if contingency not met". Subsection (2) provided: "If Senate Bill No. 495 is enjoined or declared unconstitutional before April 1, 2002, then section 20-9-306, must read as follows". Subsection

(2) contained two versions of this section. The first version is identical to the version in sec. 1, Ch. 556, L. 2001, the temporary version. The second version is the version labeled: "Effective on occurrence of contingency".

Effective Date — Applicability — Contingency: Section 3, Ch. 556, L. 2001, provided: "(1) [This act] is effective on passage and approval [approved May 2, 2001], and [section 1] [temporary version] applies to school fiscal years beginning July 1, 2001.

(2) If the contingency in [section 2(1)] occurs, [section 2(1)] [version effective if contingency not met] applies to school fiscal years beginning on or after July 1, 2002.

(3) If the contingency in [section 2(2)] occurs, the first version of 20-9-306 in [section 2(2)] [temporary version] applies to the school fiscal year beginning July 1, 2001, and the second version of 20-9-306 in [section 2(2)] [version effective on occurrence of contingency] applies to school fiscal years beginning on or after July 1, 2002." The contingencies in [section 2] did not occur by April 1, 2002, so the version labeled "Effective July 1, 2002, if contingency not met" became effective.

2001 Amendments — Composite Section: (Temporary version) Chapter 231 in definition of BASE aid in (b) near end before "40%" deleted "up to"; in definition of BASE budget near end before "140%" deleted "up to"; and in definition of maximum general fund budget near end substituted "175%" for "up to 153%". Amendment effective July 1, 2001, and terminates June 30, 2002.

(Versions effective July 1, 2002) In definition of maximum general fund budget near end substituted "the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%" for "up to 153% of special education allowable cost payments".

(Temporary version) Chapter 556 in (6)(a) and (6)(c)(ii) substituted "$209,873" for "$206,000"; in (6)(b) and (6)(c)(i) substituted "$18,889" for "$18,540"; in (10)(a) and (10)(c)(ii) substituted "$5,109" for "$5,015"; and in (10)(b) and (10)(c)(i) substituted "$3,834" for "$3,763". Amendment effective May 2, 2001.

(Version effective July 1, 2002, if contingency not met) In (6)(a) and (6)(c)(ii) substituted "$213,819" for "$206,000"; in (6)(b) and (6)(c)(i) substituted "$19,244" for "$18,540"; in (10)(a) and (10)(c)(ii) substituted "$5,205" for "$5,015"; and in (10)(b) and (10)(c)(i) substituted "$3,906" for "$3,763".

(Version effective July 1, 2002, on occurrence of contingency) In (6)(a) and (6)(c)(ii) substituted "$211,531" for "$206,000"; in (6)(b) and (6)(c)(i) substituted "$19,038" for "$18,540"; in (10)(a) and (10)(c)(ii) substituted "$5,149" for "$5,015"; and in (10)(b) and (10)(c)(i) substituted "$3,864" for "$3,763".

Effective Dates — Applicability: Section 3, Ch. 231, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] [20-9-306, temporary version] is effective July 1, 2001, and applies to school budgets for the school fiscal year beginning July 1, 2001.

(2) [Section 2] [20-9-306, version effective July 1, 2002] is effective July 1, 2002, and applies to school budgets for school fiscal years beginning on or after July 1, 2002."

2000 Amendment: (Version effective July 1, 2000) Chapter 11 in definition of BASE aid in (a) in two places substituted "44.7%" for "41.8%" and in (b) in two places substituted "35.3%" for "38.2%"; in definition of basic entitlement in (a) and (c)(ii) substituted "$206,000" for "$200,000" and in (b) and (c)(i) substituted "$18,540" for "$18,000"; in definition of direct state aid in two places substituted "44.7%" for "41.8%"; and in definition of total per-ANB entitlement in (a) and (c)(ii) substituted "$5,015" for "$4,869" and in (b) and (c)(i) substituted "$3,763" for "$3,653". Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendment: (Temporary version) Chapter 211 in definition of BASE aid in (a) in two places substituted "41.1%" for "40%" and in (b) substituted "38.9%" for "40%" in the figures for basic entitlement and total per-ANB entitlement; in definition of direct state aid in two places substituted "41.1%" for "40%"; and in definition of total per-ANB entitlement in (a) substituted "$4,821" for "$4,773", in (b) substituted "$3,529" for "$3,410", in (c)(i) substituted "$3,529" for

"$3,410", and in (c)(ii) substituted "$4,821" for "$4,773". Amendment effective July 1, 1999, and terminates June 30, 2000.

(Version effective July 1, 2000) In definition of BASE aid in (a) in two places substituted "41.8%" for "40%" and in (b) in two places substituted "38.2%" for "40%" in the figures for basic entitlement and total per-ANB entitlement; in definition of direct state aid in two places substituted "41.8%" for "40%"; and in definition of total per-ANB entitlement in (a) substituted "$4,869" for "$4,773", in (b) substituted "$3,653" for "$3,410", in (c)(i) substituted "$3,653" for "$3,410", and in (c)(ii) substituted "$4,869" for "$4,773".

Applicability: Section 9, Ch. 211, L. 1999, provided in subsection (1) that the temporary version of this section applies to school budgets for the school fiscal year beginning July 1, 1999, and provided in subsection (2) that the amendment to this section that takes effect July 1, 2000, applies to school budgets for school fiscal years beginning on or after that date.

1997 Amendment: (Temporary version) Chapter 437 in (6)(a) increased entitlement for each high school district from $191,000 to $200,000; in (6)(b) increased entitlement for each elementary school district or K-12 district elementary program from $17,190 to $18,000; in (6)(c)(i) increased amount to be multiplied by ratio from $17,190 to $18,000; in (6)(c)(ii) increased amount to be multiplied by ratio from $191,000 to $200,000; in (10)(a), in calculation for total per-ANB entitlement for high school district or K-12 district high school program, increased maximum rate from $4,680 to $4,726; in (10)(b), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program without approved and accredited junior high school or middle school, increased maximum rate from $3,343 to $3,376; in (10)(c)(i), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program with approved and accredited junior high school or middle school, increased maximum rate from $3,343 to $3,376 for first ANB for kindergarten through grade 6; and in (10)(c)(ii), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program with approved and accredited junior high school or middle school, increased maximum rate from $4,680 to $4,726 for first ANB for grades 7 and 8. Amendment effective July 1, 1997, and terminates June 30, 1998.

(Version effective July 1, 1998) In (6)(a) increased entitlement for each high school district from $191,000 to $200,000; in (6)(b) increased entitlement for each elementary school district or K-12 district elementary program from $17,190 to $18,000; in (6)(c)(i) increased amount to be multiplied by ratio from $17,190 to $18,000; in (6)(c)(ii) increased amount to be multiplied by ratio from $191,000 to $200,000; in (10)(a), in calculation for total per-ANB entitlement for high school district or K-12 district high school program, increased maximum rate from $4,680 to $4,773; in (10)(b), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program without approved and accredited junior high school or middle school, increased maximum rate from $3,343 to $3,410; in (10)(c)(i), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program with approved and accredited junior high school or middle school, increased maximum rate from $3,343 to $3,410 for first ANB for kindergarten through grade 6; and in (10)(c)(ii), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program with approved and accredited junior high school or middle school, increased maximum rate from $4,680 to $4,773 for first ANB for grades 7 and 8. Amendment effective July 1, 1998.

Effective Dates — Applicability: Section 5, Ch. 437, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 1997, and applies to school budgets for the school fiscal year beginning July 1, 1997.

(2) [Section 2] [20-9-306 — version effective July 1, 1998] is effective July 1, 1998, and applies to school budgets for school fiscal years beginning on or after July 1, 1998."

Termination: Section 6, Ch. 437, L. 1997, provided: "[Sections 1 and 3(2)] [20-9-306 — version effective July 1, 1997, and 20-9-375(2) — version effective July 1, 1997, now repealed] terminate June 30, 1998."

1993 Special Session Amendment: Chapter 38 in (6)(a) and (6)(c)(ii) decreased entitlement from $200,000 to $191,000; in (6)(b) and (6)(c)(i) decreased entitlement from $18,000 to $17,190; in (10)(a) and (10)(c)(ii) decreased per-ANB entitlement from $4,900 to $4,680; and in (10)(b) and (10)(c)(i) decreased per-ANB entitlement from $3,500 to $3,343. Amendment effective January 4, 1994.

Preamble: The preamble attached to Ch. 38, Sp. L. November 1993, provided: "WHEREAS, it is the intent of the Legislature to acknowledge and to support the constitutional role of the boards of trustees to supervise and control the public school districts of the state. However, it is also the intent of the Legislature to request that each board of trustees of a school district carefully review the district's expenditures for school administration, extracurricular activities,

extracurricular athletics, and special education. The Legislature further requests that, as a result of this investigation, the boards of trustees consider and pursue the possibilities of consolidating school districts."

Required General Fund Budget Reduction: Section 3, Ch. 38, Sp. L. November 1993, provided: "Budget reduction — exceptions. (1) Except as provided in subsection (2), for calculating and adopting a general fund budget for the school fiscal year ending June 30, 1995, as provided in 20-9-306 and 20-9-308 for that school year, the trustees of a district shall deduct 4.5% from the general fund budget for the school fiscal year ending June 30, 1994.

(2) The deduction required under subsection (1):

(a) does not apply to a school district with a general fund budget that is below the BASE budget for the school fiscal year ending June 30, 1994; and

(b) may not cause a general fund budget of a school district to fall below the BASE budget for the school fiscal year ending June 30, 1994."

Applicability: Section 4, Ch. 38, Sp. L. November 1993, provided that this section applies to budgets for the school year beginning July 1, 1994.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

Collateral References

Summary of House Bill 667, Office of Public Instruction (1993).

20-9-308. BASE budgets and maximum general fund budgets.

Compiler's Comments

2005 Amendments — Composite Section: (Temporary version) Chapter 190 in (3)(a)(i) in first sentence included subsection (3)(b) in exception clause; in (3)(a)(i) at beginning of second and third sentences (amendment in third sentence rendered void by Ch. 462 amendment) and in (3)(a)(ii) at beginning inserted exception clause; inserted (3)(b) providing that a school district that adopted a general fund budget over its maximum general fund budget under any provision of subsection (3)(a) at any time between fiscal year 2001 and fiscal year 2005 may, for fiscal year 2006 and fiscal year 2007, adopt the greater of its maximum general fund budget or the highest actual budget adopted between fiscal year 2001 and fiscal year 2005; and made minor changes in style. Amendment effective April 8, 2005, and terminates June 30, 2007.

Chapter 462 in (3)(a)(i) after second sentence deleted former introductory clause and (3)(a)(i)(A) through (3)(a)(i)(E) that read: "A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year"; in (3)(c) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

Effective Date — Applicability: Section 2, Ch. 190, L. 2005, provided: "[This act] is effective on passage and approval [approved April 8, 2005] and applies to school budgets for the school fiscal year beginning July 1, 2005."

Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendments — Composite Section: Chapter 146 deleted former (2)(b) that read: "(b) A general fund budget adopted under this subsection (2) may not exceed the greater of:

(i) 104% of the previous year's general fund budget; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 237 in (3)(a)(i) near end of first sentence substituted "maximum general fund budget amount or the previous year's general fund budget" for "maximum general fund budget amount or up to 94% of the previous year's general fund budget" and at end of second sentence inserted "but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Effective Date — Applicability: Section 2, Ch. 146, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for the school fiscal year beginning on or after July 1, 2001."

1999 Amendment — Coordination Instruction: Section 10(2), Ch. 514, L. 1999, a coordination instruction, in (1) after "that" deleted "except as provided in subsection (2)", after "district" substituted "and" for "or", and after "provided in" deleted "section 3, Chapter 38, Special Laws of November 1993, and"; deleted former (2) that read: "(2) If the BASE budget for a district for the school fiscal year is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:

(i) shall increase the general fund budget by at least:

(A) 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1994;

(B) 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1995, and the BASE budget for the district for the school fiscal year beginning July 1, 1995;

(C) 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1996, and the BASE budget for the district for the school fiscal year beginning July 1, 1996; or

(D) the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997;

(ii) may increase the general fund budget beyond the amount in subsection (2)(a)(i) but not by more than 4% of the previous year's general fund budget or by more than 4% of the previous year's general fund per-ANB multiplied by the current year's ANB for budgeting purposes pursuant to subsection (2)(b).

(b) The trustees shall submit a proposition on any amount exceeding the limitations in subsection (2)(a)(i) to the electors of the district, as provided in 20-9-353"; at end of (2)(a) after "20-9-353" deleted "for any budget amount that exceeds the previous year's general fund budget amount or the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes"; in (2)(b)(i) and (2)(b)(ii) after "budget" deleted "as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993"; deleted former (4)(a) that read: "(a) If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year"; inserted (3) authorizing district whose previous year's general fund budget exceeds current year's maximum general fund budget amount to adopt general fund budget up to greater of maximum general fund budget amount or 94% of previous year's general fund budget, providing schedule for 5-year reduction in adopted budget for district whose ANB for previous year exceeds ANB for current year by 30% of more, and authorizing district whose general fund budget was above maximum general fund budget in 1993 and whose general fund budget still exceeds district's maximum general fund budget each year after 1993 to adopt general fund budget that exceeds maximum general fund budget by the lesser of previous year's adopted budget or maximum general fund budget for current year plus over maximum budget amount adopted for previous year; at beginning of (3)(b) deleted "Except for the school fiscal year beginning July 1, 1994"; at beginning of (4) substituted "The BASE budget for the district must be financed by" for "Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with"; and made minor changes in style. Amendment effective July 1, 1999.

The amendment to this section made by Ch. 359, L. 1999, was rendered void by sec. 10(2), Ch. 514, L. 1999, a coordination instruction.

The amendment to this section made by Ch. 514, L. 1999, was rendered void by sec. 10(2), Ch. 514, L. 1999, a coordination instruction.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

1993 Special Session Amendment: Chapter 38 in (1), at beginning, deleted "For the school fiscal year beginning on July 1, 1993"; in (1)(b) inserted reference to section 3, Chapter 38, Special Laws of November 1993; in (2)(a), after "the school fiscal year", deleted "beginning on July 1, 1993"; substituted (2)(a)(i) requiring that trustees increase the general fund budget to mandatory growth levels and (2)(a)(ii) and (2)(b) requiring voter approval for any portion of the general fund budget that exceeds the mandatory growth levels for former language that read: "(i) may increase the general fund budget for the district by 4% of the previous year's general fund budget or by 4% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; but

(ii) may not adopt a general fund budget that reflects less than the following general fund budget growth amounts for the appropriate school fiscal year"; deleted former (2)(a)(ii)(A) that read: "(A) 20% of the range between the district general fund budget for the school fiscal year ending June 30, 1993, and the BASE budget for the district for the school fiscal year beginning July 1, 1993"; deleted former (2)(b) and (2)(c) that read: "(b) (i) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (2)(a).

(ii) Except for the school fiscal year beginning July 1, 1993, whenever the trustees of a district adopt a general fund budget that exceeds one of the limitations in subsection (2)(a) but does not exceed the BASE budget for the district, the trustees shall submit a proposition on the amount that exceeds the limitation to the electors of the district, as provided in 20-9-353.

(c) Nothing in this section is intended to require a district to budget in excess of its BASE budget"; substituted (3) requiring voter approval for the over-BASE budget of a school district if the budget exceeds the previous year's general fund budget or the previous year's general fund budget per-ANB multiplied by the current year's ANB and providing that a general fund budget may not exceed the greater of 104% of the previous year's budget as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, or the previous year's budget per-ANB multiplied by the current year's ANB and as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, for former (3) that read: "(3) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall:

(a) adopt a resolution stating the reasons and purposes for exceeding the BASE budget amount if the general fund budget adopted under this subsection (3) does not exceed the greater of:

(i) 104% of the previous year's general fund budget; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; or

(b) except for the school fiscal year beginning July 1, 1993, submit a proposition on any amount of the over-BASE budget that exceeds one of the limitations in subsection (3)(a) to the electors of the district, as provided in 20-9-353.

(c) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (3)(a)"; in (4)(a) inserted "as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993"; in (4)(b), after "beginning", deleted "July 1, 1993"; and made minor changes in style. Amendment effective January 4, 1994.

Interpretation of House Bill No. 22: The Legislative Council letter to Representative H.S. Hanson, dated December 20, 1993, provided a legal analysis of amendments to this section. This letter is available at the Legislative Council library.

Preamble: The preamble attached to Ch. 38, Sp. L. November 1993, provided: "WHEREAS, it is the intent of the Legislature to acknowledge and to support the constitutional role of the boards of trustees to supervise and control the public school districts of the state. However, it is also the intent of the Legislature to request that each board of trustees of a school district carefully review the district's expenditures for school administration, extracurricular activities, extracurricular athletics, and special education. The Legislature further requests that, as a result of this investigation, the boards of trustees consider and pursue the possibilities of consolidating school districts."

Required General Fund Budget Reduction: Section 3, Ch. 38, Sp. L. November 1993, provided: "Budget reduction — exceptions. (1) Except as provided in subsection (2), for

calculating and adopting a general fund budget for the school fiscal year ending June 30, 1995, as provided in 20-9-306 and 20-9-308 for that school year, the trustees of a district shall deduct 4.5% from the general fund budget for the school fiscal year ending June 30, 1994.

(2) The deduction required under subsection (1):

(a) does not apply to a school district with a general fund budget that is below the BASE budget for the school fiscal year ending June 30, 1994; and

(b) may not cause a general fund budget of a school district to fall below the BASE budget for the school fiscal year ending June 30, 1994."

Applicability: Section 4, Ch. 38, Sp. L. November 1993, provided that this section applies to budgets for the school year beginning July 1, 1994.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

Contingent Termination: Section 64, Ch. 633, L. 1993, provided: "The bracketed language in [section 3] [20-9-308(7)], relating to excluding Public Law 81-874 receipts, is void on the date that the superintendent of public instruction certifies to the governor that, prior to January 1, 1995, a letter has been received from the United States department of education declaring that, after analysis of [this act], the bracketed language in [section 3] [20-9-308(7)] violates the provisions of the federal impact aid laws and will result in the loss of federal impact aid funds."

A letter was not received from the Department of Education. The Code Commissioner has removed the bracketed language because of the limited duration of the provision.

Collateral References

Summary of House Bill 667, Office of Public Instruction (1993).

20-9-309. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review.

Compiler's Comments

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

Effective Date: Section 9, Ch. 208, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 7, 2005.

20-9-311. Calculation of average number belonging (ANB) — three-year averaging.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 138 in (1)(b) substituted "sum of 180" for "sum of the pupil-instruction"; and in (3) substituted "less than the minimum aggregate hours" for "less than 180 school days". Amendment effective July 1, 2005.

Chapter 215 substituted (4) establishing number of hours that count toward various levels of enrollment for former (4) that read: "(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day"; in (5) near beginning after "enrollment" substituted "in a program that provides 360 or more aggregate hours of pupil instruction per school year" for "at a regular session of the program for at least 2 hours of either a morning or an afternoon session" and deleted former second sentence that read: "The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil"; inserted (10) regarding access to school programs; and inserted (11) establishing conditions for including an eligible enrolled pupil for ANB purposes. Amendment effective July 1, 2005.

(Temporary version) Chapter 462 in (1) in introductory clause after "computed" inserted "for each budget unit"; in (8) near end after "except that" inserted "the ANB is calculated as a separate budget unit"; in (8)(a)(i) near middle after "calculated" substituted "as a separate budget unit" for "separately"; inserted (12) providing method of calculating a district's maximum general fund budget for elementary, high school, or K-12 districts that have been in existence for 3 or more years; and inserted (13) defining 3-year ANB and providing a method of calculating the 3-year ANB. Amendment effective April 28, 2005, and terminates June 30, 2007.

Chapter 510 in (8)(a)(iv) at beginning of first sentence after "more" deleted "elementary" and after "provisions of" substituted "20-6-422 or 20-6-423" for "20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4". Amendment effective July 1, 2005.

Preambles: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date — Applicability: Section 4, Ch. 215, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school budgets for the school fiscal years beginning on or after July 1, 2006."

Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendment: Chapter 252 in (8)(a)(iv) at end inserted "Each district shall retain a percentage of its basic entitlement for 3 additional years as follows"; and inserted (8)(a)(iv)(A) through (8)(a)(iv)(C) regarding basic entitlement percentages. Amendment effective July 1, 2001.

1999 Amendment: Chapter 343 in (1)(a) substituted "next school day" for "nearest school day"; deleted former (9) that read: "(9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction"; in (9) substituted "semiannual reports" for "annual reports", after "attendance" inserted "absence, and enrollment", and after "students" deleted "and special education students"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendments: Chapter 212 inserted (8)(a)(iv) relating to consolidation or annexation of districts; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 430 in (3), after "days", substituted "under 20-9-806" for "under 20-9-804"; deleted introductory clause at beginning of second sentence of (5) that read: "If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Retroactive Applicability: Section 2, Ch. 212, L. 1997, provided: "[This act] is effective July 1, 1997, and applies retroactively, within the meaning of 1-2-109, to a district that is consolidated or annexed on or after January 1, 1997."

1993 Amendment: (Temporary version) Chapter 633 substituted (1)(a) and (1)(b) describing computation for former language providing that ANB is computed "by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180; inserted (2) allowing up to 7 pupil-instruction-related days to be included in ANB calculation; in (3), after "total", inserted "ANB", and deleted second sentence that read: "For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days"; in two places in (4) and once in (5) substituted "enrollment" for "attendance"; in first sentence of (5), before "a regular", deleted "or absence from" and after "one-half" substituted "pupil for ANB purposes" for "day attended or absent as the case may be"

and in last sentence, after "but", deleted "in no case may" and after "ANB" inserted "for a kindergarten student may not"; in (6), after "days", substituted "the pupil may not be included in the count calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count" for "including pupil-instruction-related days, his absence after the 10th day of absence may not be included in the aggregate days of absence and his enrollment in the school may not be considered in the calculation of the average number belonging until he resumes attendance at school"; inserted (7) prohibiting enrollment of prekindergarten pupils from being included in ANB calculations; substituted (9)(a)(i) through (9)(a)(iii) relating to school location for aggregation of enrollment for former language that read: "(i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or

(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes"; in (9)(d), near end, substituted "BASE funding" for "foundation"; inserted (11) requiring districts to provide Superintendent with annual attendance reports; and made minor changes in style. Amendment effective July 1, 1993.

(Version effective July 1, 1994) Chapter 633 substituted (1)(a) and (1)(b) describing computation for former language providing that ANB is computed "by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180"; deleted former (2) that read: "(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he is considered a full-time special pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he is considered regularly enrolled for ANB purposes"; inserted (2) allowing up to 7 pupil-instruction-related days to be included in ANB calculation; in (3), after "total", inserted "ANB" and deleted second sentence that read: "For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days"; in two places in (4) and once in (5) substituted "enrollment" for "attendance"; in first sentence of (5), before "a regular", deleted "or absence from" and after "one-half" substituted "pupil for ANB purposes" for "day attended or absent as the case may be" and in last sentence, after "but", deleted "in no case may" and after "ANB" inserted "for a kindergarten student may not"; in (6), after "days", substituted "the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count" for "including pupil-instruction-related days, his absence after the 10th day of absence may not be included in the aggregate days of absence and his enrollment in the school may not be considered in the calculation of the average number belonging until he resumes attendance at school"; inserted (7) prohibiting enrollment of prekindergarten pupils from being included in ANB calculations; substituted (8)(a)(i) through (8)(a)(iii) relating to school location for aggregation of enrollment for former language that read: "(a) (i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or

(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes"; inserted (10) requiring districts to provide Superintendent with annual attendance reports; and made minor changes in style. Amendment effective July 1, 1994.

Effective Date — Retroactive Applicability: Section 59(3), Ch. 633, L. 1993, provided: "(3) [Sections 23 and 33] [20-9-321 and 20-9-311] are effective July 1, 1994, and apply retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1993."

1991 Amendment: In (3)(a)(i), after "town", substituted "located in the district and 3 miles from any other" for "or from another" and near end substituted "separately" for "individually"; and inserted (3)(a)(ii) regarding calculation when a school is located more than 3 miles from any

other school and no incorporated territory is involved in the district. Amendment effective March 29, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 250, L. 1991, provided: "A statement of intent is necessary for this bill to clarify that the superintendent of public instruction shall promulgate rules that prescribe procedures for the aggregation of the average number belonging of pupils in school districts for foundation program [renamed 1993] purposes. The authority for rulemaking to secure compliance with school budgeting laws is granted the superintendent of public instruction in 20-9-102 and 20-9-201. The rules must address the various circumstances concerning location of school districts and the schools within those districts."

Applicability: Section 3, Ch. 250, L. 1991, provided: "[This act] is applicable during school fiscal years 1992 through 1996 in the following manner:

(1) one-fifth of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1992;

(2) two-fifths of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1993;

(3) three-fifths of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1994;

(4) four-fifths of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1995;

(5) 100% of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1996."

1989 Special Session Amendment: Inserted third sentence of (1) limiting ANB calculation to 180 pupil-instruction days and 7 pupil-instruction-related days and in fifth sentence, after "under", deleted "20-7-117 prior to January 1, 1974, or pursuant to". Amendment effective August 11, 1989.

1989 Amendment: In two places in first sentence of (1) inserted "second semester of the preceding school fiscal year and the first semester of the"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

1987 Amendment: Substituted introductory clause of (3), (3)(a), and (3)(b) relating to the aggregate average number belonging, except when a school is more than 3 miles beyond city or town limits and when junior high students are considered as high school students for former introductory clause of (3), (3)(a), and (3)(b) that read: "(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated individually for each school, except that when:

(a) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(b) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town".

Applicability: Section 3, Ch. 498, L. 1987, provided: "This act is applicable to the ANB calculated on the attendance during the school fiscal year 1988-89, and used for budgeting for the school fiscal year 1989-90, and thereafter."

Administrative Rules

Title 10, chapter 20, subchapter 1, ARM Average number belonging (ANB).

Attorney General's Opinions

Aggregation of Number of All School District Pupils in Calculation of ANB — Exceptions: For purposes of calculating ANB, school districts shall aggregate the numbers of full-time pupils in all schools in the district except when a school of the district is located more than 3 miles beyond the incorporated limits of a city or town or when a school of the district is located more than 3 miles from another school of the district. 43 A.G. Op. 66 (1990).

Pupil-Instruction-Related Days Counted in ANB: Pupil-instruction-related days may be counted in computing the ANB number pursuant to administrative regulation interpreting 20-1-304. 37 A.G. Op. 160 (1978).

Collateral References

Schools and School Districts *key* 19.

78 C.J.S. Schools and School Districts §21.

68 Am. Jur. 2d Schools §106, et seq.

Determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds. 80 ALR 2d 953.

20-9-313. Circumstances under which regular average number belonging may be increased.

Compiler's Comments

1999 Amendment: Chapter 343 in middle of (6) after "enrollment" deleted "or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1993 Amendment: Chapter 466 deleted former (6) that read: "(6) a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year (the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year)." Amendment effective July 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 466, L. 1993, provided: "A statement of intent is required for this bill because 20-7-431 gives the superintendent of public instruction rulemaking authority to implement changes in special education funding distribution.

It is the intent of the legislature to enhance student and taxpayer equity by revising the method of distributing special education state funding to school districts and special education cooperatives. A revision in funding distribution methods may necessitate transitional steps to minimize disruption of program services to students. It is intended that the superintendent of public instruction implement the changes in the funding provisions of this bill to assist a smoother transition and to minimize the impact of the changes to students and districts."

1989 Amendment: Near beginning, after "school", deleted "for a given school fiscal year"; in three places in (6) inserted "fiscal"; near end of (7) inserted "fiscal"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

1981 Amendment: Inserted "or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the twelfth grade" at the end of the first sentence in (7).

20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.

Compiler's Comments

2005 Amendment: Chapter 462 in (3)(a) near beginning after "percentage" deleted "increase", after "estimated enrollment" deleted "increase", and after "exceeds the" substituted "enrollment used for the budgeted ANB" for "current enrollment"; in (3)(b) at end substituted "greater than 6%" for "at least 6%"; in (5) in first sentence near middle after "period is" inserted "determined using" and at end substituted "enrollment used to calculate the budgeted ANB" for "current enrollment"; in (6)(b) near beginning after "less than" substituted "the enrollment used to determine budgeted ANB" for "the average number belonging used for BASE funding program and entitlement calculations", near middle after "calculations" inserted "as provided in

subsection (5)", and at end after "actual" substituted "enrollment in place of the estimated enrollment" for "average number belonging"; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

Effective Date — Applicability: Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendment: Chapter 237 near beginning of (1) and (2) substituted "June 1" for "May 10"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1997 Amendment: Chapter 22 in (6), in second sentence after "per-ANB entitlement", inserted "and basic entitlement". Amendment effective July 1, 1997.

1995 Amendment: Chapter 18 at end of (6) substituted reference to 20-9-344(4) for reference to 20-9-344(3).

1993 Amendment: Chapter 633 in six places changed "foundation program" or "foundation program schedule amount" to "basic entitlement and total per-ANB entitlement"; in (2)(a), before "school", substituted "current" for "preceding"; and in (6), in first sentence before "entitlement", deleted "equalization or", in second sentence substituted "BASE funding" for "foundation" and after "revise the" substituted "total per-ANB" for "foundation program and", and in third sentence substituted "total per-ANB entitlement" for "payments". Amendment effective July 1, 1993.

1991 Amendment: In (1) substituted "elementary or high school enrollment" for "probable average number belonging" and "school fiscal year" for "ANB calculation period"; in (2), in introductory clause, inserted "by elementary or high school level"; in (2)(a) substituted "the enrollment for the preceding school fiscal year" for "the average number belonging for the preceding ANB calculation period"; in (2)(b), before "average number belonging", deleted "current" and inserted "used to calculate the foundation program schedule amount for the current school fiscal year"; inserted (2)(c) relating to the ANB used to calculate the foundation program schedule amount for the next year; in (2)(d) substituted "enrollment" for "average number belonging for the ensuing ANB calculation period"; in (3)(a) substituted "enrollment increase" for "average number belonging for the ensuing ANB calculation period" and at end substituted "enrollment" for "average number belonging"; in (5), at end of first sentence, substituted "the enrollment for the ensuing school fiscal year and 106% of the current enrollment" for "the approved estimated average number belonging for the ensuing ANB calculation period and 106% of the current average number belonging" and in second sentence, before "average number belonging", deleted "actual current"; in (6), in second sentence after "If the actual", substituted "enrollment" for "average number belonging"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: Deleted former (1) that read: "(1) The district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by 180. The resulting average number belonging shall be increased by the ratio that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30"; in middle of (1) substituted "ANB calculation period" for "school fiscal year"; in (2)(a), before "average", deleted "previous year's" and at end inserted "for the preceding ANB calculation period"; in (2)(b), before "current", deleted "estimate of the", after "current" deleted "school fiscal year's", and after "belonging" deleted "as provided in subsection (1) above"; in (2)(c), after "ensuing", substituted "ANB calculation period" for "school fiscal year"; at end of first sentence of (3) substituted "ANB calculation period" for "school fiscal year"; in (3)(a), after "ensuing", substituted "ANB calculation period" for "fiscal year" and after "current" deleted "year's"; in two places in (5) substituted reference to ANB calculation period for reference to school fiscal year, near end of first sentence, after "current", deleted "year's", and in second sentence, after "actual", inserted "current" and after "belonging" deleted "for the current school fiscal year"; corrected internal references; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

1981 Amendment: Increased the average number belonging number used to establish the foundation aid to a school district with an unusual enrollment increase by deleting "80% of" before "the difference" in the middle of the first sentence of (6).

Administrative Rules

Title 10, chapter 20, subchapter 1, ARM Average number belonging (ANB).

ARM 10.20.105 Unanticipated enrollment increase.

Collateral References

Summary of House Bill 667, Office of Public Instruction (1993).

20-9-321. Allowable cost payment for special education.

Compiler's Comments

2005 Amendment: Chapter 462 inserted (1) defining ANB as the current year ANB; inserted (2) providing that the 3-year average ANB does not apply to special education cost payment calculations; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

Effective Date — Applicability: Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendment: Chapter 145 in (1)(d) at beginning substituted "an amount for cooperatives" for "weighted cost factors for cooperatives"; deleted former (1)(e) that read: "(e) district and cooperative expenditure reports"; inserted (2)(a) providing formula for distribution of special education allocation; in (2)(b) after "allowable cost payments" inserted "outlined in subsection (2)(a)"; in (2)(b)(i) after "instructional block grant" inserted "limit prescribed in subsection (2)(a)(i)"; in (2)(b)(ii) in first sentence near beginning after "education-related services block grant" inserted "limit prescribed in subsection (2)(a)(ii)", at end of second sentence inserted "or to a cooperative or joint board that meets the requirements of 20-7-457", and deleted last sentence that read: "If a cooperative or joint board meets the requirements of 20-7-457, the special education related services block grant must be weighted for the factors in subsection (1)(d)"; deleted former (3) that read: "(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services"; inserted (2)(b)(iii) regarding reimbursement for additional special education costs; inserted (2)(b)(iv) regarding distributions under subsection (2)(a)(iv); in (4) in second sentence at end deleted "but the district is not required to match the weighted funding factors"; deleted part of former (7) that read: "(7) If a district's allowable costs of special education, as verified by the trustees' reports, exceed by at least 10% the total of the special education instructional and special education related services block grant plus the required district match, the district is eligible for a 65% reimbursement of the costs that exceed the additional 10%"; and made minor changes in style. Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 145, L. 2001, provided: "WHEREAS, state funding for special education has not kept pace with school districts' required special education expenditures, which has caused a financial shift under the formula from providing districts with block grants to reimbursing districts for disproportionate special education costs; and

WHEREAS, this financial shift has made a school district's funding level less predictable, and those districts receiving reimbursements for disproportionate costs have not been adequately compensated for extraordinarily high special education costs; and

WHEREAS, a revision of the current special education funding formula is necessary to stabilize the proportion of the state appropriation for special education that is distributed through block grants and for special education cooperative administration and travel."

Effective Date — Applicability: Section 3, Ch. 145, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for fiscal school years beginning on or after July 1, 2001."

1993 Amendment: (Temporary version) Chapter 633 in (1) and (2) substituted "allowable cost payment" for "foundation program amount"; at end of (1)(c) substituted "this section" for "20-9-315 through 20-9-321"; in (2) deleted second sentence that read: "The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district"; deleted former (3) that read: "(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4)"; in (3), in first sentence after "district", substituted "general fund

budget" for "foundation program" and deleted third and fourth sentences that read: "However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year"; in (4)(a) substituted "subsection (3)" for "subsection (4)"; and deleted (6) and (7) that read: "(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.

(7) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district." Amendment effective July 1, 1993.

(Version effective July 1, 1994) Chapter 633 in (1) substituted "allowable cost payment" for "foundation program amount" and after "total" substituted remainder of language in (1) relating to special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, for former language that read: "estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program"; in (1)(a) substituted "district ANB student count as established pursuant to 20-9-311 and 20-9-313" for "estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431"; in (1)(b) substituted "a per-ANB amount for the special education instructional block grant" for "the number of pupils expected to be enrolled in the program"; inserted (1)(c) relating to special education related services block grant; inserted (1)(d) relating to weighted cost factors; inserted (1)(e) relating to expenditure reports; in (1)(f), after "instruction", deleted "for budget justification purposes and" and at end substituted "this section" for "20-9-315 through 20-9-321"; substituted (2) relating to special education allowable cost payments for former (2) that read: "The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district"; deleted former (3) through (7) that read: "(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4).

(4) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district foundation program for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(5) (a) The special education contingency funds in subsection (4):

(i) are biennially appropriated;

(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and

(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.

(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public

instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds.

(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.

(7) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district"; inserted (3) requiring Superintendent to annually determine per-ANB special education instructional and special education related services block grant amounts; inserted (4) requiring rulemaking by Superintendent; inserted (5) requiring district to provide 25% local match for special education; inserted (6) requiring Superintendent to determine actual district match and providing unmatched portions to revert to state; and inserted (7) relating to district eligibility for special education reimbursement. Amendment effective July 1, 1994.

Effective Date — Retroactive Applicability: Section 59(3), Ch. 633, L. 1993, provided: "(3) [Sections 23 and 33] [20-9-321 and 20-9-311] are effective July 1, 1994, and apply retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1993."

1991 Amendments: Chapter 249 inserted (3) allowing deposit and management of certain allowable costs in a separate account; inserted (5) regarding special education contingency fund appropriation and use; in (6) inserted reference to subsection (4); and made minor change in style. Amendment effective July 1, 1991.

Chapter 767 in (4), in third sentence before "provisions", substituted reference to budget amendment for reference to emergency budget, changed subsection reference to 20-9-161, before "added" inserted "funded in the miscellaneous programs fund by other revenue sources and", and after "school year" inserted "under the provisions of 20-9-147". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: Throughout section substituted "foundation program amount" for "maximum-budget-without-a-vote amount"; in (3) substituted "foundation program" for "maximum-budget-without-a-vote"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1983 Amendment: In first sentence of (3), after "prescribed in this part" deleted ", then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5)"; at end of first sentence of (3) inserted "must be funded from any legislative appropriation for contingency financing for special education."; inserted second sentence of (3) relating to deposit of contingency funds; and at beginning of third sentence of (3) inserted "However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5), allowable costs for the given year".

Administrative Rules

ARM 10.10.310 Unobligated tuition money in the miscellaneous programs fund.

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements.

Compiler's Comments

Effective Date — Applicability: Section 17(1), Ch. 550, L. 2003, provided: "[Section 1] [20-9-326] is effective July 1, 2004, and applies to school budgets for the fiscal years beginning on or after July 1, 2005."

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) near end of first sentence substituted "61-3-321(2) or (3)" for "23-2-517, 23-2-803, 61-3-521, 61-3-527" and before "61-3-562" deleted "61-3-560 through". Amendment effective January 1, 2006.

2003 Amendment: Chapter 41 in (2)(a) after "funds" deleted "distributed to a county and". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 191 in (2)(h) after "anticipated revenue from" deleted "property taxes and" and after "61-3-529" deleted "61-3-537, 61-3-570"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 257 in (1)(b) substituted "department of revenue, as provided in 15-1-504" for "state treasurer". Amendment effective July 1, 2001.

Chapter 574 deleted former (2)(h) that read: "(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, 61-3-537, 61-3-570, and 67-3-204"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

2000 Amendment by Referendum — Code Commissioner Correction: Chapter 515, L. 1999, in (1) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570; and in (2)(h) deleted references to 61-3-504 and 61-3-527 and inserted reference to 61-3-570. Amendment effective November 7, 2000. The amendment made by Ch. 515 was originally made in subsection (2)(i), which became subsection (2)(h) after the codification of Ch. 554, L. 1999.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 554 deleted former (2)(h) that read: "(h) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 22 in (1), near beginning of first sentence after "basic", inserted "county" and near end, after "purposes of", substituted "elementary equalization" for "local"; in (2)(a) substituted "elementary county equalization fund" for "common school fund"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 496 in (1), in first sentence near middle, and in (2)(i), after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (2)(g) concerning oil and gas production taxes for "net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988"; inserted (2)(h) concerning anticipated local

government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 509 in (1), in second sentence, and in (1)(b) substituted "state general fund" for "state special revenue fund" and after "fund" deleted "state equalization aid account". Amendment effective July 1, 1995.

Chapter 580 in (1) and (2)(i) inserted reference to 61-3-527. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 9 in (2)(g), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee [now revenue and transportation interim committee] regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, in (1), in second sentence, substituted "elementary foundation programs of the school districts" for "foundation programs of the elementary school districts"; in (1)(b), after "levy", inserted "and other revenue" and after "required to" substituted "repay a state advance for county equalization" for "finance the difference determined in subsection (1)(a)"; deleted (1)(c) concerning increased state equalization aid to offset a deficiency in foundation program funding; in (2) substituted "elementary foundation program" for "elementary district foundation programs" and substituted "20-9-335" for "20-9-334"; and made minor changes in style. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendment: In (2)(g), before "new production", deleted "interim production and". Amendment effective March 29, 1991.

1989 Special Session Amendments: Section 35, Ch. 11, in (1) increased levy from 28 mills to 33 mills and near middle substituted "property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicles subject to taxation under 61-3-504(2)"; in (1)(a), after "subtracted from the", deleted "sum of the county elementary transportation obligation and the"; inserted (1)(c) relating to county deficiency and increased state equalization aid; in (2)(e) substituted "including federal forest reserve funds allocated under the provisions of 17-3-213" for "established by the county levy required by this section"; in (2)(h) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537"; and made minor changes in phraseology. Amendment effective July 1, 1990, and applies retroactively to all taxable years beginning after December 31, 1989.

Section 84, Ch. 11, inserted (2)(f) relating to coal gross proceeds; at end of (2)(g) inserted "and local government severance taxes on any other production occurring after December 31, 1988"; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1987 Amendments: Chapter 557 in middle of (2)(c), after "law", inserted "except money paid to a justice's court".

Chapter 611 in (1), near end of first sentence after "county", inserted exception clause; in (2)(e), after "money", deleted "including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536"; and inserted (2)(g) concerning anticipated revenue from vehicle property taxes.

Chapter 655 in (2)(f), before "new production", inserted "interim production and".

1985 Amendments: Chapter 50 in (1)(b) changed "June 1" to "June 20".

Chapter 265 in (2)(e) after "anticipated", inserted "or reappropriated".

Chapter 552 in (1)(b) after "determined above", substituted language of remainder of subsection relating to immediate deposit of surplus funds to the state by the County Treasurer for "the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set".

Chapter 695 inserted (2)(f) relating to net proceeds taxes for new production.

1983 Amendments: Chapter 277 substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 413 deleted former (2)(a), which read: "the portion of the federal forest reserve funds distributed to a county and designated for the common school fund under the provisions of 17-3-213"; and made minor changes in style.

Chapter 418 substituted, in first sentence of (1), "28 mills" for "25 mills"; and in (1)(b) after "basic levy", changed "of 25 mills" to "prescribed by this section".

Chapter 699 inserted, in (2)(e), "including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Interim Committee Bill: SB 94 (Ch. 418, L. 1983) was introduced by request of the Joint Subcommittee on Education, although it was substantially amended during the legislative process. See committee report, Montana Legislative Council, 1982.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

Attorney General's Opinions

Allocation of County Share of Taylor Grazing Act Funds: Pursuant to 17-3-222 and this section, a county must allocate its share of funds provided by the federal government to the state under the Taylor Grazing Act, 43 U.S.C. 315i, in the proportion of 50% to the county general fund and 50% to the equalization account of the elementary BASE funding program. 46 A.G. Op. 27 (1996).

Allocation of Justice's Court Fines and Costs: Section 46-18-235 provides a specific use for money collected as fines; therefore, fines and costs collected in Justice's Court and paid to the County Treasurer by the Justice of the Peace should be credited to the county general fund pursuant to 46-18-235 rather than to the equalization of the elementary district foundation programs (renamed 1993) of the county pursuant to the general use provision of 20-9-331. 41 A.G. Op. 39 (1985).

Forfeited Appearance Bonds — Credited to Elementary School District Foundation: Forfeited appearance bonds should be credited by the County Treasurer to the equalization of the county elementary school district foundation programs (renamed 1993) in the same manner as fines are credited under 20-9-331. This is the general method practiced as shown by audits of local government units. 38 A.G. Op. 96 (1980).

Collateral References

Schools and School Districts *key* 103(1).

78 C.J.S. Schools and School Districts §383.

68 Am. Jur. 2d Schools §94.

Legislative Responses to Remaining School Funding Equity Issues, Interim Report, Mont. Leg. Council (1992).

Moving Toward School Funding Equity: Implementation of HB 28, Interim Report, Mont. Leg. Council (1990).

Montana School Finance, Interim Report, Montana Leg. Council (1982).

Summary of House Bill 667, Office of Public Instruction (1993).

20-9-332. Fines and penalties proceeds for elementary county equalization.

Compiler's Comments

1997 Amendment: Chapter 22 in first sentence substituted "elementary county equalization fund" for "county elementary equalization fund"; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendment: Near beginning of first sentence, after "title", substituted "except those collected by a justice's court" for "shall be collected by the action of a court of competent jurisdiction and" and near middle of second sentence, after "superintendent of the county", deleted "in which each court or justice of the peace shall have jurisdiction"; deleted former (1) that read: "(1) during the month of September, each justice of the peace shall report all fines imposed and collected during the preceding year, indicating the type of violation and the date of collection"; and made minor changes in phraseology and punctuation.

1983 Amendment: At end of first sentence, changed "20-9-331(2)(d)" to "20-9-331(2)(c)" to reflect subsection renumbering incidental to deletion of 20-9-331(2)(a).

Section Not Codified: Section 75-8301, R.C.M. 1947, provided that "Whenever the masculine gender is used in this Title, it shall be understood also to mean the feminine gender." This section has not been codified in this code because it is redundant with the general provisions of 1-2-105. This section has not been repealed and is still valid law. Citation may be made to sec. 485, Ch. 5, L. 1971.

Attorney General's Opinions

Allocation of Justice's Court Fines and Costs: Money which has been collected as fines and costs in Justice's Court and paid to the County Treasurer by the Justice of the Peace and which remains after the specific allocations made in this section should be credited to the county general fund pursuant to 46-18-235. 41 A.G. Op. 39 (1985).

Collateral References

Fines *key* 20; Penalties *key* 14.

36A C.J.S. Fines §19; 70 C.J.S. Penalties §20.

36 Am. Jur. 2d Forfeitures and Penalties §67.

20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) near end of first sentence substituted "61-3-321(2) or (3)" for "23-2-517, 23-2-803, 61-3-521, 61-3-527" and before "61-3-562" deleted "61-3-560 through". Amendment effective January 1, 2006.

2001 Amendments — Composite Section: Chapter 191 in (2)(e) after "anticipated revenue from" deleted "property taxes and" and after "61-3-529" deleted "61-3-537, 61-3-570"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 257 in (1)(b) substituted "department of revenue, as provided in 15-1-504" for "state treasurer". Amendment effective July 1, 2001.

Chapter 574 deleted former (2)(e) that read: "(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, 61-3-537, 61-3-570, and 67-3-204"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

2000 Amendment by Referendum — Code Commissioner Correction: Chapter 515, L. 1999, in (1) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570; and in (2)(e) deleted references to 61-3-504 and 61-3-527 and inserted reference to 61-3-570. Amendment effective November 7, 2000. The amendment made by Ch. 515 was originally made in subsection (2)(f), which became subsection (2)(e) after the codification of Ch. 554, L. 1999.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 554 deleted former (2)(e) that read: "(e) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 22 in (1), near beginning of first sentence, substituted "basic county tax" for "basic special tax for high schools" and near end, after "purposes of", substituted "high school equalization" for "local"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 496 in (1), in first sentence, and in (2)(f), after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (2)(d) concerning oil and gas production taxes for "net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988"; inserted (2)(e) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 509 in (1), in second sentence, and in (1)(b) substituted "state general fund" for "state special revenue fund" and after "fund" deleted "state equalization aid account". Amendment effective July 1, 1995.

Chapter 580 in (1) and (2)(f) inserted reference to 61-3-527. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 9 in (2)(d), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee [now revenue and transportation interim committee] regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, in (1)(b), after "levy", inserted "and other revenue" and after "required to" substituted "repay a state advance for county equalization" for "finance the difference determined in subsection (1)(a)"; deleted (1)(c) concerning increased state equalization aid to offset a deficiency in foundation program funding; in (2) substituted "high school foundation program" for "high school district foundation programs" and substituted "20-9-335" for "20-9-334"; and made minor changes in style. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendment: In (2)(d), before "new production", deleted "interim production and". Amendment effective March 29, 1991.

1989 Special Session Amendments: Section 36, Ch. 11, in (1) increased levy from 17 mills to 22 mills and near middle substituted "property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicles subject to taxation under 61-3-504(2)"; in (1)(a) substituted reference to subsection (2) for reference to subsections (2)(a)

and (2)(b); inserted (1)(c) relating to county deficiency and increased state equalization aid; at end of (2)(b) substituted "including federal forest reserve funds allocated under the provisions of 17-3-213" for "established by the county levy required by this section"; in (2)(e) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537"; and made minor changes in phraseology. Amendment effective July 1, 1990, and applies retroactively to all taxable years beginning after December 31, 1989.

Section 85, Ch. 11, inserted (2)(c) relating to gross proceeds from coal; at end of (2)(d) inserted "and local government severance taxes on any other production occurring after December 31, 1988"; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1987 Amendments: Chapter 611 in (1), near end of first sentence after "county", inserted exception clause; in (2)(b), after "moneys", deleted "including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536"; and inserted (2)(d) concerning anticipated revenue from vehicle property taxes.

Chapter 655 in (2)(c), before "new production", inserted "interim production and".

1985 Amendments: Chapter 50 in (1)(b) changed "June 1" to "June 20".

Chapter 265 in (2)(b) after "anticipated", inserted "or reappropriated".

Chapter 299 in (2)(a) after "county treasurer's", substituted "accounts for the various sources of revenue" for "account for deposit of the proceeds from the levy".

Chapter 552 in (1)(b) after "determined above", substituted language of remainder of subsection relating to immediate deposit of surplus revenue to the state by the County Treasurer for "the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set".

Chapter 695 inserted (2)(c) relating to net proceeds taxes for new production.

1983 Amendments: Chapter 277 substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 418 substituted, in first sentence of (1), "17 mills" for "15 mills"; in (1)(b) after "basic levy", changed "for 15 mills" to "prescribed by this section".

Chapter 699 inserted, in (2)(b), "including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Interim Committee Bill: SB 94 (Ch. 418, L. 1983) was introduced by request of the Joint Subcommittee on Education, although it was substantially amended during the legislative process. See committee report, Montana Legislative Council, 1982.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

Collateral References

Schools and School Districts *key* 103(1).

78 C.J.S. Schools and School Districts §383.

68 Am. Jur. 2d Schools §94.

Legislative Responses to Remaining School Funding Equity Issues, Interim Report, Mont. Leg. Council (1992).

Moving Toward School Funding Equity: Implementation of HB 28, Interim Report, Mont. Leg. Council (1990).

Montana School Finance, Interim Report, Mont. Leg. Council (1982).

Summary of House Bill 667, Office of Public Instruction (1993).

20-9-335. Formula for apportionment of county equalization money.

Compiler's Comments

2005 Amendment: Chapter 463 in (2) at end after "aid" deleted "after the deduction of the county's obligation for tuition paid under the provisions of 20-5-324(6) and (7)". Amendment effective July 1, 2005.

2001 Amendment: Chapter 464 in (2) after "county's obligation for" substituted "tuition paid under the provisions of 20-5-324(6) and (7)" for "high school out-of-county tuition". Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1997 Amendment: Chapter 22 in (1), after "available in the", substituted "elementary and high school county equalization funds" for "basic county tax account and in the basic special tax for high schools account". Amendment effective July 1, 1997.

1993 Amendment: Chapter 633 in (1) substituted "superintendent of public instruction" for "county superintendent"; in (1)(a), in two places, and in (1)(b), (2), and (4) substituted "direct state aid" for "foundation program"; and made minor changes in style. Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, in (1), at beginning, deleted "After making such deductions prescribed in 20-9-334", after "shall" substituted "calculate the apportionment of revenue" for "apportion the remaining amount of moneys", after "tax account" deleted "to the several public elementary districts of the county", and after "schools account" deleted "to the several public secondary districts of the county in proportion to their needs under the foundation program"; in (1)(a) substituted "elementary foundation program" for "programs of the public elementary districts" and after "total" substituted "elementary foundation program of all districts in the county" for "amount of the foundation programs of all public elementary districts"; in (1)(b), near beginning, substituted "elementary foundation program amount of each district" for "foundation program amount of each public elementary district" and at end substituted "school district" for "public elementary district"; in (2) substituted "the high school foundation program after the deduction of the county's obligation for high school out-of-county tuition" for "public secondary districts"; in (3) substituted "calculations" for "apportionment"; in (4) substituted "reported" for "apportioned", after "source of revenue" substituted "for financing the elementary and high school foundation program payments" for "in calculating the financing of the public elementary and secondary district foundation program" and deleted last sentence concerning use of apportionment procedure in computing estimated revenue for budgeting; and made minor changes in style. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1985 Amendment: Deleted former (4) that read: "When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of 20-9-331(2)(d) or 20-9-333(2)(a)."

1983 Amendment: Near end of (4) changed "20-9-331(2)(e)" to "20-9-331(2)(d)" to reflect subsection renumbering incidental to deletion of 20-9-331(2)(a).

Case Notes

Distribution Nondiscriminatory: Provisions of foundation program (renamed 1993) dealing with distribution of state education funds on a per-student basis, with smaller schools receiving somewhat more per student than larger schools, is rational and does not discriminate against taxpayers of any single county. State ex rel. Woodahl v. Straub, 164 M 141, 520 P2d 776 (1974); certiorari denied, Straub v. Woodahl, 419 US 845, 42 L Ed 2d 73, 95 S Ct 79 (1974).

Collateral References

Legislative Responses to Remaining School Funding Equity Issues, Interim Report, Mont. Leg. Council (1992).

Moving Toward School Funding Equity: Implementation of HB 28, Interim Report, Mont. Leg. Council (1990).

Montana School Finance, Interim Report, Mont. Leg. Council (1982).

Summary of House Bill 667, Office of Public Instruction (1993).

20-9-341. Definition of interest and income money.

Compiler's Comments

1999 Amendment: Chapter 122 in (2) at end inserted "after any deductions made under 77-1-108". Amendment effective July 1, 1999.

1997 Amendment: Chapter 42 in (1) substituted "interest and income money" for "interest and income moneys"; and made minor changes in style. Amendment effective March 12, 1997.

Deletion of Termination Date: Section 9, Ch. 533, L. 1993, amended sec. 6, Ch. 14, Sp. L. January 1992, by removing the termination date for this section.

Preamble: The preamble attached to Ch. 14, Sp. L. January 1992, provided: "WHEREAS, the Legislature recognizes that timber on school trust lands is a finite renewable resource to be managed on a sustainable yield basis by the Department of State Lands [now Department of Natural Resources and Conservation]."

1992 Special Session Amendment: Chapter 14 in (1)(c), after "leasing of", inserted "or sale of timber from". Amendment effective February 4, 1992.

Termination: Section 6, Ch. 14, Sp. L. January 1992, provided that this section terminates June 30, 1993.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

20-9-342. Deposit of interest and income money by state board of land commissioners.

Compiler's Comments

2002 Amendment: Chapter 10 in middle substituted "into the guarantee account, provided for in 20-9-622" for "into a subfund of the state general fund"; and made minor changes in style. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

2001 Amendment: Chapter 554 near middle after "year into" inserted "a subfund of". Amendment effective July 1, 2001.

1995 Amendment: Chapter 509 substituted "state general fund" for "state special revenue fund" and after "aid" deleted "provided for by 20-9-343"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes

to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

20-9-343. Definition of and revenue for state equalization aid.

Compiler's Comments

2002 Amendment — Coordination: Section 5(1), Ch. 10, Sp. L. August 2002, a coordination section, provided that if [this act] (House Bill No. 7) and House Bill No. 4 are both passed and approved and both bills contain a section amending 20-9-343, then the coordination instruction in House Bill No. 4 is void and the amendments to this section are those contained in sec. 5, House Bill No. 7. House Bill No. 4 was passed and approved as Ch. 3, Sp. L. August 2002. Section 5, Ch. 10, at beginning of (3) inserted "From July 1, 2001, through June 30, 2003" and after "paid" substituted "into the guarantee account provided for in 20-9-622" for "into a subfund of the state general fund"; at beginning of (3)(a) deleted "(i) subject to subsection (3)(a)(ii)"; deleted former (3)(a)(ii) that read: "(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to the school technology account in the state special revenue fund, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533"; inserted (4) requiring certain money to be paid into the guarantee account for public schools beginning July 1, 2003; and made minor changes in style. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

2001 Amendments — Composite Section: Chapter 237 in (1)(a) near beginning after "schools for" deleted "the purposes of payment of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program" and near end after "facilities" deleted "matching funds for the systemic initiative for Montana mathematics and science grant"; deleted former (1)(c) that read: "(c) the Montana educational telecommunications network as provided in 20-32-101"; in (2) near beginning after "purposes of" deleted "systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program" and near end after "20-7-420(3)" deleted "the Montana educational telecommunications network"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Chapter 554 in (3) in introductory clause substituted "money must be paid into a subfund of the state general fund" for "must be paid into the state general fund" and at end inserted "as indicated"; in (3)(a)(ii) near end substituted "to the school technology account in the state special revenue fund, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes" for "to be appropriated for purposes"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendments: Chapter 509 in (1), after "means", deleted "the account in the state special revenue fund that receives" and after "section" deleted "plus any legislative appropriation of money from other sources"; in (2), near beginning after "spend", inserted "throughout the biennium", after "appropriated" deleted "from the state equalization aid account as required", and at end, after "network", deleted "throughout the biennium, and for the biennium beginning July 1, 1993, equipment purchases that qualify as the state match for the systemic initiative for Montana mathematics and science grant"; in (3), near beginning, substituted "state general fund" for "state equalization aid account"; deleted former (3)(a) that read: "(a) money allocated to state equalization from the collection of the severance tax on coal"; deleted former (3)(b) that read: "(b) money received from the treasurer of the United States as the state's share of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended"; deleted (3)(d) that read: "(d) money received from the state equalization aid levy under 20-9-360"; deleted (3)(e) that read: "(e) income from the lottery, as provided in 23-7-402"; deleted (3)(f) that read: "(f) the surplus revenues collected by the counties for BASE funding program support according to

20-9-331 and 20-9-333"; in (3)(b) substituted "interest and income money described in 20-9-341 and 20-9-342" for "money in the state equalization aid account in the state special revenue fund"; deleted (4) that read: "(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account"; deleted (5) that read: "(5) Any surplus revenue in the state equalization aid account at the end of a fiscal year must be transferred to the general fund"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 517 at end of (1)(a) inserted "and grants for school technology purchases"; in (2), after "network", deleted "throughout the biennium, and for the biennium beginning July 1, 1993" and at end inserted "and school technology purchases"; at beginning of (3)(a)(i) inserted "subject to subsection (3)(a)(ii)"; inserted (3)(a)(ii) relating to money from timber harvests on common school trust lands appropriated for purposes of 20-9-533; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments — Composite Section: Chapter 375 inserted (1)(b) including negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium; in (2) inserted "negotiated payments authorized under 20-7-420(3)"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 593 deleted former (3)(a) that read: "money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501"; deleted former (3)(b) that read: "(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501"; deleted (3)(j) that read: "(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704"; and made minor changes in style. Amendment effective July 1, 1994.

Chapter 633 in (1), in first sentence, substituted "account" for "money deposited" and after "fund" inserted "that receives revenue"; in (1)(a) after "payment of", substituted language dealing with systems development and related costs resulting from enacted legislation to administer enumerated functions for "guaranteed tax base aid and equalization of the foundation program"; in (2), after "appropriated", substituted "from the" for "for", after "aid" inserted "account", after "purposes of" substituted language dealing with systems development and related costs resulting from enacted legislation for changes in certain functions for "guaranteed tax base aid, the foundation", and after "biennium" inserted remainder of subsection relating to equipment purchases for state match for science grant; in (3), before "state", deleted "state special revenue fund for" and before "public" substituted "account for the" for "to"; and in (5), after "account", substituted "at the end of a fiscal year must be transferred to the general fund" for "in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium". Amendment effective July 1, 1993.

Style changes in (1) and (2) were slightly different. In each case, the codifier chose the most appropriate.

1991 Amendments: Chapter 622 near end of (1) (inserted as (1)(b) in temporary version) and (2) inserted reference to Montana educational telecommunications network; and made minor changes in style. Amendment effective April 24, 1991.

Chapter 729 inserted (1)(b) concerning filing fees for school district audits; in (2), after "required", substituted "by subsection (1)(a)" for "for guaranteed tax base aid and foundation program purposes"; and made minor changes in style. Amendment effective July 1, 1991, and terminates June 30, 1993.

Chapter 787 at end of (3)(j) deleted reference to subsection (2) of 17-5-704. Amendment effective July 1, 1991.

Code Commissioner Explanation: The amendments enacted by sec. 5, Ch. 622, L. 1991, and the temporary amendment of the section by secs. 1 and 3, Ch. 729, L. 1991, were composited. In (2), instead of repeating language on the Montana telecommunications network, reference was made to subsection (1)(b) to maintain the consistency of the subsection.

Coordination Instruction: Section 3, Ch. 729, L. 1991, was a coordination instruction that voided the substantive amendments to this section contained in sec. 1, Ch. 729, L. 1991, and replaced them as reflected in the 1991 amendment note.

Termination: Section 5, Ch. 729, L. 1991, provided: "[This act] terminates June 30, 1993."

1989 Special Session Amendment: Near end of (1) inserted "payment of guaranteed tax base aid and"; deleted former first sentence of (2) requiring appropriation of equalization aid in a single sum for the biennium; substituted (2) relating to expenditure of guaranteed tax base aid and equalization aid for former language that read: "The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium"; at

beginning of (3)(a) deleted "31.8% of all" and at end inserted "as provided by 15-1-501"; at beginning of (3)(b) deleted "25% of all money"; at beginning of (3)(c) and (3)(d) deleted "100% of the"; deleted former (3)(f) that read: "(f) income from the education trust fund account"; inserted (3)(f) relating to the state equalization aid levy; inserted (3)(g) relating to income from the lottery; inserted (3)(i) relating to investment income; inserted (3)(j) relating to income and earnings from the coal severance tax funds; inserted (4) relating to investment by the Board of Investments; and made minor changes in phraseology. Amendments to subsections (1) and (3) through (5) effective July 1, 1990. Amendments to subsection (2), relating to guaranteed tax base aid and state equalization aid, effective August 11, 1989.

1987 Amendments: Chapter 370 at beginning of (3)(c) substituted "the amount provided in 15-35-108" for "10%" (not codified, redundant with Ch. 662 amendment); at end of (3)(g) deleted "shall be paid into the same state special revenue fund"; and at end of (4) deleted "[or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation]".

Chapter 662 in (1), (3)(a), (3)(b), (3)(d), and (3)(e) changed "moneys" to "money"; in (3)(c) changed "10%" to "100%", after "of the" substituted "money allocated to state equalization" for "moneys received", and after "coal" deleted "under chapter 35 of Title 15"; and in (3)(f) substituted "education trust" for "local impact and education trust".

Chapter 666 in (3)(a) changed "25%" to "31.8%"; and near end of (3)(b), after "corporation license", inserted "and income".

Effective Date — Applicability: Section 11, Ch. 666, L. 1987, provided: "(1) This act, except section 8, is effective on passage and approval [approved May 22, 1987].

(2) Section 8 is effective July 1, 1987.

(3) Unless otherwise specified or required by a particular section of this act, sections 1 through 7 apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986."

Severability: Section 13, Ch. 662, L. 1987, was a severability section.

Void Amendment: The amendment in sec. 1, Ch. 2, L. 1987, was voided by sec. 12, Ch. 662, L. 1987.

1986 Amendment: In (3)(d) increased from 62 ½% to 100% the portion of oil and gas royalties allocated to state equalization aid.

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

1981 Amendment: Chapter 317 inserted (2) relating to a single biennial appropriation; and inserted (4) relating to use of surplus revenue in the equalization aid account.

Inconsistent Language: Chapter 540, L. 1981, entitled "An Act to simplify utilization of funds available for financing the foundation program and permissive portions of public school budgets; amending sections 20-9-345, 20-9-351, and 20-9-352 [20-9-352 repealed effective July 1, 1990 — sec. 94, Ch. 11, Sp. L. June 1989], MCA" purported to abolish the permissive levy account by deleting all references to that account in the three sections amended. For this reason and because sec. 1 of Ch. 540 deleted from 20-9-345 language requiring that unencumbered funds remaining in the public school equalization earmarked revenue account at the end of the year be transferred to the state permissive school levies earmarked revenue account, the Code Commissioner has placed brackets around similar language in subsection (4), which was added by Ch. 317, L. 1981, to indicate that this language is apparently inconsistent with the elimination of the state permissive account.

Federal Statute: The Mineral Lands Leasing Act, referred to in this section, is compiled in the U.S.C. as Title 30, §181, et seq.

Collateral References

Schools and School Districts *key* 17.

78 C.J.S. Schools and School Districts §18.

20-9-344. Duties of board of public education for distribution of BASE aid.

Compiler's Comments

2003 Amendment: Chapter 114 in (1)(b) after "superintendents" deleted "budget boards"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 308 in (5)(e) after "year" deleted "one-half of" and after "aid" deleted "and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30". Amendment effective July 1, 1999.

Applicability: Section 3, Ch. 308, L. 1999, provided: "[This act] applies to school fiscal years beginning after June 30, 1999."

1993 Amendment: Chapter 633 throughout section substituted "BASE" for "state equalization"; deleted former (1) that read: "The money available for state equalization aid must be distributed and apportioned to provide:

(a) an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; and

(b) the Montana educational telecommunications network as provided in 20-32-101"; in (2), after "aid", deleted "or order the county superintendent of schools to withhold county equalization money"; in (5), before "aid", substituted "BASE" for "foundation program payment and guaranteed tax base"; in (5)(a) substituted "October" for "May", increased amount from "8%" to "10%", and substituted "direct state aid" for "foundation program payment"; inserted (5)(b) requiring 10% of BASE aid to be distributed from December to April; in (5)(c), after "county", inserted "that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134"; deleted former (6)(d)(i) that read: "(i) the 1993 school fiscal year, one-half of the remaining foundation program payment of each district and on July 15, 1993, the remaining school fiscal year 1993 foundation program payment of each district"; in (5)(e), after "year", inserted "one-half of", after "remaining" deleted "foundation program", and after "district" inserted "of direct state aid and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30"; in (6), after "distribution", deleted "of foundation program payments and guaranteed tax base aid" and substituted "subsection (5)" for "subsection (6)"; and made minor changes in style. Amendment effective July 1, 1993.

1992 Special Session Amendments — Composite Section: Chapter 1, Sp. L. July 1992, in (6)(a) substituted "July 31" for "July 15". Amendment effective July 13, 1992, and terminates June 30, 1993.

Chapter 6, Sp. L. July 1992, in (2) and (2)(a), after "aid", inserted "and state advances for county equalization"; in (2)(a), after "law", deleted "and in a manner that provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid"; at beginning of (6) inserted exception clause and substituted schedule of guaranteed tax base aid payments for former distribution of 20% by July 15 and subsequent monthly payments of at least 7% of the entitlement; and inserted (7) concerning timing of payments. Amendment effective July 24, 1992.

The amendment made by Ch. 6, Sp. L. July 1992, provides for a schedule of foundation program and guaranteed tax base aid payments. The Code Commissioner has not codified the amendment made by Ch. 1, Sp. L. July 1992, because it became ineffective on July 24, 1992, the effective date of the amendment made by Ch. 6, Sp. L. July 1992.

Coordination Instruction: Section 14(2), Ch. 6, Sp. L. July 1992, provided that if Ch. 6, Sp. L. July 1992, was passed and approved, then Senate Bill No. 1 [this section] was void August 1, 1993. Because the amendment made by Senate Bill No. 1 terminates June 30, 1993, the provision in sec. 14(2), Ch. 6, Sp. L. July 1992, is ineffective.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendments: Chapter 622 inserted (1)(b) relating to Montana educational telecommunications network. Amendment effective April 24, 1991.

Chapter 767 at end of (5) substituted "superintendent of public instruction" for "department of commerce". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendments: Chapters 1 and 11 inserted (3) relating to withholding of state equalization aid; inserted (4) relating to a district's right to contested case hearing before aid is withheld; and made minor changes in phraseology. Amendment effective July 1, 1990.

Chapter 11 at end of (2)(a) substituted "provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid" for "would most effectively meet the financial needs of districts"; in (5) inserted reference to county; in (6)(a) substituted "foundation program payment and guaranteed tax base aid payment must be based on an estimate of 20% of the entitlement of each district or county" for "payment of state equalization aid must be based on an estimate of 20% of each district's entitlement"; inserted (6)(b) relating to subsequent monthly payments; and made minor changes in phraseology. Amendment effective July 1, 1990.

1986 Amendment: In (2)(a) at end inserted "and in a manner that would most effectively meet the financial needs of districts"; and inserted (4) relating to first state equalization aid payment.

Contingent Effective Date: Section 2, Ch. 18, Sp. L. June 1986, provided that the act was effective on passage and approval if the maximum budget schedules for school fiscal year 1987 in 20-9-318 and 20-9-319 were reduced or repealed by the June 1986 Special Session of the Legislature. Chapter 7, Sp. L. June 1986, effective June 30, 1986, reduced such budget schedules. Chapter 18, Sp. L. June 1986, was effective July 10, 1986.

1983 Amendments: Chapter 236 inserted (4) relating to erroneous claims or reimbursement of school equalization funds and adjustment of such errors. Subsection (4) terminated January 1, 1985, under sec. 3, Ch. 236, L. 1983.

Chapter 287 substituted reference to Department of Commerce for reference to Department of Administration.

1981 Amendments: Chapter 274 substituted "department of administration" for "municipal division of the department of community affairs" in (3).

Chapter 317 deleted "Except as provided in 20-9-345" at the beginning of (1).

Administrative Rules

ARM 10.67.101 State aid distribution schedule.

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

Collateral References

Schools and School Districts *key* 18.

78 C.J.S. Schools and School Districts §19.

Moving Toward School Funding Equity: Implementation of HB 28, Interim Report, Montana Legislative Council (1990).

Montana School Finance, Interim Report, Montana Legislative Council (1982).

20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution.

Compiler's Comments

2001 Amendment: Chapter 205 near end of (3) after "located" inserted "or to the investment account identified by the applicable district". Amendment effective April 5, 2001.

Effective Date — Applicability: Section 5, Ch. 205, L. 2001, provided: "[This act] is effective on passage and approval [approved April 5, 2001] and applies to the transfer of funds on or after [the effective date of this act]."

1995 Amendments: Chapter 509 in (2), after "distribution", deleted "from the state equalization aid account to no more than $1 million for the school fiscal year ending June 30, 1994, and"; and in (3), after "respective county", inserted "for county equalization", after "or" inserted "to the county treasurer of the", and inserted "for BASE aid". Amendment effective July 1, 1995.

Chapter 586 in (1), near middle after "general fund", inserted "and debt service fund"; in (2), near beginning after "state", inserted "advances and" and after "no more than" substituted "the amount appropriated for the school fiscal year" for "$1 million for the school fiscal year ending June 30, 1994, and to no more than $2 million for the biennium ending June 30, 1995"; in (2)(a), near beginning, substituted "the debt service payment obligation" for "by May 1 of each school fiscal year the number of mills levied", after "were" substituted "sold" for "issued", substituted "20-9-370(3)" for "20-9-370(2)(b)(i) or (2)(b)(ii)", and after "qualify for" substituted "a state advance or reimbursement for school facilities" for "guaranteed tax base aid"; in (2)(b), after "aid", substituted "appropriated" for "available" and after "purposes" substituted "state advance for school facilities and the proportionate share of state reimbursement for school facilities" for "in this subsection (2), determining the percentage of state equalization aid"; in (2)(c), after "amount", inserted "by May 31 of each school fiscal year"; deleted (2)(d) that read: "(d) at the end of the school fiscal year ending June 30, 1994, determining whether there is an unused portion of the amount of state equalization aid appropriated in this subsection (2) to be carried into the

next school fiscal year for the purposes of this subsection (2)"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments: Chapter 349 in (6) substituted "office of budget and program planning as provided in 17-7-111" for "legislature as provided in 5-11-210".

Chapter 633 throughout section, after "state", inserted "and county"; in (1), at end after "instruction", deleted "and by applying the verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347"; inserted (2) relating to distribution of $2 million in state and county equalization aid for state reimbursement for school facilities for biennium; in (3), before "electronic", deleted "state warrant or"; and in (3) and (4), before "aid", substituted "BASE" for "state equalization". Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, deleted (2) providing for recommending to Board of Public Education the entitlement of districts and counties to state equalization aid; in (2) and (3), after "aid", inserted "state advances for county equalization"; inserted (5)(e) concerning state advances and repayment for county equalization; and made minor changes in style. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendment: In (6) substituted introductory language regarding reports required under 5-11-210 for former language that read: "reporting to both houses of the state legislature in any year when a session is convened". Amendment effective March 20, 1991.

1989 Special Session Amendment: Throughout section inserted references to county; near middle of (1) substituted "retirement and general fund budgets" for "budget"; in (3) inserted "or electronic transfer" and "respective county"; in (6) substituted "houses" for "branches"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Collateral References

Schools and School Districts *key* 18.

78 C.J.S. Schools and School Districts §19.

20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions.

Compiler's Comments

1997 Amendments: Chapter 22 in (1)(b), after "raised for the", substituted "elementary and high school county equalization funds" for "basic county tax fund" and after "20-9-331 and" deleted "for the basic special tax fund as provided in"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 42 in (3)(b) substituted "county superintendent of schools" for "county superintendent of public instruction". Amendment effective March 12, 1997.

1993 Amendment: Chapter 633 deleted former (1) that read: "(1) The superintendent of public instruction shall apportion the state equalization aid available for support of the foundation program, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:

(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all counties.

(b) Determine the percentage that the total funds available in each county in support of the foundation programs in the county (excluding state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all districts of the county.

(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) are not entitled to an apportionment of the state equalization aid in support of the foundation program.

(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total money available to all remaining counties in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all remaining counties.

(e) Each district of each remaining county is entitled to an apportionment of the state equalization aid in support of the foundation program equal to the difference between the percentage determined in subsection (1)(d) and the percentage determined for the county in subsection (1)(b) multiplied by the foundation program amount for the district"; in (1) (a)

substituted "monthly report of the payment of BASE aid" for "report of the apportionments of state equalization aid", before "program" substituted "BASE funding" for "foundation", and after "county" deleted "and the state equalization aid in support of the foundation program must be apportioned to the districts in accordance with the report"; in (1)(c) substituted "subsection (1)(b)" for "subsection (2)(b)"; in (2)(a), before "aid", substituted "BASE" for "foundation program and guaranteed tax base" and substituted "20-9-212(8)" for "20-9-212(9)"; in (2)(b), at end, substituted "BASE aid" for "state and county equalization aid"; inserted (3) requiring Superintendent to distribute special education allowable cost payments and payment reports; and made minor changes in style. Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, inserted (2)(b) concerning state advance of basic county tax and basic special tax; inserted (2)(c) concerning adoption of rules; and inserted (3) concerning adjustment to schedule prescribed in 20-9-344. Amendment effective July 24, 1992.

1992 Statement of Intent: The statement of intent attached to Ch. 6, Sp. L. July 1992, provided: "A statement of intent is required for this bill because the superintendent of public instruction is granted rulemaking authority in 20-9-347(2) to adopt rules with regard to state advances to support the county equalization collections for foundation program [renamed 1993] funding under 20-9-331 and 20-9-333. The procedure is intended to ensure that the county equalization revenue is fully realized by school districts in a timely manner, regardless of delinquent or protested taxes. It is anticipated that the county superintendent of schools will continue to calculate and report to the school districts the revenue generated in support of elementary and high school county equalization for foundation program [renamed 1993] funding."

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1989 Special Session Amendment: Throughout section, after "state equalization aid", inserted "in support of the foundation program"; near middle of (1), after "aid", inserted "available for support of the foundation program"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

Collateral References

Schools and School Districts *key* 19.

78 C.J.S. Schools and School Districts §21.

Legislative Responses to Remaining School Funding Equity Issues, Interim Report, Mont. Leg. Council (1992).

Moving Toward School Funding Equity: Implementation of HB 28, Interim Report, Mont. Leg. Council (1990).

Montana School Finance, Interim Report, Mont. Leg. Council (1982).

Summary of House Bill 667, Office of Public Instruction (1993).

20-9-348. Estimation of state equalization aid for budget purposes.

Compiler's Comments

1985 Amendment: Near beginning of first sentence substituted "second source of revenue" for "third source of revenue", near end of first sentence, before "the high school district foundation program (renamed 1993)", deleted "it shall be the second source of revenue in calculating the financing of", near middle of second sentence, after "general fund budget revenues", substituted "the county superintendent shall consider that the" for "the superintendent of public instruction shall annually estimate a uniform percentage of each district's foundation program which", and at end of section inserted "100% of the foundation program (renamed 1993)" and deleted last sentence of former (1) and all of former (2) that read: "Such estimate shall be called the "state

equalization level" and shall be based on the best available data and calculated according to the allocation procedure provided in 20-9-347.

(2) The superintendent of public instruction shall notify each county superintendent of the state equalization level estimate by July 1. The county superintendent shall use such estimated state equalization level in establishing the budget estimate of the financing available for each district's foundation program for the ensuing school fiscal year."

20-9-351. Funding of deficiency in BASE aid.

Compiler's Comments

1993 Amendment: Chapter 633 near beginning, before "aid", substituted "BASE" for "state equalization", before "guaranteed" deleted "foundation program schedule support determined in 20-9-348 and the", near middle, after "20-9-369", inserted "and BASE aid support determined under 20-9-347", and near end, after "funding of", substituted "BASE aid for the elementary and high school districts" for "guaranteed tax base aid and the foundation programs of the elementary or secondary schools, or both". Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 5, Sp. L. July 1992, near beginning, after "aid", inserted "is not the result of a reduction in spending under 17-7-140 and". Amendment effective July 24, 1992.

1989 Special Session Amendment: At beginning substituted "If the money available for state equalization aid is not sufficient to provide the foundation program schedule support determined in 20-9-348 and the guaranteed tax base aid required under 20-9-366 through 20-9-369" for "If the foundation program level made under the provisions of 20-9-348 is less than 100%, it shall be the duty of"; near end, after "funding of", inserted "guaranteed tax base aid and"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1985 Amendments: Chapter 15 after "under the provisions of 20-9-348 is less than 100%" deleted "or if the permissive funding level made under the provisions of 20-9-352 [repealed effective July 1, 1990—sec. 94, Ch. 11, Sp. L. June 1989] is less than 100%"; and after "funding of the foundation programs" deleted "prescribed under 20-9-348 and of the permissive programs prescribed under 20-9-352 [20-9-352 repealed effective July 1, 1990—sec. 94, Ch. 11, Sp. L. June 1989]".

Chapter 299 at beginning of section substituted "foundation program" for "estimated state equalization".

1981 Amendments: Chapter 317 substituted the duty of the Superintendent of Public Instruction to seek a supplemental appropriation for the former duty of the Director of the Department of Revenue to levy additional taxes separately for elementary and high school districts; deleted former (2) through (5) relating to apportionment of proceeds of mill levies. For former text see sec. 4, Ch. 355, L. 1973.

Chapter 540 inserted "or if the permissive level made under the provisions of 20-9-352 [repealed effective July 1, 1990—sec. 94, Ch. 11, Sp. L. June 1989] is less than 100%"; deleted provision that required the Department of Revenue to levy additional taxes "separately for the elementary districts and the high school districts" in the middle of the section; and inserted "prescribed under 20-9-348 and of permissive programs as prescribed under 20-9-352 [20-9-352 repealed effective July 1, 1990—sec. 94, Ch. 11, Sp. L. June 1989]" after "foundation programs" near the end of the section.

Composite Section — 1981 Amendment Not Codified: Chapter 540 added "and shall deposit such proceeds in the earmarked revenue account established under 20-9-343" at the end of the first sentence of (2); substituted "the excess may be retained in the state equalization aid account" for "the excess may be transferred to the state equalization aid account" at the end of (3); substituted "in calculating the financing of the foundation and permissive programs for elementary and high school districts" for "in calculating the financing of the elementary district foundation program and the high school district foundation program" at the end of (4); and substituted "the elementary district and the high school district programs" for "the elementary district foundation programs and the high school district foundation programs" near the end of (5). These amendments to those former subsections deleted by Ch. 317, L. 1981, have not been codified by the Code Commissioner as the deletion of subsections (2) through (5) is in the nature of a repeal and cannot be amended. See 1-2-204.

20-9-353. Additional financing for general fund — election for authorization to impose.

Compiler's Comments

2005 Amendment: Chapter 462 in (3) in first sentence at beginning inserted exception clause; inserted (8) authorizing district trustees to permissively levy the same over-BASE property tax

revenue as levied in the previous year; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

Effective Date — Retroactive Applicability: Section 24(6), Ch. 462, L. 2005, provided: "(6) [Section 16] [20-9-353] is effective on passage and approval [approved April 28, 2005] and applies retroactively, within the meaning of 1-2-109, to the preparation of school budgets for the 2006 school fiscal year."

2001 Amendment: Chapter 495 in (2) in first sentence at end inserted "as provided in 15-10-425", in fourth sentence at end inserted "and must conform to the requirements of 15-10-425", and in fifth sentence substituted "conform to the requirements of 15-10-425" for "state the amount of the estimated increase in local property taxes and the estimated impact on the over-BASE mills needed to fund the general fund budget" and at end deleted "The ballot must be in the following format:

PROPOSITION

The district levied (state the total amount of local property taxes levied in support of the district's prior year's over-BASE general fund budget) dollars and (state the total number of mills levied in support of the district's prior year's over-BASE general fund budget) mills to support the previous year's over-BASE general fund budget. If this proposition is approved, the local property taxes to support the district's proposed over-BASE general fund budget will increase by (state the additional local property taxes) dollars. The mills will (increase or decrease as applicable) by (insert the number of mills) mills.

Shall the district be authorized to increase the local property taxes by (insert the amount), which will (increase or decrease as applicable) the local mills by approximately (insert the number of mills) mills?

[ ] FOR the additional levy.

[ ] AGAINST the additional levy." Amendment effective October 1, 2001.

1999 Amendment — Coordination Instruction: Section 10(2), Ch. 514, L. 1999, a coordination instruction, deleted former (1)(a) that read: "(a) a budget amount up to the BASE budget amount for the district general fund that is within the limitations and required budget increases provided in 20-9-308(2)"; in (1)(a) substituted "20-9-308(2)" for "20-9-308(3)"; in (1)(b) substituted "20-9-308(3)" for "20-9-308(4)"; inserted first two sentences in (2) requiring that except for increase in state funding of basic or per-ANB entitlements by legislature, any increase in local property taxes for district proposing adoption of over-BASE budget is to be submitted to electors, in third sentence substituted "voted amount" for "the additional amount of general fund financing", at beginning of fourth sentence after "The" deleted "special", in fifth sentence after "of" substituted "the estimated increase in local property taxes and the estimated impact on the over-BASE mills needed to fund the general fund budget" for "money to be financed, the approximate number of mills required to raise all or a portion of the money, and the purpose for which the money will be expended", in first paragraph after "PROPOSITION" inserted two sentences requiring ballot language to state local property tax amount and number of mills to support budget and requiring statement concerning local property tax dollar increase and increase or decrease in number of mills if approved, in second paragraph after "PROPOSITION" after "authorized to" substituted language regarding local property tax increase and increase or decrease in number of mills for "expend the sum of (state the additional amount to be expended), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional financing is made)", and after "FOR" and "AGAINST" substituted "the additional levy" for "budget authority and any levy"; inserted (3) requiring trustees proposing adoption of general fund budget amount exceeding maximum general fund budget to submit proposition to finance to electors and providing requirements for election and ballot language; in first sentence in (4) after "financing" inserted "or budget authority" and in second sentence before "election" deleted "special" and after "20-9-141" deleted "to raise the amount of the additional levy"; in (5) and (7) substituted "20-9-308(3)" for "20-9-308(4)"; in (6) before "election" deleted "special"; in (7) after "finance an" deleted "increased amount up to the BASE budget amount, as provided in 20-9-308(2)(b), and increased"; and made minor changes in style. Amendment effective July 1, 1999.

The amendment to this section made by Ch. 359, L. 1999, was rendered void by sec. 10(2), Ch. 514, L. 1999, a coordination instruction.

The amendment to this section made by Ch. 514, L. 1999, was rendered void by sec. 10(2), Ch. 514, L. 1999, a coordination instruction.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

1997 Amendment: Chapter 211 in (3), near end of first sentence, substituted "final" for "preliminary". Amendment effective April 7, 1997.

1995 Amendment: Chapter 266 in (1), at beginning, deleted "Except as limited by 20-9-308"; inserted (1)(a) and (1)(b) regarding budget amounts up to BASE and over-BASE amount; in (1)(c), after "budget", inserted "amount" and at end inserted reference to 20-9-308(4); in (2), at beginning of first sentence, deleted "Except as provided in 20-9-308(4)(b)", after "general fund budget" deleted "that is in excess of the maximum general fund budget amount", and after "finance the" substituted "additional" for "excess" and in ballot question, in parenthetical, inserted "additional"; in (4) substituted reference to budget amount allowed by 20-9-308(4) for "under the provisions of this section"; in (5) inserted "All levies adopted under this section"; in (6), before "BASE", inserted "an increased amount up to the", before "over-BASE" inserted "increased", substituted "20-9-308(3)(a)" for "20-9-308(3)(b)", and inserted "or an amount in excess of the maximum general fund budget amount for the district as allowed by 20-9-308(4)"; and made minor changes in style. Amendment effective July 1, 1995.

Effective Date — Applicability: Section 2, Ch. 266, L. 1995, provided: "[This act] is effective July 1, 1995, and applies to school district general fund budgets for the school fiscal year beginning July 1, 1996."

1993 Amendment: Chapter 633 in (1) substituted "20-9-308" for "20-9-315(2)", near end substituted "maximum general fund budget" for "foundation program and the permissive", and after "district" deleted "for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district; or

(e) severance pay for district employees"; in (2), in first sentence at beginning, inserted exception clause, substituted "maximum general fund budget" for "statutory schedule amount and the permissive", near middle, before "the excess", substituted "to finance" for "of an additional levy to raise", and at end, after "proposition", deleted "except that an election is not required to permit the school trustees to use any funds available to finance the additional amount other than those funds to be raised by the additional levy" in third sentence substituted "financed" for "raised by additional property taxation" and after "raise" inserted "all or a portion of", and in ballot, after "Shall", substituted "the district be authorized" for "a levy be made in addition to the levies authorized by law in the number of mills as may be necessary", before "the sum of" substituted "expend" for "raise", after "amount to be" substituted "expended" for "raised by additional tax levy", after "additional" substituted "financing" for "tax levy", and after "FOR" and after "AGAINST" substituted "budget authority and any" for "the"; in (3), near beginning after "additional", substituted "financing" for "levy"; inserted (5) relating to compliance by trustees; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), in introductory clause after "program", inserted "and the permissive amount"; in (2), in first sentence after "schedule amount", inserted "and the permissive amount"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: At beginning inserted exception clause; near middle of (1) substituted "foundation program for the district" for "general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321"; inserted (1)(e) relating to severance pay; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendment: At end of (2), in two places in ballot form language, deleted "additional" before "levy".

1985 Amendment: In (2) near end of first sentence, after "to use", substituted "any funds available to finance the additional amount other than those funds to be raised by the additional levy" for "federal funds received under Title I of Public Law 81-874 to increase the school district's general fund budget as established in 20-9-316 through 20-9-321 by the amount of these funds"; and in third sentence inserted "only" after "state".

1981 Amendment: Deleted former subsection (2) that read: "(2) However, when the trustees adopt a total general fund budget which exceeds 110% of the general fund budget for the preceding year, they shall file a notice of this increase with the superintendent of public instruction, setting forth the specific reasons for increasing the budget."; deleted "Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year." from the end of (4).

Administrative Rules

Title 10, chapter 23, subchapter 1, ARM Permissive and voted amounts — levies.

Case Notes

No Application to Parochial Schools: School board adopting resolution calling for special tax levy for expending funds for employment of teachers to teach secular subjects in parochial school violated former statutes dealing with special levies since statutes pertained to public schools only. State ex rel. Chambers v. School District, 155 M 422, 472 P2d 1013 (1970).

Attorney General's Opinions

Federal Funds to Be Applied to Permissive Levy:

No statutory changes since the issuance of 38 A.G. Op. 97 (1980), have affected the basis that under state law, a school district may deposit Pub. L. No. 81-874 money into any operating budget. However, the conclusion that if that money is allocated to the general fund budget, it must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. 240(d)(2)(i) as a state that may consider that money in determining the amount of state aid available to a school district. 44 A.G. Op. 41 (1992).

Federal funds received under P.L. 81-874, intended to relieve increased tax burdens due to federal installations or activity, may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount. (See 1985 amendment.) 38 A.G. Op. 97 (1980).

Electorate Approval Not Required: Due to statutory changes in 20-9-353, 28 A.G. Op. 58 (1960) is modified to delete the requirement of electorate approval for the use of P.L. 81-874 funds in excess of the amount that a 15-mill levy would produce. (See 1985 amendment.) 38 A.G. Op. 97 (1980).

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

Collateral References

Schools and School Districts *key* 103(2), 108(1).

78 C.J.S. Schools and School Districts §§379, 408.

20-9-360. State equalization aid levy.

Compiler's Comments

2005 Amendment: Chapter 542 near end of first sentence substituted "61-3-321(2) or (3)" for "23-2-517, 23-2-803, 61-3-521" and before "61-3-562" deleted "61-3-560 through". Amendment effective January 1, 2006.

2001 Amendment: Chapter 257 in second sentence substituted "department of revenue, as provided in 15-1-504" for "state treasurer". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

2000 Amendment by Referendum: Chapter 515, L. 1999, deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendment: Chapter 584 at beginning inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 422 at beginning of last sentence deleted "Except as provided in subsection (2)"; deleted (2) that read: "(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, the state treasurer shall distribute each fiscal year from the state equalization aid levy to the municipality the amount, if any, equal to the product of the

incremental taxable value of the urban renewal area times the reduced school levy for the area, each calculated for the fiscal year. The reduced school levy for a fiscal year is the difference between the aggregate amount of all property tax levies for school purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school purposes in the area or the district, expressed in mills, in the fiscal year, including the state equalization aid levy. The state treasurer shall distribute the amounts to municipalities in two equal installments on December 31 and June 30 of the fiscal year"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 496 in (1), in first sentence after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 509 in (1) substituted "state general fund" for "state special revenue fund". Amendment effective July 1, 1995.

Chapter 580 in (1) inserted reference to 61-3-527. Amendment effective January 1, 1996.

1991 Amendment: In (1), in first sentence after "imposed", inserted "by the county commissioners of each county"; and in (2), in first sentence after "1990", deleted "each year" and after "distribute" substituted present language regarding distribution of the state equalization aid levy for former language that read: "to the county an amount of the state equalization levy equal to the tax increment derived by the municipality for the fiscal year ending June 30, 1989, from the levy for property taxes for school district purposes against property within the urban renewal district, less the amount of tax increment actually received by the municipality in each year as a result of the imposition of mill levies for school district purposes". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Effective Date — Retroactive Applicability: Sections 98 and 99, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990, and applies retroactively to all taxable years beginning after December 31, 1989.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

20-9-361. County equalization revenue.

Compiler's Comments

1997 Amendment: Chapter 422 deleted (2) that read: "(2) Revenue received from the state equalization aid levy for a municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, is statutorily appropriated, as provided in 17-7-502, to be distributed as provided in 20-9-360(2)"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 509 in (1), after "20-9-333", deleted "and 20-9-343", after "is" deleted "statutorily appropriated, as provided in 17-7-502, to:

(1) the superintendent of public instruction", and before "aid" deleted "and state equalization"; in (2), at beginning, inserted language concerning revenue received for a municipality that created an urban renewal area with tax increment financing prior to July 1, 1990, and before "as" substituted "be distributed" for "counties"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In (1), after "schools", substituted "for the purposes of 20-9-343(1)(a)" for "as provided by law". Amendment effective July 1, 1991, and terminates June 30, 1993.

Termination: Section 5, Ch. 729, L. 1991, provided: "[This act] terminates June 30, 1993."

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-366. Definitions.

Compiler's Comments

2005 Amendment: Chapter 462 in definition of district guaranteed tax base ratio at end inserted "and the state special education allowable cost payment"; and in definition of facility guaranteed mill value per ANB at end after "total" substituted "state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts" for "ANB amount used to calculate the school districts' current year total per-ANB entitlement". Amendment effective April 28, 2005.

2003 Amendment: Chapter 550 at beginning substituted "20-9-371" for "20-9-369"; inserted definition of facility guaranteed mill value per ANB; and in definition of statewide mill value per elementary ANB at beginning after "school" deleted "facility entitlement and". Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1999 Amendment: Chapter 211 in definition of district guaranteed tax base ratio in (a) at end substituted "BASE budget amount less direct state aid" for "direct state aid and 40% of the special education allowable cost payment"; and in definition of statewide elementary guaranteed tax base ratio in (a) at end substituted "BASE budget amounts less total direct state aid" for "total direct state aid and 40% of special education allowable cost amounts". Amendment effective July 1, 2000.

Applicability: Section 9(2), Ch. 211, L. 1999, provided that the amendment to this section applies to school budgets for school fiscal years beginning on or after July 1, 2000.

1993 Amendment: Chapter 633 in definitions of county retirement mill value per elementary ANB, district mill value per ANB, and statewide mill value per elementary ANB, after "year", substituted "total per-ANB entitlement" for "foundation program"; inserted definition of district guaranteed tax base ratio; in definition of district mill value per ANB, after defined term, inserted "for school facility entitlement purposes"; deleted definition of permissive amount that read: ""Permissive amount" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 35% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353"; in definition of statewide mill value per elementary ANB, near beginning before "and retirement", substituted "school facility entitlement" for "permissive"; and inserted definition of statewide elementary guaranteed tax base ratio. Amendment effective July 1, 1993.

1991 Amendments: Chapter 711 changed defined term to county retirement mill value per elementary ANB or county retirement mill value per high school ANB from county mill value per elementary ANB or county mill value per high school ANB; and in definition of statewide mill value per elementary ANB or statewide mill value per high school ANB inserted "for permissive and retirement guaranteed tax base purposes". Amendment effective July 1, 1991.

Chapter 790 in definitions of county mill value per elementary ANB and district mill value per ANB, near beginning of first sentence before "taxable valuation", deleted "current", inserted reference to previous year, deleted "plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds", and deleted last sentence that read: "The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000"; substituted definition of permissive amount for definition of guaranteed overschedule general fund budget and changed "135%" to "35%"; and substituted present definition of statewide mill value per elementary or high school ANB for former definition (see 1989 MCA for text). Amendment effective May 17, 1991.

Coordination Instruction — Amendment Void: Section 58, Ch. 767, L. 1991, provided: "If House Bill No. 580 is passed and approved and if it contains a section amending 20-9-366, then the amendments to 20-9-366 in [this act] [section 31, Ch. 767, L. 1991] are void." House Bill No. 580 was approved May 17, 1991, as Ch. 790, L. 1991, and included an amendment to 20-9-366. Therefore, the amendments to 20-9-366 contained in sec. 31, Ch. 767, L. 1991, are void.

Transition Period for School Year Beginning July 1, 1991: Section 3, Ch. 790, L. 1991, provided: "The superintendent of public instruction shall, for the purposes of the definitions contained in 20-9-366 and for performing the duties required in 20-9-369, use for the school fiscal year beginning July 1, 1991, the taxable value of all property for calendar year 1990 reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305, which taxable value the department of revenue has provided to the superintendent of public instruction." Subsection (1) of sec. 7, Ch. 790, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the taxable year beginning after December 31, 1990. Section 8, Ch. 790, L. 1991, provided that this section terminates December 1, 1991. Section 9, Ch. 790, L. 1991, provided that this section is effective on passage and approval. Approved May 17, 1991.

Applicability: Subsection (2) of sec. 7, Ch. 790, L. 1991, provided: "(2) Except as provided in subsection (1), [this act] applies to school fiscal years beginning after June 30, 1991."

1990 Special Session Amendment: In definitions of county mill value per elementary ANB, district mill value per ANB, and statewide mill value per elementary ANB inserted provision for including the taxable value of oil and gas net proceeds and coal gross proceeds, moved the division formula from the end to the middle of the definitions, substituted "nonlevy" for "nontax", and inserted the provision for including revenue received from the net proceeds taxation of oil and natural gas in 1991 and including in 1992 and thereafter the local government severance tax; and made minor changes in phraseology. Amendment effective June 19, 1990.

Severability: Section 6, Ch. 3, Sp. L. May 1990, was a severability clause.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-367. Eligibility to receive guaranteed tax base aid or state advance or reimbursement for school facilities.

Compiler's Comments

2000 Amendment: (Version effective July 1, 2000) Chapter 11 in (1) in two places substituted "35.3%" for "38.2%" in the figures for basic entitlement and total per-ANB entitlement. Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendment: (Temporary version) Chapter 211 in (1) in two places substituted "38.9%" for "40%" in the figures for basic entitlement and total per-ANB entitlement. Amendment effective July 1, 1999, and terminates June 30, 2000.

(Version effective July 1, 2000) In (1) in two places substituted "38.2%" for "40%" in the figures for basic entitlement and total per-ANB entitlement.

Applicability: Section 9, Ch. 211, L. 1999, provided in subsection (1) that the temporary version of this section applies to school budgets for the school fiscal year beginning July 1, 1999, and provided in subsection (2) that the amendment to this section that takes effect July 1, 2000, applies to school budgets for school fiscal years beginning on or after that date.

1995 Amendment: Chapter 586 in (3), near end after "receive", substituted "a state advance or reimbursement for school facilities" for "guaranteed tax base aid based on the number of mills levied". Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 in (1), near beginning, substituted "guaranteed tax base ratio" for "mill value per ANB", near middle, after "statewide", substituted "elementary or high school guaranteed tax base ratio" for "district mill value per elementary ANB or high school ANB", and near end, before "general fund", substituted "up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the" for "its permissive amount of the"; in (2), after "statewide", deleted "county"; inserted (3) relating to district qualification for guaranteed tax base aid for debt service; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 711 in (2), after "county", inserted "retirement" and before "high school" inserted "county retirement mill value per". Amendment effective July 1, 1991.

Chapter 767 in (1), after "statewide", inserted "district", after "per" inserted "elementary ANB or high school", and before "permissive" deleted "guaranteed overschedule"; in (2), after "statewide", inserted "county" and after "per" inserted "elementary ANB or high school". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-368. Amount of guaranteed tax base aid.

Compiler's Comments

2000 Amendment: (Version effective July 1, 2000) Chapter 11 in (3) in two places substituted "35.3%" for "38.2%" in the figures for basic entitlement and total per-ANB entitlement. Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendment: (Temporary version) Chapter 211 in (3) in two places substituted "38.9%" for "40%" in the figures for basic entitlement and total per-ANB entitlement. Amendment effective July 1, 1999, and terminates June 30, 2000.

(Version effective July 1, 2000) In (3) in two places substituted "38.2%" for "40%" in the figures for basic entitlement and total per-ANB entitlement; and in (3)(a) substituted "BASE budget amount less direct state aid" for "direct state aid and 40% of the special education allowable cost payment".

Applicability: Section 9, Ch. 211, L. 1999, provided in subsection (1) that the temporary version of this section applies to school budgets for the school fiscal year beginning July 1, 1999, and provided in subsection (2) that the amendment to this section that takes effect July 1, 2000, applies to school budgets for school fiscal years beginning on or after that date.

1993 Amendment: Chapter 633 in (1) and (2), before "mill", deleted "county"; in (3), near beginning after "aid", deleted "per-ANB", after "support of" substituted "up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted within the" for "its permissive amount of the", after "budget" inserted "and up to 40% of the special education payment", and after "is" substituted language in (a) through (c) relating to calculation of guaranteed tax base aid for former language that read: "the difference between the district mill value per ANB and the corresponding statewide district mill value per ANB, multiplied by the number of mills levied in support of the district's permissive amount of the general fund budget"; in (4) deleted former second sentence that read: "If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 711 near end of (1) and (2), after "budgets", substituted "for" for "of". Amendment effective July 1, 1991.

Chapter 767 in (1) and (2), after "statewide", inserted "county"; and in (3), near beginning before "permissive", deleted "guaranteed overschedule", after "statewide" inserted "district", and near end, after "district's", deleted "guaranteed overschedule". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-369. Duties of superintendent of public instruction and department of revenue.

Compiler's Comments

1995 Amendment: Chapter 586 in (1)(b), near end after "aid", inserted "and state advance and reimbursement for school facilities"; and in (4), at beginning, deleted "For the purposes of implementing 20-9-366 through 20-9-368 and this section for the school fiscal year beginning

July 1, 1993, the superintendent of public instruction shall estimate the direct state aid for a district for the school fiscal year beginning July 1, 1993, in order to calculate the district and statewide guaranteed tax base ratios for that school fiscal year. For succeeding school fiscal years". Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 in (1)(a), in two places, substituted "guaranteed tax base ratios" for "county mill values per ANB" and after "preliminary statewide" inserted "and district"; inserted (1)(b) requiring Superintendent to provide District and County Superintendent preliminary and final statewide, county, and district mill values per ANB to calculate guaranteed tax base aid; inserted (4) requiring Superintendent to estimate direct state aid for the school fiscal year beginning July 1, 1993, to calculate guaranteed tax base ratios and to use prior year's state aid payment for succeeding years; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1)(a) substituted "March 1" for "June 15" and "May 1" for "July 15"; and in (3) substituted "December" for "June", after "each year" deleted "a preliminary determination of the taxable value of property within each school district and county of the state and shall provide by July 1 of each year", and at end deleted "values" and inserted language referring to values in each district and county as reported to Department of Revenue based on information delivered to Clerk and Recorder under 15-10-305. Amendment effective May 17, 1991.

Applicability: Subsection (2) of sec. 7, Ch. 790, L. 1991, provided: "(2) Except as provided in subsection (1), [this act] applies to school fiscal years beginning after June 30, 1991."

Transition Period for School Year Beginning July 1, 1991: Section 3, Ch. 790, L. 1991, provided: "The superintendent of public instruction shall, for the purposes of the definitions contained in 20-9-366 and for performing the duties required in 20-9-369, use for the school fiscal year beginning July 1, 1991, the taxable value of all property for calendar year 1990 reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305, which taxable value the department of revenue has provided to the superintendent of public instruction." Subsection (1) of sec. 7, Ch. 790, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the taxable year beginning after December 31, 1990. Section 8, Ch. 790, L. 1991, provided that this section terminates December 1, 1991. Section 9, Ch. 790, L. 1991, provided that this section is effective on passage and approval. Approved May 17, 1991.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-370. Definitions.

Compiler's Comments

2003 Amendment: Chapter 550 in definition of school facility entitlement in (a) increased amount from $220 to $300, in (b) increased amount from $330 to $450, and in (c) increased amount from $270 to $370; and in definition of state reimbursement for school facilities in (a) substituted "mill value per ANB that is less than the corresponding facility guaranteed mill value per ANB" for "mill value per elementary ANB that is less than the corresponding statewide mill value per elementary ANB or a district mill value per high school ANB that is less than the corresponding statewide mill value per high school ANB" and in (b) at end deleted "for which the original issue was sold after July 1, 1991". Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1995 Amendments: Chapter 18 deleted (2)(b)(i) that read: "(i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991"; and made minor changes in style.

Chapter 586 inserted definition of state advance for school facilities; and substituted definition of state reimbursement for school facilities for former definition that read: ""State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) is eligible for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369; and

(b) (i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991;

(ii) for the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, has outstanding bonded indebtedness on bonds sold in [and payable from] the debt service fund of the district in any year." Amendment effective July 1, 1995.

Code Commissioner Comment: In (2)(b)(ii), after "sold in", the Code Commissioner inserted "[and payable from]" to clarify legislative intent regarding definition of state reimbursement for school facilities.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-371. Calculation and uses of school facility entitlement amount.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 492 in (1) near end, (2)(b) near end, and (4) in first sentence near middle and in second sentence near end before "bonds" inserted "general obligation". Amendment effective April 24, 2003.

Chapter 550 in (1) in formula substituted "facility guaranteed" for "statewide"; and in (4) at end of first sentence after "debt service fund of the district" deleted "after July 1, 1991". Amendment effective July 1, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1995 Amendment: Chapter 586 at end of (1) substituted "20-9-370(3)" for "20-9-370(2)(b)(i) or (2)(b)(ii)"; inserted (2) concerning calculation of state advance for school facilities; inserted (3) concerning distribution of state advance for school facilities; at beginning of first sentence of (4) deleted "For the school fiscal years beginning July 1, 1993, and July 1, 1994" and after "requirement" inserted "in the ensuing school fiscal year" and inserted second sentence concerning application for state advance for school facilities; and deleted former (3) that read: "(3) For the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, the trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement of all bonded indebtedness in the district debt service fund." Amendment effective July 1, 1995.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

Part 4
School Bonds

20-9-401. Applicable laws for school district bonding.

Case Notes

Public Works Law Not Special Legislation: Former section dealing with undertaking of public works program by trustees was not unconstitutional as a deprivation of due process or a special law. Lorang v. High School District, 126 M 204, 247 P2d 477 (1952).

Apportioned Total Debt Not to Exceed Limitations: Chapter 275, L. 1947 (sections 75-4601 through 75-4606, R.C.M. 1947, now repealed), was unconstitutional as decided in the Rankin case only insofar as it purported to authorize the high school district to incur indebtedness to the full amount permitted by the state constitution irrespective of the debts of the common school districts comprising the high school district. Such high school districts had the authority to issue bonds and incur indebtedness so long as such indebtedness, when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part added to the existing indebtedness of the common school districts respectively, did not bring the debt of any of the latter in excess of the limit prescribed by Art. XIII, sec. 6, 1889 Mont. Const. Wright v. Browning High School District, 125 M 495, 240 P2d 862 (1952).

High School Districts' Public Works Program Subject to Debt Limitation: Chapter 275, L. 1947 (sections 75-4601 through 75-4606, R.C.M. 1947, now repealed), was held unconstitutional as contravening Art. XIII, sec. 6, 1889 Mont. Const., because it was merely an attempt to expand the constitutional limit of indebtedness by pyramiding another tax unit upon the identical property and taxpayers of a school district. Rankin v. Love, 125 M 184, 232 P2d 998 (1951). This case expressly overrules House v. School District, 120 M 319, 184 P2d 285 (1947).

Loans to Repay Void Bonds Held Constitutional: The act of February 18, 1895, authorizing repayment of loans advanced to trustees in reliance upon bonds subsequently declared void, was constitutional. State ex rel. NW. Nat'l Bank v. Dickerman, 16 M 278, 40 P 698 (1895).

20-9-402. Definition of school district for bonding purposes.

Compiler's Comments

1997 Amendment: Chapter 219 near end, after "high school district", inserted "county high school district" and after "community college district" deleted former exception that read: "except the following types of high schools recognized as high school districts without a bonding authority in 20-6-101:

(1) high schools operated by an elementary district in a county that has not been divided into high school districts; or

(2) county high schools located in a county that has not been divided into high school districts by the county high school boundary commission"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-9-403. Bond issues for certain purposes.

Compiler's Comments

2003 Amendment: Chapter 492 in (1) in introductory clause substituted "general obligation bonds or impact aid bonds" for "bonds on the credit"; inserted (1)(f) concerning funding a debt service reserve account; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1989 Amendment: In (1)(e) inserted "including the repayment of tax protests lost by the district". Amendment effective March 21, 1989.

Effective Date — Retroactive Applicability: Section 14, Ch. 213, L. 1989, provided: "[This act] is effective on passage and approval [approved March 21, 1989] and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983."

1987 Amendment: In (1)(a), at end, deleted "including postsecondary vocational-technical centers in the school district".

Case Notes

Construction of Combined Grade School and High School: Board of trustees of high school district and common school district included therein had authority, under former statute, to build grade school and high school in one unit sharing common facilities and to issue bonds therefor. Long v. School District, 149 M 220, 425 P2d 822 (1967).

Gymnasium Construction Authorized: Under former statute, where a district had voted a bond issue for the construction of an outdoor high school gymnasium and athletic field, the board having provided for athletic training, a place for giving proper instruction therein, whether within or outside of a building, became a necessary part of the school plant and the board of trustees was authorized to issue bonds for its construction. McNair v. School District, 87 M 423, 288 P 188, 69 ALR 866 (1930).

Collateral References

Schools and School Districts *key* 97(1).

78 C.J.S. Schools and School Districts §§359, 360.

64 Am. Jur. 2d Public Securities and Obligations §§50, 54, 64, 78, 92, 93, 100, 116, 117.

Rescission of vote authorizing school district or other municipal bond issue. 68 ALR 2d 1041.

Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes. 124 ALR 883.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein. 119 ALR 190.

20-9-404. Contracts and bonds for joint construction.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 166 in (1) near middle after "adjoining county" inserted "with the governing body of another political subdivision within the county in which the school district is located, or with the governing body of a political subdivision of a county adjoining the school district"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 584 inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Applicability: Section 3, Ch. 166, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act]."

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 397 in first sentence, after "for the joint construction of", substituted "a facility" for "vocational-technical secondary schools"; and made minor changes in style.

Applicability: Section 4, Ch. 397, L. 1997, provided: "[This act] applies to contracts entered into after [the effective date of this act]." Effective October 1, 1997.

20-9-405. Proportional joint ownership — disposition of money.

Compiler's Comments

1999 Amendment: Chapter 166 in first sentence near middle after "school districts" inserted "or other political subdivisions" and at end substituted "political subdivision" for "district". Amendment effective July 1, 1999.

Applicability: Section 3, Ch. 166, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act]."

1997 Amendment: Chapter 397 in first and third sentences substituted "facility" for "vocational-technical secondary school" and in second sentence substituted "facility" for "school"; and made minor changes in style.

Applicability: Section 4, Ch. 397, L. 1997, provided: "[This act] applies to contracts entered into after [the effective date of this act]." Effective October 1, 1997.

20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment.

Compiler's Comments

2005 Amendment: Chapter 462 in (1)(a) near middle, (1)(b) near middle, and (1)(d)(i) in first sentence near middle after "registered warrants" inserted "outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district"; in (1)(d)(i) in first sentence near beginning after "than the" substituted "facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366" for "corresponding statewide mill value per elementary ANB or per high school ANB" and near end and in second sentence in two places before "mill value" substituted "facility guaranteed" for "statewide"; and made minor changes in style. Amendment effective April 28, 2005.

2003 Amendment: Chapter 492 throughout (1) and (2) before "bonds" inserted "general obligation"; inserted (3) relating to the maximum amount of impact aid revenue bonds that may be issued and the maximum average annual principal and interest payment at the time of issuance of the bonds; inserted (6) defining federal impact aid basic support payment; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

2001 Amendment: Chapter 10 near end of (1)(a) substituted "last assessment" for "last-completed assessment" and at end deleted "plus"; deleted subsections (1)(a)(i) through (1)(a)(vii) that read: "(i) (A) for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, multiplied by 45%; and

(B) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the district for tax year 1999, multiplied by 45%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 45%;

(ii) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(iii) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(iv) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(v) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the district for tax year 1999, in each case of class six property, multiplied by 45%, and an additional 77% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(vi) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 45%; and

(vii) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 45%"; in (1)(b) near end substituted "last assessment" for "last-completed assessment" and at end deleted "plus"; deleted subsections (1)(b)(i) through (1)(b)(vii) that read: "(i) (A) for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, multiplied by 90%; and

(B) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the district for tax year 1999, multiplied by 90%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 90%;

(ii) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(iii) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(iv) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(v) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the district for tax year 1999, in each case of class six property, multiplied by 90%, and an additional 77% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(vi) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 90%; and

(vii) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 90%"; at end of (1)(c) deleted "adjusted as provided in this section"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 3, Ch. 10, L. 2001, provided: "[This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001."

1999 Amendments — Composite Section: (Version effective July 1, 2000) Chapter 285 in (1)(a)(i)(A) at beginning deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and" and near end after "1995" deleted "in each case of class eight property"; inserted (1)(a)(ii) relating to bonds issued during fiscal year 2001; inserted (1)(a)(iii) relating to bonds issued during fiscal year 2002; inserted (1)(a)(iv) relating to bonds issued during fiscal year 2003; inserted (1)(a)(v) relating to bonds issued during fiscal years when class eight property tax rate is 2%; inserted (1)(a)(vi) relating to bonds issued during fiscal years when class eight property tax rate is 1%; inserted (1)(a)(vii) relating to bonds issued during fiscal years after repeal of 15-6-138; at beginning of (1)(b)(i)(A) deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the

taxable value of class eight property within the district for tax year 1995, and"; inserted (1)(b)(ii) relating to bonds issued during fiscal year 2001; inserted (1)(b)(iii) relating to bonds issued during fiscal year 2002; inserted (1)(b)(iv) relating to bonds issued during fiscal year 2003; inserted (1)(b)(v) relating to bonds issued during fiscal years when class eight property tax rate is 2%; inserted (1)(b)(vi) relating to bonds issued during fiscal years when class eight property tax rate is 1%; inserted (1)(b)(vii) relating to bonds issued during fiscal years after repeal of 15-6-138; and made minor changes in style. Amendment effective July 1, 2000.

Chapter 426 at beginning of (1)(a)(i) and (1)(b)(i) in temporary version and (1)(a)(i)(A) and (1)(b)(i)(A) in July 1, 2000, version deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and"; inserted (1)(a)(ii) and (1)(b)(ii) in temporary version and (1)(a)(i)(B) and (1)(b)(i)(B) in July 1, 2000, version relating to taxable value of telecommunications property; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 556 at beginning of (1)(a)(i) in temporary version and (1)(a)(i)(A) in July 1, 2000, version deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and" and near end after "for tax year 1995" deleted "in each case of class eight property"; inserted (1)(a)(ii) in temporary version and (1)(a)(i)(B) in July 1, 2000, version regarding taxable value attributable to electrical generation property; at beginning of (1)(b)(i) in temporary version and (1)(b)(i)(A) in July 1, 2000, version deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and" and after "for tax year 1995" deleted "in each case of class eight property"; inserted (1)(b)(ii) in temporary version and (1)(b)(i)(B) in July 1, 2000, version regarding taxable value attributable to electrical generation property; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Section 37, Ch. 556, L. 1999, was a severability clause.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Section 39(2), Ch. 556, L. 1999, provided that this section applies to fiscal years beginning after June 30, 2000.

1995 Amendments: Chapter 570 in middle of (1)(a) and (1)(b), after "indebtedness", inserted language limiting bonded indebtedness for class eight property for elementary or high school district (see 1995 Session Law for text); at end of (1)(b), after "purposes", inserted "adjusted as provided in this section"; and made minor changes in style.

Chapter 586 in (1)(c)(i), near beginning after "district", substituted "with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB" for "that qualifies for guaranteed tax base aid under the provisions of 20-9-367"; inserted (1)(c)(ii) concerning agreement to include students for which district or county pays tuition; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 at beginning of (1)(a) and (1)(b) inserted exception clause; deleted (1)(a)(i) through (1)(a)(iii) that read: "(i) the taxable value of coal gross proceeds as determined for county bonding purposes in 15-23-703(2);

(ii) the taxable value of oil and gas net proceeds as determined for county bonding purposes in 15-23-607(3); and

(iii) the amount of the value of any other oil and gas production occurring after December 31, 1988, multiplied by 60%"; in (1)(b), in second sentence before "must", deleted "as represented by the issuance of bonds"; inserted (1)(c) relating to district maximum bond indebtedness; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 555 in (1)(a) substituted "an elementary district or a high school district" for "each school district"; inserted (1)(b) relating to maximum bonded indebtedness allowed for a K-12 district; at beginning of (2) substituted "maximum amounts determined in subsection (1)" for "45% maximum"; in (3) substituted "limitations" for "45% limitation"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 inserted (1)(a)(i), (1)(a)(ii), and (1)(a)(iii) to include in taxable value of property subject to taxation the taxable value of coal gross proceeds and oil and gas net proceeds and the amount of value of certain other oil and gas production; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Amendment: Near end of (1), after "district", inserted "or to bonds issued for the repayment of tax protests lost by the district". Amendment effective March 21, 1989.

Effective Date — Retroactive Applicability: Section 14, Ch. 213, L. 1989, provided: "[This act] is effective on passage and approval [approved March 21, 1989] and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983."

1981 Amendment: Increased 29% to 45% wherever it appears.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981, was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobiles and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobiles and light trucks.

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Case Notes

Overlapping Districts Subject to Property Tax Limitations: Under former statute, where a high school district was created which overlapped the common school districts, such high school district could incur indebtedness so long as such indebtedness, when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part, added to the existing indebtedness of the common school districts, did not bring the debt of any of the latter in excess of the limit prescribed by Art. XIII, sec. 6, 1889 Mont. Const. Wright v. Browning High School District, 125 M 495, 240 P2d 862 (1952), decided prior to 1958 amendment of Art. XIII, sec. 6, 1889 Mont. Const.

High School Districts Added to Existing School District: Under former statute, where a high school district was created and the effect was to divide the powers already exercised by a school district in an attempt to expand the constitutional limit of indebtedness by the pyramiding of another tax unit upon the identical property and taxpayers of the existing school district, an injunction was properly issued restraining the trustees of the district from becoming indebted to a sum greater than the then constitutional limit of 3% of the value of the taxable property, but such injunction was inoperative after date that raise of indebtedness limit to 5% became effective. Rankin v. Love, 125 M 184, 232 P2d 998 (1951), overruling House v. School District, 120 M 319, 184 P2d 285 (1947).

Issuing Less Bonds Than Authorized at Election: Under former statute, issuance of public bonds in a lesser amount than that authorized by the election does not warrant injunction against their issuance. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P2d 264 (1936).

Collateral References

Schools and School Districts *key* 97(3).

78 C.J.S. Schools and School Districts §361.

64 Am. Jur. 2d Public Securities and Obligations §§50, 54, 64.

20-9-407. Industrial facility agreement for bond issue in excess of maximum.

Compiler's Comments

1985 Amendment: In (1) substituted "45%" for "29%" in two places; and in (2) substituted "20-9-406" for "this section".

Commissioner Correction: In subsection (1), "this section" was changed to "20-9-406" by the Code Commissioner, 1979. Sections 20-9-406 and 20-9-407 were enacted as part of one section and were split during recodification. The internal reference to "this section" was overlooked and has now been corrected.

20-9-408. Definition of forms of bonds.

Compiler's Comments

2005 Amendment: Chapter 451 in definition of serial bonds near beginning after "installments" inserted "of principal", after "maturing" inserted "or subject to mandatory sinking fund redemption", after "installment" inserted "commencing with the installment payable in the fourth year after the date of issue", and near end substituted "payable" for "maturing". Amendment effective April 28, 2005.

2003 Amendment: Chapter 492 inserted definitions of general obligation bonds and impact aid revenue bonds; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 423 in (1) inserted second full sentence concerning payment on initial interest payment date and in last sentence substituted "as a result of rounding" for "resulting from disregarding fractional cents"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1989 Amendment: In (2) substituted definition of serial bonds for former language that read: ""serial bonds" means the form of bonds which are payable in annual installments and on which the amount maturing each year may not be more than three times the principal amount of the bonds maturing in the immediately preceding years." Amendment effective March 23, 1989.

Saving Clause: Section 9, Ch. 256, L. 1989, was a saving clause.

1983 Amendment: Substituted definition of serial bonds as being annual installments not to exceed three times the principal amount maturing in the previous year for former definition, which read: "'serial bonds' means the form of bonds which are payable in annual installments and on which the amount to be redeemed each year is determined by dividing the total amount of the bonds by the term of the bond issue. However, the first or the first and second installments may vary from the others to the extent resulting from fixing the amounts of each bond of the other installments at $100, at $500, or at some multiple thereof."

20-9-410. Limitation of term and interest — timing for redemption.

Compiler's Comments

2005 Amendment: Chapter 451 in (1) at beginning of second sentence inserted "Other than refunding or redeeming bonds"; and made minor changes in style. Amendment effective April 28, 2005.

1989 Amendment: Inserted (2) relating to when the term of a bond commences; and made minor changes in phraseology. Amendment effective March 23, 1989.

Saving Clause: Section 9, Ch. 256, L. 1989, was a saving clause.

1987 Amendment: In last sentence, after "interest shall", substituted "be as provided under 17-5-102" for "not exceed the limitation of 17-5-102".

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Substituted "the limitation of 17-5-102" for "7% per annum" after "exceed" in the last sentence.

Collateral References

Schools and School Districts *key* 97(6).

78 C.J.S. Schools and School Districts §371.

20-9-411. Dates of issue and payments.

Attorney General's Opinions

When School Bonds Become Binding: The act of delivery is essential to the very existence of public bonds as obligations binding on their issuers. Therefore, school bonds become binding upon taxpayers on the date the bonds are delivered, not on the date of issuance. 45 A.G. Op. 8 (1993).

Collateral References

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required by constitutional or statutory provision. 157 ALR 794.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voter. 97 ALR 442.

20-9-412. Issuance of refunding bonds without election.

Compiler's Comments

2003 Amendment: Chapter 277 in (6)(b) at beginning inserted exception clause; inserted (6)(c) allowing investment of funds if the funds initially deposited in escrow are sufficient; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendment: Chapter 423 inserted (4) concerning unrefunded portion of outstanding bond issue; inserted (5) concerning refunding bonds in amount greater than outstanding bonds; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1993 Amendment: Chapter 158 in (3), at beginning, inserted exception clause regarding bonds refunded by a school district; and made minor changes in style. Amendment effective March 24, 1993.

1983 Amendment: Inserted (2)(a) relating to facts; at beginning of (2)(b) inserted "at their option"; inserted (4) relating to refunding bonds; and made minor changes in phraseology.

20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction.

Compiler's Comments

1989 Amendment: In first sentence inserted "15-1-402 and". Amendment effective March 21, 1989.

Effective Date — Retroactive Applicability: Section 14, Ch. 213, L. 1989, provided: "[This act] is effective on passage and approval [approved March 21, 1989] and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983."

Case Notes

Rescission of Valid Election Not Authorized: There is no provision of the written law of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may desire another election to vote on the question already voted upon, especially where no fraud is either alleged or shown in the conduct of the election already held. Schmiedeskamp v. Bd. of Trustees, 128 M 493, 278 P2d 584, 68 ALR 2d 1035 (1955).

Authority to Purchase Site Not Implied in Bond Approval: Under former law, where the only question submitted to the electors of a school district of the second class was whether bonds in a given amount should be authorized for the purpose of erecting a school building, authorization to issue the bonds did not carry with it the implied authority to purchase a site, although question of acquisition might have been submitted as part of same proposition. Nichols v. School District, 87 M 181, 287 P 624 (1930).

Attorney General's Opinions

Election Not Required — County Revenue Bonds to Finance Community College District Construction: No election under this section is required when Flathead Valley Community College District uses funds that Flathead County raised by issuing revenue bonds for school construction. 42 A.G. Op. 29 (1987).

Collateral References

Schools and School Districts *key* 97(4).

78 C.J.S. Schools and School Districts §366.

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax. 68 ALR 2d 1041.

20-9-422. Additional requirements for trustees' resolution calling bond election.

Compiler's Comments

2003 Amendment: Chapter 492 inserted (1)(a) relating to specifying whether the bonds will be general obligation bonds or impact aid revenue bonds; in (2) in first sentence near beginning inserted "for a general obligation bond" and near end before "bonds" and in third sentence before "bond" inserted "general obligation"; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 586 inserted (1)(d) concerning estimated state advance for school facilities; inserted (2) concerning statement of estimated state advance for school facilities; and made minor changes in style. Amendment effective July 1, 1995.

20-9-423. Form, contents, and circularization of petition proposing school district bond election.

Compiler's Comments

2003 Amendment: Chapter 492 inserted (1) relating to specifying whether the bonds will be general obligation bonds or impact aid revenue bonds; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

Collateral References

Schools and School Districts *key* 97(4).

78 C.J.S. Schools and School Districts §366.

20-9-424. Validation of petition — election administrator's certificate.

Compiler's Comments

Transition: Section 404, Ch. 571, L. 1979, was a transition section, the text of which may be found in the compiler's comment to 13-1-104.

20-9-426. Preparation and form of ballots for bond election.

Compiler's Comments

2003 Amendment: Chapter 492 in (3) in second paragraph of the form inserted "(state type of bonds here: general obligation or impact aid revenue)". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1997 Amendment: Chapter 144 inserted (2) specifying that ballots for certain school bond elections must be made available 30 days before bond election; and made minor changes in style.

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Substituted ".... percent (....%)" for "seven percent (7%)" before "per annum" in the third paragraph.

Case Notes

Bond Issue of Combined Grade School and High School Approved: Under former law, bond issue of joint common school district and high school district for purpose of building combined grade school and high school was not illegal for failure to state cost of land separately on ballot. Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

Form of Ballot — Substantial Compliance With Statute: Under former law, use of words "For" and "Against" on ballot in school bond election was substantial compliance with statute requiring words "Yes" and "No". Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

Notice and Ballot Not Misleading: Under former law, where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P2d 264 (1936).

20-9-427. Notice of bond election by separate purpose.

Compiler's Comments

2003 Amendment: Chapter 492 in (1) in first paragraph of the form near middle inserted "(state here: general obligation or impact aid revenue)"; and inserted (3) relating to specifying whether the bonds will be general obligation bonds or impact aid revenue bonds. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 423 in form of notice deleted former second sentence that read: "The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees" and in second sentence, after "issued", deleted "whether amortization or serial bonds"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Substituted ".... percent (....%)" for "seven percent (7%)" before "per annum" in the second paragraph.

Case Notes

Notice and Ballot Not Misleading: Under former law, where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P2d 264 (1936).

20-9-428. Determination of approval or rejection of proposition at bond election.

Compiler's Comments

2005 Amendment: Chapter 503 substituted (1)(a) through (1)(c) regarding the method of determining approval or rejection of a school bond proposition for former (1)(a) through (1)(f) that read: "(a) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for such school bond election;

(b) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;

(c) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(b) by the amount determined in subsection (1)(a); and

(d) when the calculated percentage in subsection (1)(c) is 40% or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(e) when the calculated percentage in subsection (1)(c) is more than 30% but less than 40%, the school bond proposition shall be deemed to have been approved and adopted if 60% or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(f) when the calculated percentage in subsection (1)(c) is 30% or less, the school bond proposition shall be deemed to have been rejected"; and made minor changes in style. Amendment effective April 28, 2005.

Effective Date — Applicability: Section 4, Ch. 503, L. 2005, provided: "[This act] is effective on passage and approval [approved April 28, 2005] and applies to school bond elections held on or after [the effective date of this act]."

Case Notes

No Authority in School Board to Remove Unqualified Voters From List of Registered Voters: Under this section a school board of trustees removed from the certified list of registered voters the names of several persons who the board determined were disqualified to vote. The court held that this section must be read with other statutes governing elections, including 20-20-303, concerning how an elector's qualifications may be challenged; 13-13-301, et seq., concerning how qualifications are determined; and 13-15-101, concerning general canvassing requirements. The court determined the school board had no authority to remove names of unqualified voters. Bischoff v. School District, 230 M 336, 749 P2d 533, 45 St. Rep. 253 (1988).

Failure to Canvass Bond Election: Failure of trustees to canvass vote as required by former statute did not make bonds issued by school district illegal and void. Long v. School District, 149 M 220, 425 P2d 822 (1967).

Attorney General's Opinions

Revision of Voter Registration List by School Trustees Prohibited: Montana law does not permit the exercise of discretion by anyone other than the election administrator to revise the number of names on a voter registration list, pursuant to Title 13, ch. 2, part 4. Therefore, school trustees are not permitted under this section to revise the number of voters on the certified list of registered electors when determining the percentage of voter turnout at a school bond election. 42 A.G. Op. 19 (1987).

20-9-429. Trustees' resolution to issue school district bonds.

Compiler's Comments

1995 Amendment: Chapter 423 in introductory clause, at beginning, substituted "Anytime" for "Within 60 days", after "certificate" deleted "or as soon thereafter as is practical in the judgment of the trustees", and after "resolution" substituted "calling for the sale" for "providing for the issuance"; substituted (3) concerning minimum purchase price for former text that read: "the maximum rate of interest"; at beginning of (8) substituted "whether bids will be accepted for either serial or amortization bonds and, if so" for "that amortization bonds will be preferred but also fix" and after "serial" inserted "or amortization"; inserted (10) concerning minimum price for bonds; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Case Notes

Mandamus to Compel Issuance of Bonds — Time Limitation Suspended: Court would not compel board to issue bonds for construction of school where board was making good faith effort to solve financial aspects of building the proposed school. Litigation that was instituted to test validity of bond election suspended the running of 60-day period in the former statute. State ex rel. Tilzey v. School District, 149 M 509, 428 P2d 974 (1967).

Bond Sale Resolution — Minutes Not Incomplete: Under former law, school bond election was not invalid for failure of clerk to set out in full in minute books of board of trustees resolution authorizing sale of bonds, in absence of showing that resolution itself was defective, since minute books need not reflect exact contents of resolution. Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

Delay in Issuance of Bonds — Time Limitations Directory: Delay in the issuance of bonds, occasioned by litigation and negotiations with the federal government in the financing thereof under National Recovery Act, did not affect the legality of original authority voted by the district, the requirement to proceed within 60 days, under the former statute, being directory, not mandatory. State ex rel. Sullivan v. School District, 100 M 468, 50 P2d 252 (1935).

20-9-430. Notice of sale of school district bonds.

Compiler's Comments

2003 Amendment: Chapter 492 in first paragraph of the form inserted "(state here:" and "or impact aid revenue)". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 423 in introductory clause, before "bonds", inserted "school district"; in form of notice of sale, in first paragraph, substituted "general obligation bonds" for "either amortization or serial bonds"; deleted former second and third paragraphs that read: "Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue"; in second paragraph, near beginning before "bonds", deleted "serial", before "amount" inserted "aggregate principal", and at end inserted parenthetical concerning amortization bonds; in third paragraph, after "bonds", deleted "whether amortization or serial bonds", before "date" inserted "an original issue", and after "interest" deleted "at a rate not exceeding ....% per annum"; in fourth paragraph, in first sentence after "less than", deleted "their par value", after "interest" inserted "on the principal amount of the bonds to the date of their delivery", and at end substituted "the price specified for the bonds" for "par" and deleted former second sentence that read: "The bonds shall be sold in open competition bidding, by written bids, or by sealed bids"; in fifth paragraph, after "bids", deleted "other than by or on behalf of the state board of land

commissioners" and after "accompanied by" substituted parenthetical concerning bid security for "money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1983 Amendments: Chapter 11 made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

Chapter 631 substituted fourth paragraph of "Notice of Sale" relating to serial bonds payable according to a maturity schedule for former text, which read: "If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, the sum of .... dollars ($....) of the serial bonds will become payable on the .... day of ...., 19.., and the sum of .... dollars ($....) will become payable on the same day each year thereafter until all of the bonds are paid."; and in fifth paragraph of "Notice" after "per annum" inserted "commencing on the ... day of ... (month), 19.., and" and after "year" inserted "thereafter".

1981 Amendment: Substituted "....%" for "7%" before "per annum" in the sixth paragraph.

20-9-431. Publication of notice of sale of school district bonds.

Compiler's Comments

1995 Amendment: Chapter 423 near end substituted "one or more newspapers" for "a newspaper"; deleted (2) that read: "(2) If the bond issue to be sold is $10,000 or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1987 Amendment: Substituted (1) referencing notice pursuant to 17-5-106 for former (1) that read: "(1) The trustees shall cause a copy of the notice of sale of the bonds to be:

(a) published once a week for 4 successive weeks preceding the date of the sale in a newspaper as determined by the trustees;

(b) published once, not less than 30 days prior to the date of sale, in some daily newspaper of the state that has a general circulation throughout the state when the bond issue to be sold is $10,000 or more; and

(c) sent to the board of investments."

Case Notes

Failure to Advertise in New York Paper: Under former law, failure to cause notice of sale of bonds to be published in New York City newspaper was no reason for invalidating bond election and subsequent bond issue. Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

20-9-432. Sale of school district bonds.

Compiler's Comments

1995 Amendment: Chapter 423 in (1), in second sentence after "less than", substituted "the minimum bid specified for bonds" for "par" and substituted "specify the rate of interest and purchase price" for "specify the form of bonds to be issued, whether amortization or serial, and the rate of interest", deleted former third sentence that read: "A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind but also every other known element affecting the total cost of the bonds to the district when paid in full", and in last sentence, after "less than", substituted "the minimum sale price" for "par"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1983 Amendment: Near beginning and end of (1) after "par" substituted "with accrued interest to date of delivery" for "and accrued interest"; near middle of (1) at beginning of fifth sentence, substituted "Consultants' fees and attorney fees may be paid" for "No attorney fees, brokerage or other fees, or commissions of any kind shall be paid".

Collateral References

Schools and School Districts *key* 97(5).

78 C.J.S. Schools and School Districts §370, et seq.

64 Am. Jur. 2d Public Securities and Obligations §§188, 195 through 197, 200.
Sale of municipal or other public bonds at less than par or face value. 162 ALR 396; 91 ALR 7.

20-9-433. Form and execution of school district bonds.

Compiler's Comments

2003 Amendment: Chapter 492 in (1) near middle inserted "or indenture of trust". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 423 substituted current text concerning resolution providing for issuance of bonds and prescribing form of bonds and manner of execution of bonds for former text that read: "(1) It is not necessary for the trustees to prescribe the detailed form of the bonds to be issued, but the bonds must conform to all legal requirements for their payment whether they are issued as amortization or serial bonds. The bonds and coupons shall be issued in the name of the school district and shall be executed by the chairman of the trustees and the school district clerk in accordance with 2-16-114. If the bonds are purchased by the board of investments, all payments of principal or interest shall be made at the office of the state treasurer.

(2) The trustees shall cause the bonds, with the attached coupons, to be printed at the expense of the school district at the lowest commercial rates." Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Collateral References

Schools and School Districts *key* 97(6).
78 C.J.S. Schools and School Districts §371.

20-9-434. Registration of school district bonds by county treasurer and copy for preservation.

Compiler's Comments

1995 Amendment: Chapter 423 deleted former (1)(a) that read: "(a) the number and amount of each bond"; deleted (1)(d) that read: "(d) the name of the purchaser"; in (2), after "printed", inserted "specimen"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Collateral References

78 C.J.S. Schools and School Districts §368.

20-9-435. Delivery of school district bonds and disposition of sale money.

Compiler's Comments

1997 Amendment: Chapter 219 in (3), at end, deleted "Under the provisions of 7-6-2802, the trustees may invest the money for which there is no immediate demand and the interest earned by investment must be used in the manner provided in 7-6-2802. After the full accomplishment of the purpose or purposes of a bond issue, the excess money realized from the bond issue must be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of the issue." Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1991 Amendments: Chapter 568 in (3), at end of second sentence, inserted "and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund, as provided for in 2-9-316, to pay a final judgment against the school district"; and made minor changes in style. Amendment effective April 23, 1991.

Chapter 767 in (3), in first sentence after "realized for", inserted "accrued interest or" and near middle, after "fund", deleted "for the purchase of such bonds"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Attorney General's Opinions

When School Bonds Become Binding: The act of delivery is essential to the very existence of public bonds as obligations binding on their issuers. Therefore, school bonds become binding upon taxpayers on the date the bonds are delivered, not on the date of issuance. 45 A.G. Op. 8 (1993).

20-9-436. County attorney to assist in the proceedings.

Collateral References

District and Prosecuting Attorneys *key* 8.

27 C.J.S. District and Prosecuting Attorneys §§10, 12(1).

20-9-437. School district liable on bonds.

Compiler's Comments

2003 Amendment: Chapter 492 in (1) in first sentence near middle and in (2) before "bonds" inserted "general obligation"; and inserted (3) stating what impact aid revenue bonds must be payable from and that the school district's taxing power is not pledged for repayment of the bonds. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

2001 Amendment: Chapter 549 inserted (2) concerning use of up to 25% of impact aid funds; and made minor changes in style. Amendment effective May 1, 2001.

Collateral References

Schools and School Districts *key* 97(10).

78 C.J.S. Schools and School Districts §375.

20-9-438. Preparation of general obligation debt service fund budget — operating reserve.

Compiler's Comments

2003 Amendment: Chapter 492 in (1) near beginning before "bonds" inserted "general obligation". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1997 Amendment: Chapter 211, in (1), (2), and three places in (4) substituted "final budget" for "preliminary budget"; and in (1), near middle, substituted "20-9-133" for "20-9-113". Amendment effective April 7, 1997.

1991 Amendment: In (2)(b) and in two places in (3), before "reserve", substituted "operating" for "cash"; in (3), in two places after "end-of-the-year", substituted "fund" for "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1987 Amendment: Inserted (2)(b) requiring trustees to include in the debt service fund of the preliminary budget a limited cash reserve for the school fiscal year following the ensuing fiscal year; and inserted (3) allowing trustees to designate a portion of the end-of-the-year cash balance of the debt service fund to be earmarked as a limited cash reserve and providing that any portion of the cash balance not earmarked be used for property tax reduction.

Attorney General's Opinions

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under 20-9-443 when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under 20-9-208, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

Anticipated Tax Delinquencies Includable in Budget: Anticipated delinquencies in tax payments may be included in the computations in preparing a school's debt service fund in the preliminary budget and in setting the levy for the ensuing school fiscal year. 43 A.G. Op. 21 (1989).

Debt Service Fund Deficit to Be Included in Budget: When the debt service fund of a school district contains a deficit from the previous school year, the deficit should be included in the budget and the levy for the ensuing school fiscal year. 43 A.G. Op. 21 (1989).

Increase in Preliminary Budget Limited to Amount of Bonds and Assessments in Treasurer's Statement: A County Superintendent may increase the preliminary budget amount in the debt service fund only to the amount of obligations for bonds and special improvement district assessments contained in the County Treasurer's statement pursuant to 20-9-121. 43 A.G. Op. 21 (1989).

Limited Cash Reserve Not Includable in Debt Service Fund: The limited cash reserve in the debt service fund is made up of a portion of the cash balance of the fund at the end of the fiscal year. Thus, if there is no cash surplus, there can be no limited cash reserve for the next fiscal year. Therefore, trustees are not required to include a limited cash reserve in the debt service fund of the preliminary budget. Even if there is a cash surplus in the debt service fund, trustees are not required to designate a portion for the next fiscal year. 43 A.G. Op. 21 (1989).

20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate.

Compiler's Comments

2003 Amendment: Chapter 492 in (1) near beginning before "debt" inserted "general obligation"; and in (1)(a)(iv) inserted "authorized by 20-9-437(2) to be". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

2001 Amendment: Chapter 549 inserted (1)(a)(iv) concerning impact aid funds used to repay bonds; and made minor changes in style. Amendment effective May 1, 2001.

1995 Amendment: Chapter 586 in (1)(a)(iii) substituted "state advance for school facilities" for "state reimbursement for school facilities"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments: Chapter 133 in (2) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 633 inserted (1)(a)(iii) relating to state reimbursement for school facilities distributed to qualified district; in (1)(a)(iv), before "anticipated", inserted "including money from federal sources" and at end, after "income", inserted "excluding any guaranteed tax base aid"; in (1)(b), after "budget", deleted "expenditure amount"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1)(a)(i), after "end-of-the-year", substituted "fund" for "cash", after "balance" deleted "less any outstanding warrants", and after "limited" substituted "operating" for "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1987 Amendment: At end of (1)(a)(i) inserted "and less any limited cash reserve as provided in 20-9-438".

Collateral References

Schools and School Districts *key* 97(10), 108(4).

78 C.J.S. Schools and School Districts §§375, 408.

20-9-440. Payment of debt service obligations — termination of interest.

Compiler's Comments

2003 Amendment: Chapter 492 in (1) inserted first sentence requiring the school district to provide the county treasurer with a general obligation bond or impact aid revenue bond debt services schedule, and in second sentence inserted "and, if bonds are to be issued as impact aid revenue bonds, a separate impact aid revenue bond debt service fund and an impact aid revenue bond debt service reserve account, if required" and after "tax money" inserted "or impact aid revenue"; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

Attorney General's Opinions

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for

under 20-9-443 when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under 20-9-208, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

Collateral References

Schools and School Districts *key* 97(9).

78 C.J.S. Schools and School Districts §374.

64 Am. Jur. 2d Public Securities and Obligations §§175, 339 through 341.

20-9-441. Redemption of bonds — investment of debt service fund moneys.

Collateral References

Schools and School Districts *key* 97(9).

78 C.J.S. Schools and School Districts §374.

20-9-443. Disposition of remaining debt service fund.

Compiler's Comments

2005 Amendment: Chapter 462 in (1) near beginning after "bond interest" inserted "and special improvement district obligations"; and made minor changes in style. Amendment effective April 28, 2005.

2001 Amendments — Composite Section: Chapter 480 near middle after "county treasurer to the" substituted "building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school" for "general fund of such school" and at end after "district" inserted "provided that the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 549 in (1) at beginning inserted exception clause; inserted (2) concerning reversion of impact aid funds after bond repayment; and made minor changes in style. Amendment effective May 1, 2001.

Effective Date — Applicability: Section 5, Ch. 480, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001."

Attorney General's Opinions

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under this section when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under 20-9-208, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. (However, see 2001 amendment to 20-9-208.) A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

County High School Bonds — Surplus: The money remaining in bond debt service fund after payment of a bond debt incurred for a county high school must be transferred to the county general fund unless the Board of County Commissioners directs that such funds be transferred to another series or issue of county bonds. 37 A.G. Op. 83 (1977).

20-9-444. Liability of officers for failure to provide fund for payment of bonds.

Collateral References

Officers *key* 114; Schools and School Districts *key* 63(3).

67 C.J.S. Officers and Public Employees §206, et seq.; 78 C.J.S. Schools and School Districts §120, et seq.; 78 C.J.S. Schools and School Districts §428.

20-9-445. Liability for misuse of bond payment fund.

Collateral References

Counties *key* 186 ½; Municipal Corporations *key* 951; Officers *key* 111.

20 C.J.S. Counties §277; 64 C.J.S. Municipal Corporations §1953, et seq.; 67 C.J.S. Officers and Public Employees §§211, 212.

20-9-446. Duty of county attorney to prosecute.

Collateral References

Counties *key* 186 ½; District and Prosecuting Attorneys *key* 9.

20 C.J.S. Counties §277; 27 C.J.S. District and Prosecuting Attorneys §15.

20-9-464. Statute of limitations — action to test validity.

Compiler's Comments

2005 Amendment: Chapter 451 at end substituted "the adoption of the resolution calling for the sale of bonds of the school district" for "sale"; and made minor changes in style. Amendment effective April 28, 2005.

20-9-465. Action to restrain bond issue — time for bringing.

Collateral References

Counties *key* 196(5); Municipal Corporations *key* 1000; Schools and School Districts *key* 111.

20 C.J.S. Counties §290; 64 C.J.S. Municipal Corporations §2160; 78 C.J.S. Schools and School Districts §422.

20-9-466. School district bonds — state loan — qualifications for state loan.

Compiler's Comments

1997 Amendment: Chapter 42 in (1)(a) substituted "20-9-421 through 20-9-464" for "20-9-421 and 20-9-464"; in (6)(d), at beginning of third sentence, deleted "Repayment must begin no later than January 1, 1994"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment: Chapter 18 in introductory clause of (1), after "17-5-703", deleted reference to subsection (1)(e).

Preamble: The preamble attached to Ch. 12, Sp. L. January 1992, provided: "WHEREAS, the decision of the Montana Supreme Court in Helena Elementary School District No. 1 v. State of Montana, 236 M 44, 769 P2d 684 (1989) (the Helena School District case), which became effective July 1, 1991, created uncertainty as to the validity and enforceability of Montana school district bonds issued after July 1, 1991; and

WHEREAS, neither the 1989 Legislature in House Bill No. 28, which addressed the funding issue for school operation, nor the 1991 Legislature addressed equalization of capital outlay; and

WHEREAS, on October 7, 1991, the Montana Supreme Court denied a request to delay the effective date of its decision in the Helena School District case beyond July 1, 1991; and

WHEREAS, since July 1, 1991, Montana school districts have been unable to issue bonds because bond counsel is unable to give an unqualified opinion as to the validity and enforceability of the bonds; and

WHEREAS, there are certain school districts that are in need of new facilities but are currently unable to market bonds, including Plentywood and West Glacier, whose schools were destroyed by fire; Livingston, which faces closure of its 80-year-old building by the State Fire Prevention and Investigation Program; and Clancy, which, like other districts, faces the threat of accreditation loss because of the unsafe and unsanitary conditions of its building.

THEREFORE, the Legislature finds it appropriate that until the 1993 Legislature can address the issue of capital outlay equalization, the state provide school districts the authority to obtain loans secured by the state to pay holders of school district bonds issued between [the effective date of this act] [January 21, 1992] and January 1, 1993, by school districts faced with severe deficiencies in their current facilities."

Effective Date: Section 8(1), Ch. 12, Sp. L. January 1992, provided that this section is effective on passage and approval. Approved January 21, 1992.

20-9-467. State loan — limitation on state loan authority — priority of loan allocation — application.

Compiler's Comments

Preamble: The preamble attached to Ch. 12, Sp. L. January 1992, provided: "WHEREAS, the decision of the Montana Supreme Court in Helena Elementary School District No. 1 v. State of Montana, 236 M 44, 769 P2d 684 (1989) (the Helena School District case), which became effective July 1, 1991, created uncertainty as to the validity and enforceability of Montana school district bonds issued after July 1, 1991; and

WHEREAS, neither the 1989 Legislature in House Bill No. 28, which addressed the funding issue for school operation, nor the 1991 Legislature addressed equalization of capital outlay; and

WHEREAS, on October 7, 1991, the Montana Supreme Court denied a request to delay the effective date of its decision in the Helena School District case beyond July 1, 1991; and

WHEREAS, since July 1, 1991, Montana school districts have been unable to issue bonds because bond counsel is unable to give an unqualified opinion as to the validity and enforceability of the bonds; and

WHEREAS, there are certain school districts that are in need of new facilities but are currently unable to market bonds, including Plentywood and West Glacier, whose schools were destroyed by fire; Livingston, which faces closure of its 80-year-old building by the State Fire Prevention and Investigation Program; and Clancy, which, like other districts, faces the threat of accreditation loss because of the unsafe and unsanitary conditions of its building.

THEREFORE, the Legislature finds it appropriate that until the 1993 Legislature can address the issue of capital outlay equalization, the state provide school districts the authority to obtain loans secured by the state to pay holders of school district bonds issued between [the effective date of this act] [January 21, 1992] and January 1, 1993, by school districts faced with severe deficiencies in their current facilities."

Effective Date: Section 8(1), Ch. 12, Sp. L. January 1992, provided that this section is effective on passage and approval. Approved January 21, 1992.

20-9-471. Issuance of obligations — authorization — conditions.

Compiler's Comments

1997 Amendments: Chapter 23 in (4), at beginning, inserted exception clause. Amendment effective July 1, 1997.

Chapter 499 in (2) substituted "10 fiscal years" for "5 fiscal years"; in (4), in introductory clause at end, inserted "unless"; inserted (4)(a), (4)(b), and (4)(c) concerning conditions under which school district obligations may be used to acquire real property or construct facility; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 37 in (2), near middle of first sentence after "5", deleted "full" and after "fiscal years" inserted "except that the term of the obligation for a qualified energy project may not exceed 10 fiscal years" and inserted second sentence defining qualified energy project; and made minor changes in style. Amendment effective July 1, 1995.

Code Commissioner Correction: In (2), the Code Commissioner substituted Department of Environmental Quality for Department of Natural Resources and Conservation to reflect the assignment of energy conservation projects to that agency in Title 90, ch. 6, part 4.

1991 Amendments: Chapter 719 in (1)(c), before "expenditure", deleted "capital" and at end inserted "including the payment of settlements of legal claims and judgments". Amendment effective April 29, 1991.

Chapter 767 throughout section, before reference to obligation, deleted "short-term"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Effective Date: Section 3, Ch. 264, L. 1989, provided that this section is effective March 23, 1989.

20-9-472. Security for impact aid revenue bonds — agreement of state.

Compiler's Comments

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

Part 5
Special Purpose Funds

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-9-501. Retirement costs and retirement fund.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in (4)(a)(iv) substituted "20-9-631" for "section 245, Chapter 574, Laws of 2001". Amendment effective October 1, 2005.

Chapter 405 in (2)(a)(ii) at end after "20-9-321" inserted "or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101"; inserted (2)(a)(iv) requiring that a school district or cooperative pay, from the retirement fund, the employer's contributions of a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid

from the district impact aid fund; and made minor changes in style. Amendment effective April 25, 2005.

Effective Date — Retroactive Applicability: Section 2, Ch. 405, L. 2005, provided: "[This act] is effective on passage and approval [approved April 25, 2005] and applies retroactively, within the meaning of 1-2-109, to retirement benefits paid in the school fiscal year beginning on or after July 1, 2004."

2003 Amendments — Composite Section: (Temporary version) Chapter 276 inserted (10)((11) in version effective July 1, 2004) requiring each county superintendent to submit a report of the revenue amounts used to establish levy amounts for the county school fund supporting elementary and high school district retirement obligations not later than the second Monday in September. Amendment effective April 9, 2003.

(Version effective July 1, 2004) Chapter 550 in (1) near beginning of first sentence inserted "or the management board of a cooperative" and at end inserted reference to subsection (2)(a) and in four places after "district's" inserted "or the cooperative's"; inserted (2) relating to payments from the retirement fund; and made minor changes in style. Amendment effective July 1, 2004.

Effective Date — Applicability: Section 5, Ch. 276, L. 2003, provided: "[This act] is effective on passage and approval [approved April 9, 2003] and applies to school fiscal years beginning on or after July 1, 2003."

Restrictions on Retirement Fund for Fiscal Year 2004: Section 15, Ch. 550, L. 2003, provided: "(1) For school fiscal year 2004, the amount that a school district or cooperative may charge to the retirement fund for the employer's contributions to the retirement, federal social security, and unemployment insurance systems for all employees whose salaries are paid from a federal funding source is limited to the amount that the district or cooperative charged to the retirement fund for those same purposes for the same group of employees in school fiscal year 2003.

(2) The restriction in subsection (1) does not apply to employees whose salaries are paid from the district's school food services fund." Effective May 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

2001 Amendment: Chapter 574 at end of (3)(a)(i) deleted "including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204"; inserted (3)(a)(iv) concerning retirement block grants; and made minor changes in style. Amendment effective July 1, 2001.

School Retirement Block Grants: Section 245, Ch. 574, L. 2001, provided that the office of public instruction shall distribute one-half of the amount appropriated for countywide school retirement in November and the remainder in May. The total amount for each county for elementary and high school purposes is set forth in sec. 245(1). See 2001 Session Law for text.

Section 245(2) provided that the average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year.

Appropriation: Section 248, Ch. 574, L. 2001, provided: "(1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244] [not codified].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245] [not codified].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246] [not codified].

(4) If Senate Bill No. 176 [Ch. 585, L. 2001] is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] [15-1-121(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176."

Inclusion of Appropriations in Budget: Section 249, Ch. 574, L. 2001, provided: "The governor shall include the appropriation in [section 248(1)] [not codified] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

2000 Amendment by Referendum: Chapter 515, L. 1999, in (3)(a)(i) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 379 in (5) inserted "or district levy"; and inserted (9) limiting community college district levy to property within district. Amendment effective April 20, 1999.

Chapter 554 deleted former (3)(a)(iii) that read: "(iii) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

1997 Amendments: Chapter 211 in (2), near middle of first sentence, substituted "final budget" for "preliminary budget". Amendment effective April 7, 1997.

Chapter 496 in (3)(a)(i), near end after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (3)(a)(ii) concerning oil and gas production taxes for "net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988"; inserted (3)(a)(iii) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 580 in (3)(a)(i) inserted reference to 61-3-527; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendment: Chapter 133 in (4)(b) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

1991 Amendment: Deleted former (3)(a)(ii) that read: "(ii) anticipated guaranteed tax base aid in support of retirement"; in (3)(a)(iv), at beginning after "any", substituted "fund balance" for "cash", in two places, after "end-of-the-year", substituted "fund" for "cash", and in two places, before "reserve", substituted "operating" for "cash"; inserted (3)(a)(v) that reads: "(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid"; at beginning of (3)(b) inserted "notwithstanding the provisions of subsection (8)"; in (7), at end of first sentence, substituted "special education cooperative budget is prorated to the member school districts" for "budget for the special education cooperative agreement of the district bears to the total budget of the cooperative" and

in second sentence, before "fix", inserted "the county commissioners shall"; inserted (8) requiring County Superintendent to calculate the number of mills to be levied on county property to finance the retirement fund net levy requirement; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendments: Section 43, Ch. 11, deleted former fourth sentence of (1) that read: "The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204"; at end of first sentence of (2) deleted "and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve"; inserted (3)(a)(ii) relating to guaranteed tax base aid; at end of (3)(a)(iii), relating to net proceeds taxes, deleted "for interim production and new production, as defined in 15-23-601"; deleted former (4)(b) that read: "(b) reduce the total retirement fund levy requirements of elementary school districts and high school districts by the amount available in state retirement equalization aid as calculated and distributed under the provisions of 20-9-532"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Sections 43 and 89, Ch. 11, in (3)(a)(i) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537". Amendment effective August 11, 1989.

Section 89, Ch. 11, at end of (3)(a)(ii), relating to net proceeds taxes, inserted "and local government severance taxes on any other oil and gas production occurring after December 31, 1988"; and inserted (3)(a)(iii) relating to coal gross proceeds taxes. Amendment effective August 11, 1989.

1987 Amendments: Chapter 611 in (3)(a)(i), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 635 inserted (4)(b) relating to reduction of retirement fund requirements because of equalization aid; and made minor changes in phraseology.

Chapter 655 in (3)(a)(ii), before "new production", inserted "interim production and".

1985 Amendment: Inserted (3)(a)(ii) relating to net proceeds taxes for new production.

1983 Amendment: In (3)(a)(i), inserted "including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Case Notes

Special Tax Levy — Teachers' Retirement: Under the applicable 1974 statutes the Flathead County Board of County Commissioners had authority to levy a special tax to finance the Flathead Valley Community College district's teachers' retirement fund contribution separate from other levies made to finance the general fund, building debt service, and adult education program. Burlington N., Inc. v. Flathead County, 176 M 9, 575 P2d 912 (1978).

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in this section that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. (See 1999 amendment.) 47 A.G. Op. 17 (1998).

Collateral References

Schools and School Districts *key* 16 through 19, 146.

78 C.J.S. Schools and School Districts §§17 through 22, 235.

20-9-502. Purpose and authorization of building reserve fund by election — levy for school transition costs.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 237 in (1) at end of first sentence inserted "or for the purpose of funding school transition costs as provided in subsection (5)"; in (2) near beginning of first sentence inserted "less the amount provided for in subsection (5)" and at

beginning of second sentence inserted exception clause; inserted (5) requiring voter approval for a levy to fund transition costs when a school district opens or closes a school or replaces a school building or when a school district consolidates with or annexes another school district; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Chapter 495 in (1)(d) inserted reference to 15-10-425; and at end of (3) substituted "in compliance with 15-10-425" for "in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used)?

[ ] BUILDING RESERVE—YES.

[ ] BUILDING RESERVE—NO"; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: In (2) substituted "the limitations provided in 20-9-406" for "45% of the taxable value of the taxable property of the district. Such limitation shall be determined in the manner provided in 20-9-406"; and made minor changes in style. Amendment effective July 1, 1991.

1981 Amendment: Substituted "shall not be more than 45% of the taxable value" for "shall not be more than 5% of the value" in (2).

20-9-503. Budgeting, tax levy, and use of building reserve fund.

Compiler's Comments

1997 Amendments: Chapter 23 inserted (2)(a) allowing trustees to pledge loan revenue for up to 5 years for authorized projects; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 211 in (1), at end of first sentence, substituted "final budget" for "preliminary budget"; and made minor changes in style. Amendment effective April 7, 1997.

1993 Amendment: Chapter 133 in (1), in second sentence, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

20-9-504. Extracurricular fund for pupil functions.

Compiler's Comments

1991 Amendment: In (2), in introductory clause, substituted "superintendent of public instruction must" for "department of commerce shall"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2).

20-9-505. Purpose and establishment of nonoperating fund.

Compiler's Comments

1991 Amendment: In (1), in two places, and in first sentence of (2) substituted reference to fund balance for reference to cash balance; in (2), in seven places before "reserve", substituted "operating" for "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-506. Budgeting and net levy requirement for nonoperating fund.

Compiler's Comments

1993 Amendment: Chapter 133 in (3) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

20-9-507. Miscellaneous programs fund.

Compiler's Comments

2001 Amendment: Chapter 356 in (1) in middle of second sentence inserted "the transfer of a fund balance from a tuition fund closed under 20-9-201", in third sentence inserted "the transfer of a tuition fund balance", and in last sentence near end inserted "funds transferred from a closed tuition fund"; and made minor changes in style. Amendment effective April 23, 2001.

1999 Amendment: Chapter 554 in (1) in second sentence near middle after "realized by the district" deleted "a payment received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

1997 Amendment: Chapter 22 in (1), near middle of first sentence, substituted "impact aid, as provided in 20 U.S.C. 7701, et seq." for "Title I of Public Law 81-874", in second sentence, after "15-36-325", inserted "indirect cost recoveries", and at end of fifth sentence substituted "local, state, or federal grant project and the indirect cost recoveries" for "federal grant program and for the aggregate of all reimbursement money"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 451 in second sentence, after "district", inserted "a payment received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325" and in third sentence, after "reimbursement", inserted "or a local government severance tax payment". Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendments — Composite Section: Chapter 466 near beginning of (1) substituted "20-9-321(8)" for "20-9-321(3)". The Code Commissioner has not made this revision because the reference was merely a reflection of the amendment to 20-9-321 made by Ch. 466, and the reference was deleted by Ch. 633. Amendment effective July 1, 1994.

Chapter 563 near beginning of (1) substituted "20-5-324" for "20-5-307(4), 20-5-312(8)".

Chapter 633 near beginning of (1), after "20-5-312(8)", deleted "and 20-9-321(3)". Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat

tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (1), in first sentence after "receiving", substituted "money from local" for "grants of" and after "state or federal" substituted "or other sources provided in 20-5-307(4), 20-5-312(8), and 20-9-321(3)" for "moneys" and in second sentence, after "reimbursement of", inserted "miscellaneous program fund"; in (2), at end after "fund", deleted "which shall be applied by individual grant programs or for the aggregate amount of the reimbursement moneys rather than on the basis of the total fund"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Public Law Reference: Public Law 81-874, referred to in this section, is compiled in the U.S.C. as Title 20, §§236 through 244.

Administrative Rules

ARM 10.10.310 Unobligated tuition money in the miscellaneous programs fund.

20-9-508. Building fund.

Compiler's Comments

1999 Amendment: Chapter 343 deleted former (1)(d) that read: "(d) receives money as an insurance settlement for the destruction of any property or portion of property insured by the district"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1995 Amendment: Chapter 506 in (1)(f) inserted "including payments made by a developer under the provisions of 20-9-615"; and made minor changes in style. Amendment effective April 15, 1995.

Case Notes

Authority of Board of Trustees to Proceed With School Construction Without Voter Approval — Use of Insurance Proceeds — Contiguous Property: A citizens' group contended that a school district Board of Trustees lacked the authority to construct a new middle school without first getting approval from the voters for the purchase of the property. The District Court correctly found that the Board had authority to proceed with construction: (1) without an election if the cost could be financed without exceeding the maximum-general-fund-budget-without-a-vote amount, as set out in 20-6-603; (2) using insurance proceeds to credit the district building fund under this section; and (3) without a site approval election if the property was contiguous to an existing site that was in use for school purposes under 20-6-621. The Awareness Group v. Bd. of Trustees, 243 M 469, 795 P2d 447, 47 St. Rep. 1333 (1990).

20-9-509. Lease or rental agreement fund.

Compiler's Comments

1997 Amendment: Chapter 22 in (1), near middle of third sentence after "$10,000", inserted "for an elementary or high school district or $20,000 for a K-12 district" and near end, after "excess of", substituted "this limit must" for "$10,000 shall"; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendment: Throughout section changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

1983 Amendment: In (1), raised the maximum housing and dormitory cash balance from $3,000 to $10,000.

20-9-512. Compensated absence liability fund.

Compiler's Comments

1995 Amendment: Chapter 129 at beginning of (3) substituted "The trustees may transfer money from the general fund, within the adopted budget" for "At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year fund balance"; and near end of (4)(a) and (4)(b) substituted "current school fiscal year" for "preceding school fiscal year". Section 2, Ch. 129, repealed the termination date formerly applicable to this section found in sec. 3, Ch. 754, L. 1991. Amendment effective July 1, 1995.

1991 Amendments: Chapter 568 in (3) ((2) of version effective July 1, 1995), before "balance", substituted "fund" for "cash"; in (4)(a) ((3) of version effective July 1, 1995) substituted "June 30" for "January 15"; and made minor changes in style. Amendment effective April 23, 1991.

Chapter 754 in (1) substituted "compensated absence liability" for "reserve"; in (1)(a) and (4)(a), after "nonteaching", inserted reference to administrative; inserted (1)(b) authorizing trustees to establish compensated absence liability fund to pay "any accumulated amount of vacation leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district"; at beginning of (2) substituted "The compensated absence liability" for "Such a reserve"; in (3), before "balance", substituted "fund" for "cash" and after "establish" substituted "and maintain the compensated absence liability" for "such a reserve"; in (4) changed subsection reference; in (4)(a) substituted "June 30" for "January 15"; inserted (4)(b) prohibiting maximum amount in reserve fund from exceeding 30% of "the total school district liability for accumulated vacation leave of nonteaching and administrative school district employees on June 30 of the preceding school fiscal year"; inserted (5) defining administrative school district employee; and made minor changes in style. Amendment effective July 1, 1991, and terminates July 1, 1995.

Termination: Section 3, Ch. 754, L. 1991, provided: "[This act] terminates July 1, 1995."

Attorney General's Opinions

Transfer of End-of-the-Year General Fund Balance Required: There is no basis for the conclusion that school district trustees may establish or maintain the compensated absence liability fund only with the positive difference between initially budgeted and actually expended amounts. Rather, school district trustees may transfer any portion of the end-of-the-year general fund balance, as that term is used in 20-9-104, into the compensated absence liability fund subject to the limitations in this section. 45 A.G. Op. 27 (1994).

20-9-514. Impact aid fund.

Compiler's Comments

1997 Amendment: Chapter 22 in (1), in two places, and in (2) substituted reference to 20 U.S.C. 7701, et seq., for reference to Title I of Public Law 81-874. Amendment effective July 1, 1997.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-515. Litigation reserve fund.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 493, L. 1995, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1994." Effective April 15, 1995.

Administrative Rules

ARM 10.10.315 Litigation reserve fund.

20-9-533. Technology acquisition and depreciation fund — limitations.

Compiler's Comments

2001 Amendment — Coordination: Chapter 474 in (1), (1)(a), (2), and (8) inserted "and depreciation"; in (1) after "incurred" inserted "and depreciation accrued"; in (2) inserted first sentence requiring expenditures from fund to be made in accordance with financial administration requirements for budgeted fund; in (2)(b) after "state" inserted "private" and at end inserted "or technology-associated training"; inserted (3) requiring trustees upon voter approval to include up to 20% of original cost of equipment in district's budget when depreciating technology equipment and limiting amount budgeted to 150% of original cost of equipment; inserted (4) requiring annual revenue requirement of fund to be reported by county superintendent to county commissioners for setting fund levy requirement; inserted (5) requiring expenditure of fund money to be within limits of fund budget and financial administration provisions; inserted (6) authorizing trustees to submit additional levy to fund depreciation of technological equipment to voters as prescribed in Title 20 and requiring specific ballot provisions for the levy; inserted (7) requiring approval by majority of voters for passage of proposed technology levy and providing that levy is subject to 15-10-420; and made minor changes in style. Amendment effective April 30, 2001.

The amendments to subsection (6) made by sec. 2, Ch. 474, L. 2001, were rendered void by sec. 3, Ch. 474, L. 2001, a coordination instruction, which provided: "If House Bill No. 179 is passed and approved, then [section 2(6) [20-9-533(6)] of this act] must read as follows: "(6) In addition to

the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund the depreciation of technological equipment authorized under this section. The election must be called and conducted in the manner prescribed by this title for school elections and in the manner prescribed by [section 1 of House Bill No. 179] [15-10-425].”” House Bill No. 179 was passed and approved as Ch. 495, L. 2001.

Effective Date — Applicability: Section 4, Ch. 474, L. 2001, provided: “[This act] is effective on passage and approval [approved April 30, 2001] and applies to school budgets for school fiscal years beginning on or after July 1, 2001.”

1997 Amendment: Chapter 22 in (2), after “fund the”, deleted “budget for the” and at end, after “20-9-534”, inserted “and with other local, state, and federal funds received for the purpose of funding technology”; deleted former (3) that read: “(3) Whenever the trustees of a district establish the technology acquisition fund, the trustees shall:

(a) adopt a resolution stating the reasons and purpose for financing a technology acquisition fund budget;

(b) adopt a budget for the amount required for the technology acquisition fund for the ensuing school fiscal year; and

(c) report the technology acquisition fund budget to the county superintendent on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103”; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 8, Ch. 517, L. 1995, provided that this section is effective July 1, 1995.

20-9-534. School technology purchases.

Compiler's Comments

2002 Amendment: Chapter 3 near end of first sentence substituted “provided in 20-9-343 for the purposes of 20-9-533” for “provided in 20-9-343(3)(a)(ii)”. Amendment effective August 13, 2002.

Effective Date — Retroactive Applicability: Section 5, Ch. 3, Sp. L. August 2002, provided: “[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning July 1, 2001.” Approved August 13, 2002.

2001 Amendment: Chapter 554 in first sentence near beginning after “annual amount” deleted “appropriated” and at end substituted “prior fiscal year” for “current school year” and inserted second sentence statutorily appropriating the grants. Amendment effective July 1, 2001.

1997 Amendment: Chapter 22 at beginning inserted “By September 1” and after “allocate the” inserted “annual”. Amendment effective July 1, 1997.

Effective Date: Section 8, Ch. 517, L. 1995, provided that this section is effective July 1, 1995.

20-9-541. Definitions.

Compiler's Comments

Effective Date — Applicability: Section 23(1), Ch. 237, L. 2001, provided that this section is effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

20-9-542. School flexibility account — distribution of funds.

Compiler's Comments

2003 Amendment: Chapter 550 inserted (3) relating to fund use for staff shortages or retirement incentives. Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: “[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003.”

Effective Date — Applicability: Section 23(1), Ch. 237, L. 2001, provided that this section is effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

20-9-543. School flexibility fund — uses.

Compiler's Comments

Effective Date — Applicability: Section 23(1), Ch. 237, L. 2001, provided that this section is effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

20-9-544. District school flexibility fund levy.

Compiler's Comments

Effective Date — Applicability: Section 23(1), Ch. 237, L. 2001, provided that this section is effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Part 6
Public School Fund and Grants to Schools

20-9-601. Public school fund.

Compiler's Comments

2001 Amendment: Chapter 34 in first sentence of introductory clause substituted "permanent fund type" for "nonexpendable trust fund type". Amendment effective July 1, 2001.

1999 Amendment: Chapter 122 in (6) at beginning inserted exception clause; in (8) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 1999.

Deletion of Termination Date: Section 9, Ch. 533, L. 1993, amended sec. 6, Ch. 14, Sp. L. January 1992, by removing the termination date for this section.

Preamble: The preamble attached to Ch. 14, Sp. L. January 1992, provided: "WHEREAS, the Legislature recognizes that timber on school trust lands is a finite renewable resource to be managed on a sustainable yield basis by the Department of State Lands [now Department of Natural Resources and Conservation]."

1992 Special Session Amendment: Chapter 14 in (6), after "sale of", deleted "timber". Amendment effective February 4, 1992.

Termination: Section 6, Ch. 14, Sp. L. January 1992, provided that this section terminates June 30, 1993.

1983 Amendment: In first sentence, substituted "fund in the nonexpendable trust fund type" for "subfund in the trust and legacy fund".

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

Collateral References

Schools and School Districts *key* 17.

78 C.J.S. Schools and School Districts §18.

68 Am. Jur. 2d Schools §95, et seq.

20-9-602. Title to farm mortgage lands vested in state and transfers validated.

Compiler's Comments

Chapter Repealed: Chapter 250, L. 1953 (section 75-3729, R.C.M. 1947), referred to in this section, was repealed by sec. 496, Ch. 5, L. 1971.

20-9-604. Gifts, legacies, devises, and administration of endowment fund.

Compiler's Comments

2001 Amendment: Chapter 76 in (2) at end after "trustees" substituted "according to the provisions of the Uniform Management of Institutional Funds Act, Title 72, chapter 30" for "notwithstanding the provisions of any other state law, in:

(a) school district bonds of the district;

(b) bonds of other school districts within the state;

(c) first mortgage bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof, which bonds, debentures, notes, and other evidences of indebtedness are, at the time of such investment, within the three highest quality grades for the rating of such bonds, debentures, notes, and other evidences of indebtedness by any nationally recognized investment rating agency;

(d) certificates of deposit of Montana banks insured by the federal deposit insurance corporation; or

(e) direct obligations of the United States government"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 2, Ch. 76, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to investment of school district endowments on or after July 1, 2001."

Collateral References

Schools and School Districts *key* 92.

78 C.J.S. Schools and School Districts §331, et seq.

68 Am. Jur. 2d Schools §99.

20-9-615. Voluntary rural residential impact payments.

Compiler's Comments

Effective Date: Section 6, Ch. 506, L. 1995, provided: "[This act] is effective on passage and approval." Approved April 15, 1995.

20-9-620. Definition.

Compiler's Comments

2002 Amendment: Chapter 3 near middle of (1) substituted "described in 20-9-343(4)(a)(ii) and available on or after July 1, 2003" for "described in 20-9-343(3)(a)(ii)". Amendment effective August 13, 2002.

Effective Date — Retroactive Applicability: Section 5, Ch. 3, Sp. L. August 2002, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning July 1, 2001." Approved August 13, 2002.

2001 Amendment — Coordination: Section 9(1), Ch. 554, L. 2001, a coordination instruction, provided that if House Bill No. 41 (Ch. 554, L. 2001) and Senate Bill No. 495 (Ch. 418, L. 2001) are both passed and approved, then subsection (1) of this section must be amended as follows: near beginning after "means" inserted "except for that portion of revenue described in 20-9-343(3)(a)(ii), 77-1-607, and 77-1-613". Amendment effective July 1, 2001.

Effective Date: Section 13(1), Ch. 418, L. 2001, provided that this section is effective July 1, 2001.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for

Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

20-9-621. Permanent fund.

Compiler's Comments

Effective Date: Section 13(1), Ch. 418, L. 2001, provided that this section is effective July 1, 2001.

20-9-622. Guarantee account.

Compiler's Comments

2003 Amendment: Chapter 291 in (1) in first sentence after "account in" deleted "a subfund of"; and in (2) near middle before "transfer" substituted "monthly" for "annually" and at end substituted "currently outstanding" for "outstanding in the prior year". Amendment effective April 11, 2003.

2002 Amendment: Chapter 10 at end of first sentence in (1) substituted "state special revenue fund" for "state general fund"; in (1)(b) in second sentence substituted language providing that except as provided in subsections (2) and (3), guarantee account is statutorily appropriated for distribution to school district through school equalization aid as provided in 20-9-343 for former language that read: "Except as provided in subsection (2), the guarantee account must be distributed to school districts through the basic and per-ANB entitlements"; in (2) after "department" inserted "of natural resources and conservation"; inserted (3) requiring revenue distributed through 20-9-534 to be used for the purposes of 20-9-533; and made minor changes in style. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

Coal Severance Tax Loan — Agreement: Sections 8 and 9, Ch. 418, L. 2001, provided: "Section 8. Coal severance tax loan — rate of interest — appropriation. (1) There is appropriated to the department of natural resources and conservation from the coal severance tax permanent fund an amount not to exceed $75 million for the biennium ending June 30, 2003, for the purpose of purchasing mineral production rights as provided in [section 4] [17-6-340]. The department shall deposit the appropriated loan proceeds in the guarantee account provided for in [section 3] [20-9-622].

(2) The interest to be paid on the loan authorized under subsection (1) must be at the long-term investment rate. The interest is payable as of the date of the transfer of the loan proceeds from the coal severance tax permanent fund to the department.

Section 9. Loan agreement. (1) In order to make the loan authorized in [section 8] [not codified], the board of investments shall enter into a contract with the department of natural resources and conservation pledging the percentage of mineral royalties to the repayment of the loan over a period of 30 years. The loan agreement may not require a payment on the loan until fiscal year 2004. In fiscal years 2004 and 2005, 20% of the mineral royalties deposited in the guarantee account provided for in [section 3] [20-9-622] must be pledged to the loan repayment. In fiscal years 2006 through 2011, not less than 25% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment, and in succeeding fiscal years, not less than 34% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment until the loan is fully paid.

(2) The contract must provide that the loan repayment proceeds be deposited in the coal severance tax permanent fund. To the extent possible, the board of investments shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool. The loan authorized in [section 8] [not codified] may not be made until the contract required by this section has become effective."

2001 Amendment — Coordination: Section 9(2), Ch. 554, L. 2001, a coordination instruction, provided that if House Bill No. 41 (Ch. 554, L. 2001) and Senate Bill No. 495 (Ch. 418, L. 2001) are both passed and approved, then subsection (1) of this section must be amended as follows: near beginning substituted "account in a subfund of the state general fund" for "account in the state special revenue fund". Amendment effective July 1, 2001.

Effective Date: Section 13(1), Ch. 418, L. 2001, provided that this section is effective July 1, 2001.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental

and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

20-9-630. School district block grants.

Compiler's Comments

2003 Amendment: Chapter 550 in (1)(b) in last sentence after "allocate" deleted "a portion of" and after "district's" deleted "fiscal year 2002"; and substituted (4) relating to amounts of block grants and annual increases for "The average of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year." Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

2002 Amendment: Chapter 13 near beginning of (2) before "appropriation" substituted "fiscal year 2003" for "biennial"; in (3) deleted former second sentence that read: "If the appropriation for block grants is greater than or less than the amount received by schools from the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue"; and in (4) after "average" deleted "amount" and near end after "0.76%" inserted reference to fiscal year 2004. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided that this section applies retroactively, within the meaning of 1-2-109, to July 1, 2002.

20-9-631. Countywide school retirement block grants.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 518 revised schedule of block grants for countywide school retirement (see August 2002 Special Session Law for former text). Amendment effective July 1, 2003.

Chapter 550 deleted former (2) that read: "(2) The average of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year"; and made minor changes in style. Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

2002 Amendment: Chapter 13 in (1) revised schedule of block grants for countywide school retirement (see 2001 Session Law for former text); and in (2) after "average" deleted "amount" and near end after "0.76%" inserted reference to fiscal year 2004. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided that this section applies retroactively, within the meaning of 1-2-109, to July 1, 2002.

20-9-632. Countywide school transportation block grants.

Compiler's Comments

2003 Amendment: Chapter 518 in (1) revised schedule of block grants for countywide school transportation (see August 2002 Special Session Law for former text). Amendment effective July 1, 2003.

2002 Amendment: Chapter 13 in (1) revised schedule of block grants for countywide school transportation (see 2001 Session Law for former text); and in (2) after "average" deleted

"amount" and near end after "0.76%" inserted reference to fiscal year 2004. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided that this section applies retroactively, within the meaning of 1-2-109, to July 1, 2002.

Part 7
Educational Cooperative Agreements

20-9-706. Running start program — authorizing class credits at postsecondary institution — eligibility — payment for credits.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 377, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to interlocal agreements entered into on or after July 1, 2001."

Source: Revised Code of Washington (RCW) 28A.600.310.

20-9-707. Agreement with accredited Montana job corps program.

Compiler's Comments

2005 Amendment: Chapter 132 inserted (4) regarding residency and job corps status. Amendment effective July 1, 2005.

Effective Date — Applicability: Section 3, Ch. 462, L. 2001, provided: "[This act] [20-9-707] is effective July 1, 2002, and applies to agreements entered into on or after [the effective date of this act]." Effective July 1, 2002.

Part 8
Emergency School Closure

20-9-801. Purpose.

Compiler's Comments

2005 Amendment: Chapter 138 in first sentence after "conduct" deleted "the minimum number of school days and". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 near end of first sentence, after "days", substituted "and the minimum aggregate hours by grade required by 20-1-301" for "required by law". Amendment effective July 1, 1997.

20-9-802. Definitions.

Compiler's Comments

2005 Amendment: Chapter 138 in definition of reasonable effort substituted "minimum aggregate hours" for "minimum number of school days" and in (a) substituted "12 hours for 1st through 3rd grades and 18 hours for 4th through 12th grades" for "3 days"; in definition of school day substituted "set by the trustees as provided in 20-1-302" for "defined in 20-1-302"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in definition of declaration of emergency, after "declaration", substituted "by a board of trustees that an unforeseen emergency has occurred in the district" for "of a state of emergency by the governor as authorized by 10-3-302"; in definition of reasonable effort, in (a), substituted "3 days and the equivalent aggregate hours of pupil instruction" for "1 week"; and made minor changes in style. Amendment effective July 1, 1997.

1981 Amendment: Inserted (2) defining declaration of emergency.

Collateral References

Imposition of state or local penalties for threatening to use explosive devices at schools or other buildings. 79 ALR 5th 1.

20-9-805. Rate of reduction in annual apportionment entitlement.

Compiler's Comments

2005 Amendment: Chapter 138 in (1) at beginning inserted exception clause, substituted "each hour short" for "each school day short", substituted "number of aggregate hours" for "number of school days", after "emergencies" deleted "as defined in 20-9-802", and at end substituted "by a proportionate amount" for "by 1/180th"; in (2) inserted "grade 1 through 3", substituted "grade 4" for "grade 1", and substituted "minimum aggregate hour" for "minimum school day"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1985 Amendment: Near middle of (1) after "unforeseen emergencies", substituted "as defined in 20-9-802" for "or by reason of any other cause and for which the school district is not entitled to apportionment credit".

Case Notes

Construction With Other Statutes — Conflicts: Provision in 20-1-301, prior to 1983 amendment, that "Any district that fails to provide for at least 180 school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited money shall be apportioned by the county superintendent to the other elementary districts of his county" is obviously ambiguous as to whether it applies to high school districts or only to elementary school districts. Since this section provides that for each day short of the minimum school days required by law, for which a district is not entitled to apportionment credit, the equalization apportionment and entitlement of the district for that year shall be reduced by 1/180th, and since the interest and income funds referred to in this section are integrated with the equalization funds, the two sections are so conflicting that they require legislative review and revision; and in the meantime, since they are penal statutes, courts are powerless to apply them. Therefore, a high school that held 18 days less than the required 180-day minimum due to a teacher strike was entitled to its interest and income money regardless of the statutes. Missoula High School Legal Defense Ass'n v. Supt. of Pub. Instruction, 196 M 106, 637 P2d 1188, 38 St. Rep. 2164 (1981).

20-9-806. School closure by declaration of emergency.

Compiler's Comments

2005 Amendment: Chapter 138 in (1)(a) at beginning inserted exception clause and in second sentence near middle after "requirement" substituted "for aggregate hours" for "for pupil-instruction days"; inserted (2) authorizing trustees to close school for 1 day each school year for an unforeseen emergency without rescheduling of lost instruction time; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in (1) substituted language in introductory clause and language authorizing trustees to adopt resolution on rescheduling pupil-instruction time lost to emergency for "If a school is closed by reason of a declaration of emergency by the governor" and at beginning of second sentence substituted "If the trustees adopt the resolution, the pupil-instruction time lost" for "the pupil-instruction days lost"; inserted (2) requiring make up of at least 3 days or equivalent aggregate hours before trustees may declare reasonable effort made; and made minor changes in style. Amendment effective July 1, 1997.

CHAPTER 10
TRANSPORTATION AND FOOD SERVICES

Part 1
School Buses and Transportation

Part Compiler's Comments

Preamble: The preamble attached to Ch. 711, L. 1991, provided: "WHEREAS, the Legislature recognizes its responsibility to develop a more equalized system of funding school transportation. It is the intent of the Legislature that this bill, which allows the Office of Public Instruction to develop data not currently available to monitor current spending by the school, be considered simply the first step toward providing a long-term solution to school transportation equalization problems in Montana. The Legislature also intends, as provided in [section 16], that the Office of Public Instruction continue to collect school transportation data and that equitable funding methods for school transportation be addressed by the 53rd Legislature."

Study of Transportation Funding: Section 16, Ch. 711, L. 1991, provided: "(1) During the 1991-92 interim, the office of public instruction is directed to collect data and to study methods for equalizing school transportation funding.

(2) The office of public instruction is further directed to report its findings and conclusions and make recommendations for improvements in school transportation funding to the 53rd legislature."

Part Administrative Rules

Title 10, chapter 7, subchapter 1, ARM Pupil transportation rules.

Title 10, chapter 64, ARM Board of Public Education transportation policies.

Part Collateral References

Task Force on Pupil Transportation Finance, Final Report Submitted to Superintendent of Public Instruction (1994).

Montana's School Transportation Policies and Funding, Interim Report, Mont. Leg. Council (1993).

20-10-101. Definitions.

Compiler's Comments

2003 Amendment: Chapter 550 deleted definition of weighted ridership that read: ""Weighted ridership" means the sum of the passenger points assigned to the eligible transportees who are transported on a bus route." Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in definition of eligible transportee in (a) the code commissioner changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

1995 Amendment: Chapter 298 inserted definition of bus route; in definition of eligible transportee, in (a), substituted "reached the age of 21 on or before September 10 of the current school year" for "attained his 21st birthday" and inserted (c)(ii) regarding transportation

identified as a related service; inserted definitions of passenger seating position, transportation service area, and weighted ridership; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 359 near beginning of (3)(a), after "residence", inserted "or an officially designated bus stop". Amendment effective July 1, 1993.

1991 Amendment: In definition of transportation deleted former (b) that read: "(b) a district's conveyance of a pupil by a school bus between his regular school of attendance and the vocational-technical secondary schools designated by the trustees for his attendance if the secondary school is located in some other school district"; in definition of eligible transportee, in (a) after "birthday", inserted "or who is a preschool child with disabilities between the ages of 3 and 6"; and made minor changes in style. Amendment effective May 15, 1991.

1991 Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

1983 Amendment: Substituted definition of school bus for former definition that read: "A 'school bus' shall mean any motor vehicle which is owned by a district or other public agency or by a carrier under contract with such a district or public agency and which complies with the bus standards established by the board of public education as determined by the Montana division of motor vehicles' semiannual inspection of school buses and the superintendent of public instruction."

Case Notes

Substantial Evidence of Residency: When respondents left their ranch within the county for the purpose of earning an income and educating their children, returned to the property each summer, intended to maintain the ranch as their residence, and paid county property taxes, there was substantial evidence from which the District Court could conclude that respondents were residents of the county and that therefore their children were "eligible transportees" within the meaning of this section. The meaning of "legal residence" for the purposes of this section is to be determined in accordance with the rules set forth in 1-1-215. School District v. Simonsen, 210 M 100, 683 P2d 471, 41 St. Rep. 944 (1984).

Attorney General's Opinions

Small Transit-Type Bus Considered School Bus — National School Bus Standards Applicable: Under the definition in this section, a small, transit-type bus that is smaller than a Greyhound bus but larger than a nine-passenger van is a school bus and may not be used to transport students to extracurricular activities unless it meets the standards contained in the 1990 National Standards for School Buses, including paint requirements, adopted by the Board of Public Education. 45 A.G. Op. 30 (1994).

"Eligible Transportee" Construed — Permission Required for Attendance Outside District Before Transportation Provided: To be designated an "eligible transportee" for purposes of the school transportation statutes, a pupil must reside more than 3 miles from the closest school, regardless of the school's location inside or outside the resident school district. If an eligible transportee wishes to attend a school outside his district, the pupil must obtain permission from the resident district school board in order to be provided transportation by the resident district. 42 A.G. Op. 115 (1988).

Fourteen-Passenger Van as School Bus: Although a passenger van owned by two school districts for transporting students to and from activity events is the general type of vehicle contemplated by the exclusion in the definition of "school bus", it constitutes a bus under the definition if its passenger capacity exceeds nine. 40 A.G. Op. 53 (1984).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

Collateral References

Schools and School Districts *key* 159 ½.

78A C.J.S. Schools and School Districts §§475 through 482.

68 Am. Jur. 2d Schools §§259 through 264, 320.

Transportation of school pupils at expense of public. 146 ALR 625; 118 ALR 806; 63 ALR 413.

20-10-102. School bus requirements.

Administrative Rules

Title 10, chapter 64, subchapter 3, ARM Minimum standards for school buses.

20-10-103. School bus driver qualifications.

Compiler's Comments

1995 Amendment: Chapter 298 in (4), near middle after "transportation", deleted "or by the superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 195 in (3) substituted "commercial driver's license" for "driver's license with a commercial vehicle operator's endorsement"; and made minor changes in style.

1989 Amendment: In (4) substituted "form approved by the United States department of transportation or" for "blank provided"; in (5), in two places in first sentence, substituted "basic first aid" for "standard first aid" and near end, before "first aid", inserted "basic"; and made minor changes in grammar. Amendment effective July 1, 1989.

1987 Amendment: In (3) substituted "driver's license with a commercial vehicle operator's endorsement" for "chauffeur's license".

Administrative Rules

ARM 10.7.111 Qualifications of bus drivers.

ARM 10.7.112 Summary of requirements for bus transportation for eligibility for state reimbursement.

Title 10, chapter 64, subchapter 2, ARM Driver qualifications.

Attorney General's Opinions

Responsibility for Cost of Required Medical Examination: The medical examination for school bus drivers mandated by this section is a requirement of certification established by the Legislature rather than a requirement for employment imposed by the employer school district or school bus contractor. Therefore, under 39-2-301, school bus contractors and school districts which employ school bus drivers are not responsible for paying the costs of the medical examination; rather, the cost is the responsibility of the employee or applicant. 41 A.G. Op. 69 (1986).

Age of School Bus Driver: Article II, sec. 14, Mont. Const., provides that a person 18 years of age or older is an adult for all purposes, and a 1973 amendment to 61-5-112 provided that no person under age 18 may obtain a chauffeur's license to drive a school bus. Since 20-10-103(1) was enacted in 1971 and rules of statutory construction provide that earlier statutes to the extent of any repugnancy are controlled by later statutes, 20-10-103(1) (prior to 1977 amendment) appears to have been repealed by implication and an individual must be 18 years of age or older to qualify as a school bus driver. 35 A.G. Op. 73 (1974).

20-10-104. Penalty for violating law or rules.

Compiler's Comments

1997 Amendment: Chapter 427 inserted (2) providing for forfeiture of transportation reimbursement for an unapproved bus route operated by a district in violation of law or policy; in first sentence in (3), after "district", inserted reference to 20-10-145 and 20-10-146 for all miles traveled, including miles traveled in compliance with and in violation of transportation laws or policies and in second sentence, after "superintendent", substituted "shall pay all reimbursements otherwise payable under 20-10-145 and 20-10-146, including amounts suspended during the violation" for "shall resume paying reimbursements to the district"; and made minor changes in style.

Attorney General's Opinions

"Transportation Law" Construed — Transportation Committee Decisions: A decision of a County Transportation Committee is "a transportation law" within the meaning of this section. 39 A.G. Op. 57 (1982).

Unapproved Bus Routes — Penalty for Following: The penalty for operating school buses in violation of routes approved by the County Transportation Committee is suspension of all

reimbursements under 20-10-145 and 20-10-146 until the violation ceases and forfeiture of reimbursement for miles traveled in violation of the approved routes. 39 A.G. Op. 57 (1982).

20-10-105. Determination of residence.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 132 in first sentence inserted exception clause; and minor changes in style. Amendment effective July 1, 2005.

Chapter 463 in second sentence near beginning after "Whenever" substituted "the state" for "a county". Amendment effective July 1, 2005.

1993 Amendment: Chapter 563 near beginning of second sentence, before "county", deleted "district or" and after "accordance with" substituted "20-5-321 through 20-5-323" for "20-5-301, 20-5-302, or 20-5-311"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Case Notes

Substantial Evidence of Residency: When respondents left their ranch within the county for the purpose of earning an income and educating their children, returned to the property each summer, intended to maintain the ranch as their residence, and paid county property taxes, there was substantial evidence from which the District Court could conclude that respondents were residents of the county and that therefore their children were "eligible transportees" within the meaning of 20-10-101. The meaning of "legal residence" for the purposes of 20-10-101 is to be determined in accordance with the rules set forth in 1-1-215. School District v. Simonsen, 210 M 100, 683 P2d 471, 41 St. Rep. 944 (1984).

Wrongful Denial of School Transportation Money: Denial of transportation money to an eligible transportee of a school district is an "unlawful act" within the meaning of 27-1-202 for purposes of receiving compensatory damages. School District v. Simonsen, 210 M 100, 683 P2d 471, 41 St. Rep. 944 (1984).

20-10-109. Liability insurance for school bus.

Case Notes

Governmental Immunity Waived — 1889 Constitution: Prior to adoption of the 1972 Montana Constitution, the statute requiring school districts to carry liability insurance to cover injuries and property damage that might arise in connection with operation and maintenance of school buses constituted waiver of governmental immunity to extent of insurance required to be carried or actually carried. Longpre v. Joint School District, 151 M 345, 443 P2d 1 (1968), distinguished in Murphy v. St., 248 M 82, 809 P2d 16, 48 St. Rep. 335 (1991).

Collateral References

Tort liability of public schools and institutions of higher learning for accidents associated with the transportation of students. 34 ALR 3d 1210.

Immunity: comment note on rule of governmental tort nonliability as applied to public schools and institutions of higher learning. 33 ALR 3d 703.

Tort liability of public schools and institutions of higher learning. 84 ALR 2d 489; 160 ALR 7.

20-10-111. Duties of board of public education.

Compiler's Comments

2001 Amendment: Chapter 237 in (1)(a) inserted "and operation"; in (1)(a)(i) at beginning substituted "the recommendations" for "minimum standards" and at end after ";" substituted "and" for "or"; in (1)(a)(ii) substituted "the federal motor vehicle safety standards" for "minimum standards adopted by the national highway traffic safety administration"; deleted former (1)(f) that read: "(f) prescribe other policies for the operation of school buses that are not inconsistent with:

(i) motor vehicle laws;

(ii) minimum standards adopted for school bus operation by the national conference on school transportation;

(iii) highway safety standards; and

(iv) the transportation provisions of this title"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1999 Amendment: Chapter 343 in (1)(a)(i) and (1)(f)(ii) substituted "national conference on school transportation" for "national commission on safety education"; in (1)(a)(ii) substituted "national highway traffic safety administration" for "national highway safety bureau"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1989 Amendment: Deleted former (2) and (3) that read: "(2) The board of public education may grant permission to the trustees of any district to use for transportation a four-wheel drive vehicle capable of transporting eight passengers or less that meets the minimum standards for these vehicles as prescribed by the board of public education if this type of vehicle will not be used to transport more than eight pupils per trip.

(3) Whenever the board of public education grants the trustees of a district permission to use a four-wheel drive vehicle under the provisions of subsection (2), the reimbursement to the district shall be based on the on-schedule rate of 20 cents per mile"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

1981 Amendment: Inserted (2) and (3) relating to use and reimbursement for four-wheel drive vehicles, respectively.

Statement of Intent: The statement of intent attached to HB 662 (Ch. 455, L. 1981) provided: "A statement of intent is required for House Bill 662 because section 1 [20-10-111] delegates rulemaking power to the Board of Public Education.

The Board of Public Education is to promulgate rules prescribing minimum standards for four-wheel drive vehicles that are used as school buses. These standards are to relate to safety considerations and equipment requirements to insure that four-wheel drive vehicles used as school buses provide safe transportation for student transportees."

Administrative Rules

ARM 10.7.106 Contracts with individual families.
ARM 10.7.106A Transportation costs allocated by out-of-district attendance agreements.
ARM 10.7.107 Contingency transportation.
ARM 10.7.110 Standards for school buses.
ARM 10.7.111 Qualification of bus drivers.
ARM 10.64.201 Driver qualifications.
Title 10, chapter 64, subchapter 3, ARM Minimum standards for school buses.

Attorney General's Opinions

Small Transit-Type Bus Considered School Bus — National School Bus Standards Applicable: Under the definition in 20-10-101, a small, transit-type bus that is smaller than a Greyhound bus but larger than a nine-passenger van is a school bus and may not be used to transport students to extracurricular activities unless it meets the standards contained in the 1990 National Standards for School Buses, including paint requirements, adopted by the Board of Public Education. 45 A.G. Op. 30 (1994).

20-10-112. Duties of superintendent of public instruction.

Administrative Rules

ARM 10.7.101 Introduction.
ARM 10.7.106 Contracts with individual families.
ARM 10.7.106A Transportation costs allocated by out-of-district attendance agreements.
ARM 10.7.107 Contingency transportation.
ARM 10.7.110 through 10.7.112 Standards for school buses and bus drivers.
ARM 10.64.701 Criteria for establishing transportation areas.

Attorney General's Opinions

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation.

Administrative Rules

ARM 10.7.101 Introduction to pupil transportation.

Attorney General's Opinions

"Eligible Transportee" Construed — Permission Required for Attendance Outside District Before Transportation Provided: To be designated an "eligible transportee" for purposes of the school transportation statutes, a pupil must reside more than 3 miles from the closest school, regardless of the school's location inside or outside the resident school district. If an eligible transportee wishes to attend a school outside his district, the pupil must obtain permission from the resident district school board in order to be provided transportation by the resident district. 42 A.G. Op. 115 (1988).

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-10-122. Discretionary provision of transportation and payment for this transportation.

Attorney General's Opinions

"Eligible Transportee" Construed — Permission Required for Attendance Outside District Before Transportation Provided: To be designated an "eligible transportee" for purposes of the school transportation statutes, a pupil must reside more than 3 miles from the closest school, regardless of the school's location inside or outside the resident school district. If an eligible transportee wishes to attend a school outside his district, the pupil must obtain permission from the resident district school board in order to be provided transportation by the resident district. 42 A.G. Op. 115 (1988).

20-10-123. Provision of transportation for nonpublic school children.

Compiler's Comments

1987 Amendment: In second sentence substituted "may" for "shall", making transportation charge discretionary.

20-10-124. Private party contract for transportation — individual transportation contract.

Compiler's Comments

1997 Amendment: Chapter 22 in (1), near beginning of second sentence, after "may", deleted "in contracting with private parties"; in (3)(a) changed requirement for quadruplicate copies to requirement for triplicate copies and deleted requirement that one copy be given to the Superintendent of Public Instruction; in (4)(a), after "quadruplicate", deleted "and, upon approval"; and made minor changes in style. Amendment effective July 1, 1997.

Administrative Rules

ARM 10.7.105 Pupil transportation contracts.
ARM 10.7.106 Contracts with individual families.
ARM 10.7.106A Transportation costs allocated by out-of-district attendance agreements.
ARM 10.7.107 Contingency transportation.
ARM 10.7.108 Bus contracts.

Case Notes

Governmental Immunity Waived — 1889 Constitution: Prior to adoption of the 1972 Montana Constitution, the statute requiring school districts to carry liability insurance to cover injuries

and property damage that might arise in connection with operation and maintenance of school buses constituted waiver of governmental immunity to extent of insurance required to be carried or actually carried. Longpre v. Joint School District, 151 M 345, 443 P2d 1 (1968), distinguished in Murphy v. St., 248 M 82, 809 P2d 16, 48 St. Rep. 335 (1991).

Collateral References

Schools and School Districts *key* 159 ½.

78A C.J.S. Schools and School Districts §480.

68 Am. Jur. 2d Schools §263.

Tort liability of public schools and institutions of higher learning for accidents associated with the transportation of students. 34 ALR 3d 1210.

Immunity: comment note on rule of governmental tort nonliability as applied to public schools and institutions of higher learning. 33 ALR 3d 703.

Tort liability of public schools and institutions of higher learning. 84 ALR 2d 489; 160 ALR 7.

One transporting children to or from school as independent contractor. 66 ALR 724.

20-10-125. Bid letting for contract bus — payments under transportation contract.

Compiler's Comments

1981 Amendment: In (1)(b), increased the maximum percentage by which negotiated contract costs may exceed the basic costs of the previous year's contract from 8% to 12%; at the end of the first sentence of (1)(b), deleted "and provided the duration of the negotiated contract is no longer than the duration of the previous contract".

Case Notes

No Standing to Challenge to Award of Public School Transportation Contract on Statutory Grounds: Plaintiff provided bus service to a school district for about 24 years, but in 2001, the district elected to accept bids for the service. Plaintiff submitted the lowest bid, but the district decided to reject the bid on grounds that plaintiff was not a responsible bidder. The contract was awarded to another bidder, and plaintiff challenged the contract on statutory grounds, claiming that the district violated 18-1-201, 20-9-204, and this section. The Supreme Court declined to address any statutory violations because plaintiff lacked standing to bring the complaint under the criteria in Debcon, Inc. v. Glasgow, 2001 MT 124, 305 M 391, 28 P3d 478 (2001). Hickey v. Baker School District No. 12, 2002 MT 322, 313 M 162, 60 P3d 966 (2002), distinguishing State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973), and E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

20-10-126. Establishment of transportation service areas.

Compiler's Comments

2005 Amendment: Chapter 508 in (2)(a) at beginning inserted exception clause; inserted (2)(b) allowing a school district to extend a bus route across another school district in order to provide transportation to students within its own district; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 427 inserted (5) authorizing trustees objecting to a bus route to report route to county transportation committee and providing a procedure for withdrawal of route approval; and made minor changes in style.

Effective Date: Section 12(1), Ch. 298, L. 1995, provided that this section was effective July 1, 1995.

20-10-131. County transportation committee membership.

Compiler's Comments

1995 Amendment: Chapter 298 in (1), in first sentence after "within a county", deleted "under the transportation law, board of public education transportation policies, and the transportation rules of the superintendent of public instruction"; in (1)(c), at beginning, inserted exception clause; inserted (1)(e) regarding membership of two representatives of each K-12 school district of the county; in (3) inserted second sentence requiring the presence of a quorum to conduct business; adjusted internal references; and made minor changes in style. Amendment effective July 1, 1995.

20-10-132. Duties of county transportation committee.

Compiler's Comments

2001 Amendment: Chapter 464 inserted (1)(e) requiring the transportation committee to determine if geographic conditions make it impractical for a child to attend school in the district of residence; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1995 Amendment: Chapter 298 in (1)(a), after "lines", deleted "which will define the geographic area of responsibility for school bus transportation"; in (1)(b), at beginning, inserted exception clause; inserted (2) regarding change in a temporary bus route in an emergency; inserted (3) establishing criteria that must be considered upon request for a new or changed bus route; inserted (4) requiring inclusion of a signed contract and copy of official minutes with an application for increased reimbursement; deleted former (3) that read: "(3) The trustees of any district which objects to a particular school bus route or transportation service area to which it has been assigned may request a transfer to another school bus route or transportation service area. The county transportation committee may transfer the territory of such district to an adjacent district's transportation service area or approved school bus route with the consent of such adjacent district. When the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of such district be transferred for school bus transportation purposes to such consenting, adjacent district. When a satisfactory petition is presented to the trustees, the trustees shall call an election in accordance with 20-20-201 for the next ensuing regular school election day. Such election shall be conducted in accordance with the school election laws. If a majority of those voting at such election approve the transfer, it shall become effective on July 1 of the ensuing school fiscal year"; deleted former (4) that read: "(4) Unless a transfer of a district from one transportation service area or approved school bus route to another such area or route is approved by the county transportation committee and the superintendent of public instruction, the state transportation reimbursement shall be limited to the reimbursement amount for school bus transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils"; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

ARM 10.7.112 Summary of requirements for bus transportation for eligibility for state reimbursement.

Attorney General's Opinions

Unapproved Bus Routes — Penalty for Following: The penalty for operating school buses in violation of routes approved by the County Transportation Committee is suspension of all reimbursements under 20-10-145 and 20-10-146 until the violation ceases and forfeiture of reimbursement for miles traveled in violation of the approved routes. 39 A.G. Op. 57 (1982).

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

Authority of Transportation Committee to Change Transportation Service Areas and School Bus Routes: After establishment of transportation areas and school routes for the proximate school year, a county transportation committee has continuing authority to consider new facts arising after transportation areas and school routes were established and, based upon such new facts, to change a transportation service area and approve, disapprove, or adjust proposed modifications to school bus routes which are submitted to it by a district board of trustees. (See 1995 amendment.) 37 A.G. Op. 17 (1977).

Transcript: The parties to a controversy before a county school transportation committee may not waive the making of a transcript in the absence of rules providing for appeal without a transcript promulgated by the Superintendent of Public Instruction as a transcript, although not necessarily a verbatim stenographic report, is required by 20-3-107 and 20-10-132 on an appeal to the Superintendent from a decision of a county school transportation committee. 35 A.G. Op. 53 (1973).

20-10-141. Schedule of maximum reimbursement by mileage rates.

Compiler's Comments

2003 Amendment: Chapter 550 in (2)(a) deleted from end of introductory clause "when the weighted ridership assigned to a bus route is not less than one-half of the rated capacity of the school bus"; in (2)(a)(i) increased amount from 85 cents to 95 cents and increased seating from 45 to 49; substituted (2)(a)(ii) through (2)(a)(v) setting mileage for categories of school buses for "when the rated capacity is more than 45 passenger seating positions, an additional 2.13 cents per bus mile for each additional passenger seating position in the rated capacity in excess of 45 must be added to a base rate of 85 cents per bus mile"; inserted (2)(b) relating to reimbursement for nonbus mileage; deleted former (3) and (4) that read: "(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the weighted ridership assigned to a bus route is less than one-half of the rated capacity of the school bus, the rate per bus mile traveled must be computed as follows:

(a) determine the weighted ridership assigned to the bus route;

(b) multiply the number determined in subsection (4)(a) by two; and

(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2)"; and made minor changes in style. Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1995 Amendment: Chapter 298 in (2)(a), after "capacity of", deleted "not less than 12 but". Amendment effective March 30, 1995. The Code Commissioner has not codified the temporary version.

Chapter 298 in (2), in introductory clause, substituted "weighted ridership assigned to a bus" for "number of eligible transportees that board a school bus on an approved"; in (2)(a), after "capacity of", deleted "not less than 12 but" and after "45" substituted "passenger seating positions" for "children"; in (2)(b), in two places, substituted "passenger seating positions" for "children"; in (4), in introductory clause, and in (4)(a) substituted reference to weighted ridership for reference to number of eligible transportees; in (4)(b), after "two", deleted "and round off to the nearest whole number"; in (5), in first sentence after "number of", substituted "passenger seating" for "riding" and inserted second sentence regarding reimbursement in cases of bus modification; inserted (6) disallowing the number of pupils to exceed the seating positions; and made minor changes in style. Amendment effective July 1, 1995.

Retroactive Applicability: Section 12(3), Ch. 298, L. 1995, provided: "[Section 5] [version of 20-10-141 effective March 30, 1995, not codified] applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1994."

Termination: Section 13, Ch. 298, L. 1995, provided: "[Section 5] [version of 20-10-141 effective March 30, 1995, not codified] terminates July 1, 1995."

1991 Amendment: In (2)(a) and (2)(b) increased rate from 80 cents to 85 cents and deleted language pertinent to fiscal years 1984 and 1985; in (2)(b) increased rate from 2 cents to 2.13 cents; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: In (1) at beginning, deleted "bus" before "mileage", in three places deleted "bus" from the phrase "school bus transportation", inserted fourth sentence referring to overnight location, in fifth sentence inserted "or nonbus", and in last sentence inserted "for bus mileage"; and inserted (3) relating to reimbursement for nonbus mileage.

1983 Amendments: Chapter 515 substituted, in (2) in lead-in, after "when the", clause relating to number of eligible transportees for "bus is used for transportation of eligible transportees"; and inserted (3) relating to rate per bus mile when bus operates at one-half its rated capacity.

Chapter 559 inserted, in middle of (1), third and fourth sentences providing that all approved bus miles are reimbursable and permitting a district to approve additional bus miles but prohibiting reimbursement for such mileage; in (2)(a) and (2)(b) substituted "72 cents in fiscal year 1984 and 80 cents in fiscal year 1985" for "60 cents in fiscal year 1982 and 65 cents in fiscal year 1983"; in (2)(a) and (2)(b) substituted "45 children" for "50 children"; and in (2)(b) substituted "an additional 2 cents per bus mile for each additional child in the rated capacity in excess of 45" for "an additional 2 ½ cents per bus mile for each additional child in the rated capacity in excess of 50".

1981 Amendment: In (2)(a) substituted "60 cents in fiscal 1982 and 65 cents in fiscal 1983" for "50 cents in fiscal 1980 and 55 cents in fiscal 1981"; and in (2)(b), substituted "2 ½ cents" for "2 cents", and "60 cents in fiscal 1982 and 65 cents in fiscal 1983" for "50 cents in fiscal 1980 and 55 cents in fiscal 1981".

Administrative Rules

ARM 10.7.110 Standards for school buses.

ARM 10.7.112 Summary of requirements for bus transportation for eligibility for state reimbursement.

ARM 10.7.115 Schedule for bus transportation.

20-10-142. Schedule of maximum reimbursement for individual transportation.

Compiler's Comments

2001 Amendment: Chapter 409 in (1) and (2) in introductory clause near end increased multiplier in reimbursement formula from 21.25 cents to 25 cents; in (4) and (5) increased reimbursement for first transportee from $8 to $9.25 and for each additional transportee from $5 to $6 for each day of attendance; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 3, Ch. 409, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school district transportation reimbursements for school fiscal years beginning on or after July 1, 2001."

1995 Amendment: Chapter 298 in introductory clause, in fourth sentence after "guardian", inserted "for actual miles transported"; in (2), near end, changed "3 miles" to "6 miles"; in (3), in fourth sentence before "committee", deleted "county transportation"; inserted (4) limiting state reimbursement for individual transportation contracts; in (5), in third sentence, increased per diem rate for one eligible transportee from $5.31 to $8 and for each additional eligible transportee from $3.19 to $5; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 359 at end of (2) decreased multiplier from 22.5 cents to 21.25 cents for figuring daily reimbursement rate; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1) increased multiplier from 20 cents to 21.25 cents; in (2) increased multiplier from 20 cents to 22.5 cents; and in (4) increased per diem rates from $5 to $5.31 and from $3 to $3.19. Amendment effective July 1, 1991.

1981 Amendment: Increased the multiplier in (1) and (2) from 18 to 20 cents; and in (4) increased the per diem rates from $4 and $2 to $5 and $3, respectively.

Administrative Rules

ARM 10.7.113 "Two contract amounts" regulation.

ARM 10.7.114 Schedule for transportation payments.

ARM 10.7.115 Schedule for bus transportation.

20-10-143. Budgeting for transportation and transmittal of transportation contracts.

Compiler's Comments

1999 Amendment: Chapter 343 inserted (2)(c) authorizing trustees to include contingency amount in transportation fund budget for unforeseen increases in bus route mileage or reimbursement of additional transportation contract obligations; in second sentence in (4) after "bus transportation" deleted "and individual transportation and in third sentence after "contracted" inserted "school bus" and after "budget" deleted "and after the county superintendent has utilized the contracts for that purpose but before the second Monday of August, the county superintendent shall send all transportation contracts received to the superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 211 in (2)(a), (2)(b), and two places in (4) substituted "final budget" for "preliminary budget"; in (4), in third sentence, substituted "second Monday of August" for "fourth Monday of July" and deleted last sentence that read: "When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for the services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow

the trustees to change the preliminary budgeted amount to compensate for the deviation"; and made minor changes in style. Amendment effective April 7, 1997.

1991 Amendments: Chapter 711 in (3), at beginning, substituted "A budget amendment to the" for "As provided in 20-9-162, an emergency" and at end substituted "20-9-161 through 20-9-166" for "the emergency budgeting law"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 in (3), before "transportation", substituted "amendment to the" for "emergency" and at end substituted "budget amendment law" for "emergency budgeting law" (latter amendment rendered void by Ch. 711); and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

ARM 10.7.105 Pupil transportation contracts.

ARM 10.7.108 Bus contracts.

Case Notes

Payment for Transportation to Elementary School Outside District: Transportation to another elementary school outside the district was paid from a budget of the district under former law. State ex rel. Knaup v. Holland, 132 M 569, 319 P2d 516 (1957).

Transportation for High School Pupils: Transportation for high school pupils was provided at the expense of the state and county and not by the school district under former law. State ex rel. Knaup v. Holland, 132 M 569, 319 P2d 516 (1957).

Attorney General's Opinions

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in (3)(i) substituted "20-9-630" for "section 244, Chapter 574, Laws of 2001". Amendment effective October 1, 2005.

Chapter 255 in (2)(a)(i) at end deleted "except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils". Amendment effective July 1, 2005.

2001 Amendment: Chapter 574 deleted former (3)(e) that read: "(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204"; inserted (3)(i) concerning block grants; and made minor changes in style. Amendment effective July 1, 2001.

Block Grants: Section 244, Ch. 574, L. 2001, provided: "(1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate a portion of the block grant amount into each district's fiscal year 2002 budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the biennial appropriation provided in [section 248(1)] [not codified] is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed. If the appropriation for block grants is greater than or less than the amount received by schools from the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue.

(4) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year."

Appropriation: Section 248, Ch. 574, L. 2001, provided: "(1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244] [not codified].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245] [not codified].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246] [not codified].

(4) If Senate Bill No. 176 [Ch. 585, L. 2001] is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] [15-1-121(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176."

Inclusion of Appropriations in Budget: Section 249, Ch. 574, L. 2001, provided: "The governor shall include the appropriation in [section 248(1)] [not codified] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

2000 Amendment by Referendum: Chapter 515, L. 1999, in (3)(e) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendments: Chapter 22 in (2)(b), in two places, substituted "fund balance" for "cash"; and in (3)(a) substituted reference to 20 U.S.C. 7701, et seq., for reference to Title I of Public Law 81-874. Amendment effective July 1, 1997.

Chapter 211 in first sentence of introductory clause substituted "second Monday of August" for "fourth Monday of July and in accordance with 20-9-123"; and in (1), two places in (1)(d), and (2)(a), before "budget", deleted "preliminary". Amendment effective April 7, 1997.

Chapter 496 in (3)(e), after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (3)(g) concerning oil and gas production taxes for "net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988"; inserted (3)(h) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 580 in (3)(e) inserted reference to 61-3-527. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 9 in (3)(g), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee [now revenue and transportation interim committee] regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

1993 Amendments: Chapter 133 in (5) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 563 inserted (1)(e) requiring the addition of transportation costs to the schedule amount; inserted (3)(h) requiring the addition of transportation payments to the total amount available for the reduction of property tax; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1992 Special Session Amendment: Chapter 9, Sp. L. July 1992, in (2)(a)(i) reduced from 100% to 50% the amount of transportation reimbursement attributed to transportation of special education pupils. Amendment effective August 6, 1992.

1991 Amendments: Chapter 267 in (3)(g), before "new production", deleted "interim production and". Amendment effective March 29, 1991.

Chapter 711 in (2)(a) increased state transportation reimbursement by substituting "divided by 2" for "divided by 3" and deleted "the resulting one-third amount"; in (2)(a)(i) substituted "one-half" for "the resulting one-third amount" and after "must be" substituted "100%" for "two-thirds"; in (2)(a)(ii) substituted "one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146" for former (2)(b) and (2)(c) that read: "(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), is the budgeted county transportation reimbursement for

elementary districts and must be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 is the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5), except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be one-third of the schedule amount attributed to the transportation of special education pupils"; in (2)(b) substituted "(2)(a)(ii)" for "(2)(b) or (2)(c)" and at end inserted reference to subsection (i) of subsection (2)(a); in (2)(c) changed subsection reference; in (3)(f) substituted "anticipated revenue from coal gross proceeds" for "gross proceeds taxes from coal"; at beginning of (3)(g) inserted "anticipated"; in (3)(i), in three places, substituted reference to fund balance for reference to cash and in two places substituted "operating reserve" for "cash reserve"; in (4)(a), at end, deleted "and, for an elementary district, adding the difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2)"; deleted former (5) that read: "(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts is computed by adding all requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts"; in (5), after "each district", deleted "and in subsection (5) for the county" and after "the district" deleted "and for the county"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 in (3)(i), in three places, substituted reference to fund balance for reference to cash and in two places substituted "operating reserve" for "cash reserve"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: In (3)(e) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537"; inserted (3)(f) relating to gross proceeds taxes from coal; at end of (3)(g) inserted "and local government severance taxes on any other production occurring after December 31, 1988"; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1989 Amendment: In (3)(d) and (3)(e) inserted "or reappropriated". Amendment effective July 1, 1989.

1987 Amendments: Chapter 611 in (3)(e), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 655 in (3)(f), before "new production", inserted "interim production and".

1985 Amendment: Inserted (3)(f) relating to net proceeds taxes for new production.

1983 Amendment: Inserted (3)(e) relating to motor vehicle fees and reimbursement.

20-10-145. State transportation reimbursement.

Compiler's Comments

1999 Amendment: Chapter 343 inserted (3) requiring district to send to superintendent of public instruction a copy of each new or amended individual transportation contract or bus route form after adopting transportation fund budget amendment and requiring a payment procedure for state reimbursement for additional obligations; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1991 Amendments: Chapter 711 in (1), in second sentence after "reimbursement", substituted "is one-half of the reimbursement amounts or one-half" for "shall not exceed one-third of the reimbursement amounts established in such sections or one-third" and at end inserted "not to exceed 180 pupil-instruction days"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 in (1), in second sentence, substituted "20-10-141 and 20-10-142" for "such sections" and at end inserted "not to exceed 180 pupil-instruction days"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

ARM 10.7.101 Introduction.

ARM 10.7.104 Claim procedure.

ARM 10.7.112 Summary of requirements for bus transportation for eligibility for state reimbursement.

ARM 10.7.118 School transportation forms listed by form number.

Attorney General's Opinions

School Transportation Not Reimbursable During Emergency: The authority of the Governor under 10-3-104 to suspend the provisions of a regulatory statute during an emergency is discretionary. Therefore, when nothing in the Governor's executive order declaring a state of emergency specifically mentioned reimbursement for school transportation under this section, the state was not required to reimburse the costs for school bus transportation for districts closed in accordance with the declaration of emergency. 43 A.G. Op. 29 (1989).

20-10-146. County transportation reimbursement.

Compiler's Comments

2005 Amendment: Chapter 130 in (2)(b)(v) substituted "20-9-632" for "section 246, Chapter 574, Laws of 2001". Amendment effective October 1, 2005.

2003 Amendment: Chapter 276 inserted (4) requiring each county superintendent to submit a report of the revenue amounts used to establish levy requirements to the superintendent of public instruction not later than the second Monday in September; and made minor changes in style. Amendment effective April 9, 2003.

Effective Date — Applicability: Section 5, Ch. 276, L. 2003, provided: "[This act] is effective on passage and approval [approved April 9, 2003] and applies to school fiscal years beginning on or after July 1, 2003."

2001 Amendment: Chapter 574 in (2)(b)(i) at end deleted "including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204"; inserted (2)(b)(v) concerning transportation block grants; and made minor changes in style. Amendment effective July 1, 2001.

Countywide School Transportation Block Grants: Section 246, Ch. 574, L. 2001, provided that the office of public instruction shall distribute one-half of the amount appropriated for countywide school transportation in November and the remainder in May. The total amount for each county is set forth in sec. 246(1). See 2001 Session Law for text.

Section 246(2) provided that the average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year.

Appropriation: Section 248, Ch. 574, L. 2001, provided: "(1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244] [not codified].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245] [not codified].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246] [not codified].

(4) If Senate Bill No. 176 [Ch. 585, L. 2001] is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] [15-1-121(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176."

Inclusion of Appropriations in Budget: Section 249, Ch. 574, L. 2001, provided: "The governor shall include the appropriation in [section 248(1)] [not codified] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

2000 Amendment by Referendum: Chapter 515, L. 1999, in (2)(b)(i) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendment: Chapter 496 in (2)(b)(i), after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (2)(b)(ii) concerning oil and gas production taxes for "net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988"; inserted (2)(b)(iii) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 580 in (2)(b)(i) inserted reference to 61-3-527; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendments: Chapter 10 at beginning of (2)(c) deleted "notwithstanding the provisions of subsection (3)"; and made minor changes in style.

Chapter 133 in (3) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 359 deleted second sentence of (2)(b)(iv) that read: "The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 563 inserted (1)(c) regarding an exception for county transportation reimbursement; and at end of (2)(a) inserted "or reimbursements under the mandatory attendance agreement provisions of 20-5-321".

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: Deleted former (1)(a) that read: "(a) the high school apportionment of the county transportation reimbursement shall be twice the state transportation reimbursement payment"; in (1)(a) changed subsection reference to 20-10-144; deleted former (1)(c) that read:

"(c) when a district receives a state transportation reimbursement of two-thirds the schedule amount for the transportation of special education pupils, the apportionment of the high school county transportation reimbursement shall be adjusted to provide only a one-third high school county reimbursement of the transportation of special education pupils"; inserted (2) providing for computation of the county transportation net levy requirement for financing reimbursements to districts; inserted (3) providing for report of the county transportation net levy requirement to County Commissioners; in (4), in first sentence before "county", deleted "elementary" and at end substituted "county transportation fund" for "county basic levy and the high school county transportation reimbursement from the proceeds of the county tax for high school transportation"; and made minor changes in style. Amendment effective July 1, 1991.

20-10-147. Bus depreciation reserve fund.

Compiler's Comments

2001 Amendment: Chapter 220 near end of (2) after "district, and" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective April 11, 2001.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

1999 Amendments — Composite Section: Chapter 157 in (1) inserted last sentence allowing use of bus depreciation reserve fund to purchase additional bus; near end of (3) inserted reference to purchase of additional bus; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 584 near end of (2) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 238 in (4), near beginning of first sentence after "reserve fund", inserted "sell all of the district's buses and".

1993 Amendment: Chapter 133 in (2), in third sentence, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

1991 Amendments: Chapter 69 near end of (1), after "used for", inserted "the conversion, remodeling, or rebuilding of a bus or for"; near end of (3), after "only", substituted "to convert, remodel, or rebuild buses or" for "for the purchase of buses or radios"; and made minor change in style.

Chapter 568 in (2), in first sentence after "radio", deleted "for such purposes" and inserted second sentence that reads: "The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio"; in (4), in first sentence before "balance", substituted "fund" for "cash" and after "district" substituted "the trustees" for "it"; and made minor changes in style. Amendment effective April 23, 1991.

Attorney General's Opinions

Conditions for Transfer of School District Bus Depreciation Reserve Fund: Resolving an apparent statutory conflict regarding the transfer of a school district bus depreciation reserve fund, a budgeted fund, the Attorney General applied the specific provisions of this section over the general provisions of 20-9-201 and 20-9-208 in holding that before a school district may transfer any money in the district's bus depreciation reserve fund to any other district fund, the school district trustees must have sold all of the district's buses and submitted the proposed fund transfer to the electors of the district. 51 A.G. Op. 6 (2005).

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

Use of School Bus Depreciation Fund: The trustees of a school district may pay for the cost of replacement of a bus or radio from a bus depreciation reserve fund established under 20-10-147 if depreciation taken on the bus or radio since its acquisition has been credited to the reserve fund. In replacing any such bus or radio, the trustees are not limited to paying an amount from the fund which equals the accumulated depreciation credited to the fund on account of the replaced vehicle. 37 A.G. Op. 153 (1978).

Part 2
Food Services

20-10-201. Acceptance, expenditure, and administration of federal school food services money.

Compiler's Comments

2001 Amendment: Chapter 237 in (2) at end of first sentence substituted "the federal special revenue fund" for "the agency fund"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1983 Amendment: In first sentence of (2), substituted "agency fund" for "federal and private grant clearance fund".

Federal Statutes: The National School Lunch Act and the Child Nutrition Act of 1966, referred to in this section, are compiled in the U.S.C. as Title 42, §1751, et seq.

20-10-202. Records, reports, reviews, and audits.

Compiler's Comments

1991 Amendment: In (2), before "inspections", deleted "audits"; and made minor changes in style. Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

20-10-203. School food commodities.

Compiler's Comments

1983 Amendment: At end of second sentence, substituted "commodity state special revenue account" for "commodity revolving account".

20-10-204. Duties of trustees.

Attorney General's Opinions

School Trustees — Conflict of Interest: A member of the board of trustees of a school district is prohibited from having any pecuniary interests in supplies purchased for the school's lunch program. 34 A.G. Op. 31 (1972).

20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils.

Compiler's Comments

2003 Amendment: Chapter 114 in (1) substituted "local office of public assistance" for "county department of welfare"; and made minor changes in style. Amendment effective October 1, 2003.

CHAPTER 15
COMMUNITY COLLEGE DISTRICTS

Chapter Compiler's Comments

Legislative Study of Postsecondary Education: Chapter 632, L. 1989, was a bill entitled: "An act establishing a legislative committee to consider issues related to the governance and funding of postsecondary education; providing an appropriation; and providing an effective date and a termination date." Effective July 1, 1989, and terminates June 30, 1991.

Preamble — Interim Study: The preamble attached to Ch. 632, L. 1989, provided: "WHEREAS, postsecondary education provides opportunities for the citizens of Montana to develop their educational potential; and

WHEREAS, as a result of the work of the University Funding Study Committee during the 1989 biennium, valuable conclusions were reached regarding the reliability and use of peer data and the level of funding for Montana postsecondary education institutions relative to peer institutions; and

WHEREAS, the conclusions reached on peer data have removed a major impediment to working cooperatively on elements of the higher education funding formula and have changed the direction for Montana University System budgeting; and

WHEREAS, the relationship between the Montana University System and the Legislature has been significantly improved by the work of the University Funding Study Committee; and

WHEREAS, further work is needed to more fully develop new budgeting formulas and to complete work on personnel and classroom enrollment systems; and

WHEREAS, the balance from the $150,000 appropriated by the 1987 Legislature to conduct the university funding study may be expended to support the costs of a postsecondary education study committee."

Part 1
General Provisions

20-15-102. Community college districts — name and corporate powers.

Case Notes

Administrative Tenure Not Contemplated: A community college may not grant continuing contract status (tenure) except to those persons specifically authorized to receive such status. Tenure for teachers is unique in public contracts of employment; its basis is academic freedom. It does not apply to an administrative position not requiring teacher certification. Sibert v. Community College, 179 M 188, 587 P2d 26 (1978).

Attorney General's Opinions

Power of Community College Trustees to Acquire and Dispose of Property: This section authorizes community college trustees to acquire and dispose of property in the same way as other types of school districts are statutorily permitted. 41 A.G. Op. 72 (1986).

Collateral References

Colleges and Universities *key* 3, 5.
14 C.J.S. Colleges and Universities §§4, 6.
15A Am. Jur. 2d Colleges and Universities §§3, 4.

20-15-103. Supervision and coordination by board of regents.

Case Notes

"Schoolteacher" — Higher Education Faculty Not Included: The plain and ordinary meaning of "schoolteacher" does not encompass higher education faculty, including community college faculty members, especially since community college faculty members are ultimately answerable to the Board of Regents. Community college faculty members are state employees for purposes of entitlement to payment for accumulated sick leave. Rippey v. Bd. of Trustees, 210 M 396, 682 P2d 1363, 41 St. Rep. 1117 (1984), followed, with regard to the fact that "teacher" does not include a community college instructor for tenure purposes, in Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

Collateral References

Colleges and Universities *key* 7.
14A C.J.S. Colleges and Universities §§16, 18.

20-15-104. Pecuniary interest and letting contracts.

Compiler's Comments

2005 Amendment: Chapter 162 in (2) at beginning inserted exception clause pertaining to certain energy audits and energy performance contracts; and made minor changes in style. Amendment effective April 7, 2005.

20-15-105. Courses of instruction — tuition and fees.

Collateral References

Colleges and Universities *key* 9.

14 C.J.S. Colleges and Universities §27.
15A Am. Jur. 2d Colleges and Universities §§20, 22.
Residence: determination of residence or nonresidence for purpose of admission to public college. 56 ALR 3d 641; 83 ALR 2d 497.

20-15-106. Retirement systems for employees and teachers.

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

20-15-107. Lease or sale of district property.

Collateral References

Colleges and Universities *key* 6(3).
14 C.J.S. Colleges and Universities §11.

20-15-109. Acceptance of donations.

Collateral References

Colleges and Universities *key* 6(2).
14 C.J.S. Colleges and Universities §12.
15A Am. Jur. 2d Colleges and Universities §43.

Part 2
Organization and Trustees

20-15-203. Call of community college district organization election — proposition statement.

Compiler's Comments

1999 Amendment: Chapter 51 in (3) near end of proposition form after "day of ...." substituted "20..." for "19..."; and made minor changes in style. Amendment effective January 1, 2000.

20-15-204. Election of trustees — districts from which elected — terms of office.

Attorney General's Opinions

City Judge Not to Hold Office as Community College Trustee: The provisions of Art. VII, sec. 10, Mont. Const., apply to all judges, including City Judges. Because the position of trustee of a community college district is considered an elective public office, a City Judge is constitutionally prohibited from holding office as an elected trustee of a community college district. 44 A.G. Op. 21 (1991).

Collateral References

Colleges and Universities *key* 7.
14A C.J.S. Colleges and Universities §17.
15A Am. Jur. 2d Colleges and Universities §§9, 12, 13.

20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved.

Compiler's Comments

Composite Section: Section 20-15-209 was amended twice in 1971, once by Ch. 164, sec. 1 (approved March 3, 1971), and once by Ch. 407, sec. 2 (approved March 18, 1971). Neither amendment mentioned the other or included the changes made by the other. Chapter 164 deleted "or part of a county" after "county" in the present first and third sentences of the first paragraph and deleted a third sentence reading: "If the proposition carries in some county or counties or parts of counties but not in all portions of the area sought to be included within the district, the board of education shall determine whether the area in which the proposition

carried by a majority vote meets the assessed valuation and high school pupil enrollment requirements for the organization of a community college district, and if so, shall establish the boundaries and make an order declaring the community college district organized in the area in which the proposition has carried by a majority vote."

Although Ch. 407 substituted "regents" for "board of education" in the above quoted sentence, perhaps indicating an intent that the sentence be left in the section, and did not delete "or part of the county" where deleted by Ch. 164, the compiler has made a composite section incorporating the changes made by both amendments since 20-15-201 requires that the proposed area of a district coincide with the boundaries of one or more counties and the changes made by Ch. 164 appear to make this section consistent with those requirements.

Chapter 407 also inserted the second sentence of the first paragraph, substituted "may" for "shall" in the third sentence shown in the text, and substituted "co-ordinator of community college districts" for "superintendent of public instruction" and "regents" for "board of education" throughout the section.

20-15-210. Qualification and organization of board of trustees.

Compiler's Comments

1995 Amendment: Chapter 260 in (2), in last sentence, deleted references to 20-9-206, 20-9-222, and 20-9-224; and made minor changes in style. Amendment effective July 1, 1995.

20-15-221. Election of trustees after organization of community college district.

Compiler's Comments

2005 Amendment: Chapter 130 in (3) in third sentence near beginning after "system" substituted "is" for "or voting machines are"; and made minor changes in style. Amendment effective October 1, 2005.

Collateral References

Colleges and Universities *key* 7.

14A C.J.S. Colleges and Universities §17.

15A Am. Jur. 2d Colleges and Universities §§9, 12, 13.

20-15-231. Annexation of territory of districts to community college district.

Compiler's Comments

1985 Amendment: Inserted (2) relating to adoption of a plan.

1983 Amendment: In first sentence of (1), after "districts of" substituted "a county that is contiguous to the existing community college district" for "one county", before "order" changed "shall" to "may"; and in second sentence of (1) after "shall be" substituted "held on the next general election day" for "ordered within 60 days of the receipt of the petition".

20-15-241. Community college service regions — creation.

Compiler's Comments

2001 Amendment: Chapter 495 in (3)(a)(vi) inserted requirement of an estimate of the election's impact on homes valued at $100,000 and at $200,000 in terms of added property taxes and inserted last sentence allowing an impact statement as to homes of other values; and made minor changes in style. Amendment effective October 1, 2001.

Part 3
Finance

Part Attorney General's Opinions

Appropriations to Community Colleges — Budget Procedure: The budget for community college districts must be approved by the Board of Regents and fit into the Budget Act procedure of 17-7-101, et seq. It is a budget request that may be altered by the chief budget officer and which is ultimately subject to legislative approval. While 65% state funding of community colleges is the goal, the Legislature may or may not appropriate an amount equal to 65% of the districts' proposed budgets. If it does not, an additional levy, which must be approved by the voters in the district, is authorized to make up the deficiency. The General Appropriation Act of 1979 does no more than reflect this entire statutory scheme, especially the requirements of this part. The General Appropriation Act of 1979 properly appropriates state funds to the community colleges. 38 A.G. Op. 54 (1979).

20-15-301. Sources of financing for and types of capital expenditures.

Compiler's Comments

1989 Amendment: In (1)(a), before "school buildings", substituted "purchase, lease, build, enlarge, alter, or repair" for "build, enlarge, alter, repair, or acquire by purchase"; in (1)(d), after "provisions of", substituted "chapter 9, part 4" for "the bonds chapter"; and made minor changes in phraseology.

Attorney General's Opinions

Community College District Statutory Borrowing Authority: A community college district may enter into an agreement with a city whereby the city would loan the district the proceeds from the sale of an industrial development revenue bond and the district would repay the loan from college revenues. A district may also enter into a promissory note loan agreement with a private lender whereby the district would repay the loan from college revenues. A college district election is not required to approve these construction project financing arrangements; however, a city is required to hold a public hearing prior to issuing industrial development revenue bonds. A district is subject to the election requirement in 20-6-603 when acquiring or constructing sites or buildings. 42 A.G. Op. 78 (1988).

County Revenue Bonds to Finance Community College District Construction: Flathead Valley Community College District may use funds that Flathead County raised by issuing revenue bonds for school construction either by borrowing the funds from the county or by leasing the buildings constructed by the county, subject to applicable school law. 42 A.G. Op. 29 (1987).

20-15-305. Adult education tax levy.

Compiler's Comments

2001 Amendment: Chapter 574 near middle after "levy a" deleted "1 mill". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

20-15-309. Proposed budget.

Compiler's Comments

Legislative Finance Committee Bill: Chapter 495, L. 1981 (HB 69), was introduced at the request of the Legislative Finance Committee. See final report on community college funding study, Legislative Fiscal Analyst, June 1981.

20-15-310. Appropriation.

Compiler's Comments

1989 Amendment: At end of first sentence substituted "be governed by the provisions of this part and the state general appropriations act" for "be controlled under provisions of the state general appropriations act"; and at beginning of second sentence substituted "The state general fund appropriation must be based on a budget amount" for "The unrestricted budget shall be based on a calculated dollar amount" and at end inserted "as determined by the legislature". Amendment effective July 1, 1989.

20-15-311. Funding sources.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 495 at end of (5) inserted "and 15-10-425". Amendment effective October 1, 2001.

Chapter 574 in (3) before "adult education levy" deleted "1 mill". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 in (2) and (3) inserted references to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1983 Amendment: Inserted (8) relating to income from community college service region.

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

Applicability of Property Tax Freeze to Community College Funding — Mandatory Levy Frozen: The provisions of Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987) apply in freezing the mandatory levy on community college districts at the 1986 level. 42 A.G. Op. 21 (1987).

20-15-312. Calculation and approval of operating budget.

Compiler's Comments

1997 Amendment: Chapter 243 in (1), near beginning of first sentence, substituted "September 1" for "June 15"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: In (1)(a) deleted introductory clause "General fund appropriation", at end of first sentence substituted "the budget amount per full-time equivalent student, as determined by the legislature" for "the total unrestricted budget authorized by the legislature and approved by the regents", and inserted last sentence relating to nonapplication of percentage to excess budget; in (1)(b) substituted language relating to mandatory levy for "An estimate of revenues to be generated by student tuition and fees, and all other unrestricted income, revenues, or balances shall be added to the state general fund appropriation and the total subtracted from the total unrestricted budget. The difference shall be obtained by a mandatory levy"; in (1)(c) inserted reference to subsection (a) of subsection (1) and inserted reference to revenue from tuition and fee schedules and other unrestricted income; deleted former (1)(g) that read: "(g) If revenues to the unrestricted budget exceed estimates, the excess shall be used to reduce the mandatory levy in the subsequent year"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Attorney General's Opinions

Applicability of Property Tax Freeze to Community College Funding — Mandatory Levy Frozen: The provisions of Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987) apply in freezing the mandatory levy on community college districts at the 1986 level. 42 A.G. Op. 21 (1987).

20-15-313. Tax levy.

Compiler's Comments

1999 Amendment: Chapter 584 in first sentence inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

20-15-314. Tax levy for community college service region.

Compiler's Comments

1999 Amendment: Chapter 584 in two places inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

20-15-323. Definition of emergency for budgeting purposes.

Compiler's Comments

Effective Date: Section 60(1), Ch. 767, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

20-15-324. Resolution for emergency budget — petition to board of regents.

Compiler's Comments

Effective Date: Section 60(1), Ch. 767, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

20-15-325. Emergency budget limitation, preparation, and adoption procedures.

Compiler's Comments

1995 Amendment: Chapter 260 in (4), after "county superintendent", deleted "the county treasurer"; and made minor changes in style. Amendment effective July 1, 1995.

Effective Date: Section 60(1), Ch. 767, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.

Compiler's Comments

2001 Amendment: Chapter 574 in (3) near middle after "shall" deleted "subject to 15-10-420 and" and after "tax on the" inserted "taxable value of all". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 in (3) inserted reference to 15-10-420. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 42 in (3) substituted "subsection (2)(b)" for "subsection (2)(c)". Amendment effective March 12, 1997.

1995 Amendment: Chapter 260 in (1), near beginning, substituted "board of trustees" for "county treasurer"; in (2), near beginning, inserted "cash"; in (2)(a) and (2)(b), before "registered", deleted reference to outstanding warrants; deleted former (2)(b) that read: "(b) the amount of the cash balance in each fund included on the emergency budget that is available to finance the outstanding warrants or registered warrants"; in (2)(b), at beginning, deleted "after consideration of the available money in subsection (2)(b)"; and made minor changes in style. Amendment effective July 1, 1995.

Effective Date: Section 60(1), Ch. 767, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

Part 4
Relationship to Other Laws

20-15-403. Applications of other school district provisions.

Compiler's Comments

1999 Amendment: Chapter 18 in (1) near end after "53-20-304" deleted "77-3-321". Amendment effective October 1, 1999.

1997 Amendments: Chapter 310 in (1) deleted 39-71-2206 from the list of sections. Amendment effective July 1, 1997.

Chapter 522 in (1), near middle of list of statutory references after "18-2-114", inserted "18-2-401"; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 14, Ch. 310, L. 1997, was a severability clause.

Section 10, Ch. 522, L. 1997, was a severability clause.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 10, Ch. 522, L. 1997, was a saving clause.

1993 Amendments: Chapter 525 in (1), after "15-70-301", deleted "15-70-322". Amendment effective January 1, 1994.

Chapter 539 in (1) substituted "15-16-605" for "15-16-601".

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, in (1) deleted reference to 15-55-106. Amendment effective August 6, 1992.

1987 Amendments: Chapter 370 in (1) deleted reference to 7-8-2215.

Chapter 512 in (1) deleted reference to 18-1-102 and 18-1-112.

Chapter 587 in (1) deleted reference to 15-18-108.

1985 Amendment: In (1) deleted reference to 18-1-105 and 19-1-602.

1983 Amendment: In (1), inserted "41-3-1132".

1981 Amendments: Chapter 495 deleted "15-24-502, 15-24-505", "18-2-115", and "40-8-124, 40-8-125, 40-8-128" from (1).

Chapter 570 deleted "15-30-221" from (1).

Chapter 575 deleted "15-24-502, 15-24-505" after "15-18-108" in (1).

20-15-404. Trustees to adhere to certain other laws.

Compiler's Comments

1997 Amendments: Chapter 42 in (4) substituted "Title 20, chapter 7, part 7" for "20-7-701 through 20-7-713". Amendment effective March 12, 1997.

Chapter 219 in (6), after "20-9-446", deleted "20-9-451 through 20-9-456".

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1995 Amendments: Chapter 260 in (5) substituted "20-9-223" for "through 20-9-224"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 423 in (6) deleted reference to 20-9-409. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1991 Amendment: In (5) deleted "subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Amendment: In (3) inserted "20-6-604"; and in (5) inserted "20-9-512".

1987 Amendment: In (4) changed "20-7-712" to "20-7-713".

1983 Amendment: In (5), deleted internal reference to 20-9-209.

1981 Amendment: Deleted "20-9-501" from (7).

Attorney General's Opinions

Election Requirement Inapplicable to Community College Construction Project: The election requirement in 20-9-453 (now repealed) does not apply to a county's issuance of revenue bonds to finance a community college district's construction project because revenue bonds do not place the county in debt. 42 A.G. Op. 78 (1988), modifying any contrary holding in 42 A.G. Op. 29 (1987).

CHAPTER 20
SCHOOL ELECTIONS

Chapter Compiler's Comments

Extension of 2003 School Election Deadlines: Section 14, Ch. 550, L. 2003, provided: "In order to allow for the orderly and efficient conduct of the regular school elections scheduled for May 6, 2003, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2003 only, a school district may limit the regular school election scheduled for May 6, 2003, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. In addition, all statutory deadlines for the May 6, 2003, regular school election that fall on or before April 18 are extended to April 28, 2003, except that the timeline for posting the election notice is changed to April 28, 2003, through May 2, 2003." Effective May 1, 2003.

Retroactive Applicability. Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

Extension of 2001 Deadlines Relating to School Elections: Section 22, Ch. 237, L. 2001, provided: "In order to allow for the orderly and efficient conduct of the regular school elections scheduled for May 8, 2001, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, for the regular school election scheduled for May 8, 2001, all statutory deadlines falling on or before April 13 are extended to April 20, 2001, except that the deadline for making the absentee ballots available is extended to April 25, 2001, and the timeline for posting the election notice is changed to April 20, 2001, through April 30, 2001."

Retroactive Applicability: Section 24, Ch. 237, L. 2001, provided: "[Section 22] [Extension of 2001 Deadlines Relating to School Elections] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 29, 2001."

Part 1
General Provisions

20-20-102. Precedence of school election provisions.

Compiler's Comments

Transition: Section 404, Ch. 571, L. 1979, was a transition section, the text of which may be found in the compiler's comment to 13-1-104.

20-20-103. Election by ballot.

Collateral References

Elections *key* 161.
29 C.J.S. Elections §264.
25 Am. Jur. 2d Elections §199.

20-20-104. Forms.

Compiler's Comments

Section Not Codified: Part of section 75-6416, R.C.M. 1947, provided that the Superintendent of Public Instruction was to prepare the forms necessary for absentee voting in school elections. This language was not codified in the MCA because it is redundant with this section. However, the language has not been repealed and is still valid. Citation may be made to sec. 152, Ch. 5, L. 1971.

20-20-105. Regular school election day and special school elections — limitation — exception.

Compiler's Comments

1999 Amendment: Chapter 514 in first sentence in (1) substituted "first Tuesday after the first Monday of May" for "first Tuesday of April" and inserted second sentence authorizing one election each calendar year on regular school election day for proposition requesting funding and providing exception for unforeseen emergency; at beginning of (2) inserted "Subject to the provisions of subsection (1)"; inserted (3) authorizing rescheduling of election day in event of unforeseen emergency; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

Contingent 1987 Amendment: In first sentence substituted "The fourth Tuesday of March" for "The first Tuesday of April".

Section 14(1), Ch. 644, L. 1987, provided that the amendment to this section was effective on passage and approval of legislation or adoption of party rules establishing the fourth Tuesday of March as the presidential primary election date or caucus date in any two of the states of Idaho, Washington, or Oregon prior to August 1, 1987. Contingency did not occur.

Attorney General's Opinions

Tie Vote — Special Election Required: When an election for school trustee results in a tie vote, the school district board of trustees should conduct a special school election to fill the trustee position. 35 A.G. Op. 81 (1974).

Collateral References

Elections *key* 38.
29 C.J.S. Elections §§142, 143.
26 Am. Jur. 2d Elections §223.

20-20-106. Poll hours.

Compiler's Comments

1987 Amendment: At end of (1) changed "8 a.m." to "7 a.m.".

1985 Amendment: Near beginning of (2) after "on the same day as", substituted "an election held by a political subdivision under 13-1-104(3) and at the same polling place" for "a general, primary, or special election for another political subdivision", at end of (2) substituted "the school election" for "that election"; and inserted (3) relating to general or primary election hours.

Collateral References

Elections *key* 206 through 208.
29 C.J.S. Elections §317.
26 Am. Jur. 2d Elections §224.

20-20-107. Election expenses.

Collateral References

Schools and School Districts *key* 87.
78 C.J.S. Schools and School Districts §318.

Part 2
Calling of and Preparation for School Elections

20-20-201. Calling of school election.

Compiler's Comments

Transition: Section 404, Ch. 571, L. 1979, was a transition section, the text of which may be found in the compiler's comment to 13-1-104.

Case Notes

Petitions to Rescind Valid Bond Elections: There is no provision of the written law of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may desire another election to vote on the question already favorably voted upon, especially where no fraud is either alleged or shown in the conduct of the election already held. Schmiedeskamp v. Bd. of Trustees, 128 M 493, 278 P2d 584, 68 ALR 2d 1035 (1955).

Collateral References

Elections *key* 30, 34.
29 C.J.S. Elections §§128, 132 through 135.
26 Am. Jur. 2d Elections §184.

20-20-203. Resolution for poll hours, polling places, and judges.

Compiler's Comments

1985 Amendment: Near beginning of (1)(a) changed "20-20-106(2)" to "20-20-106(3)".

20-20-204. Election notice.

Compiler's Comments

1997 Amendment: Chapter 144 in (1)(a)(i) inserted "if there is one" and at end substituted "and" for "or"; and made minor changes in style.

1987 Amendment: Inserted (1)(a)(i) relating to notice by newspaper publication; in (1)(b), after "notice in", deleted "a newspaper or by"; and made minor changes in phraseology.

Case Notes

Notice and Ballot Not Misleading: Under former law, where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P2d 264 (1936).

Actual Notice of Election Held to Be Sufficient: Under the rule that failure to give the statutory notice of an election is immaterial where actual notice was given and the electors participated generally in the election, where it appeared that the clerk of the district had mailed circular letters to the taxpaying freeholders of the district stating the time and place of holding the election, that the only newspaper in the district published a news item with relation thereto, that handbills referring to the election were distributed throughout the district, that the election was discussed generally by the people residing in the district, and that a larger number of votes was cast than at any previous election, failure to give the statutory notice by giving only 9 days' instead of 10 days' notice required by former statute did not render the election void and did not justify an injunction against collection of the tax, particularly where no proof was offered that any elector was deprived of the right to vote by reason of insufficient notice. Buckhouse v. Joint School District, 85 M 141, 277 P 961 (1929).

Collateral References

Elections *key* 40 through 42.

29 C.J.S. Elections §§136 through 140.

26 Am. Jur. 2d Elections §§191 through 194.

Inclusion or exclusion of first and last days in computing time for giving notice of school district election, which must be given a certain number of days before a known future date. 98 ALR 2d 1392.

What is "public place" within requirements as to posting of school election notices. 90 ALR 2d 1212, 1216, 1220 through 1226.

Part 3
Qualification and Registration of Electors

20-20-301. Qualifications of elector.

Compiler's Comments

1987 Amendment: At end added clause concerning single-member districts.

Transition — 1979: Section 404, Ch. 571, L. 1979, was a transition section, the text of which may be found in the compiler's comment to 13-1-104.

Similar Amendment Not Codified — 1971: Section 75-6410, R.C.M. 1947, was amended twice in 1971, once by Ch. 83, sec. 2, and once by Ch. 118, sec. 1. Both amendatory acts made similar changes in the language of subsections (2) and (3). In the original enactment by sec. 146, Ch. 5, L. 1971, these provisions read: "(2) He is twenty-one (21) years of age or older;

(3) He has resided in the state one (1) year and in the district thirty (30) days immediately preceding the election at which he offers to vote; and". The effective dates of the amendatory acts, Ch. 83 and Ch. 118, are February 27 and March 1, respectively. The language set forth above is that of Ch. 118, sec. 1.

Attorney General's Opinions

Eligibility as Trustee — Registered Voter: A person must be registered to vote in the school district to be eligible for the office of school trustee. "Eligibility", as used in 20-3-305, refers to the qualifications required of a school trustee to hold the office, not the qualifications to be elected. 37 A.G. Op. 145 (1978). (See also 35 A.G. Op. 91 (1974).)

Elector Residency Qualifications: An elector in a school election may be challenged on election day by any registered elector of the district and may be disqualified from voting by the election judges if he is not a resident of the school district in which the election is held. 35 A.G. Op. 56 (1974).

Collateral References

Elections *key* 59, 66, 68, 72.

29 C.J.S. Elections §§26, 30, 32, 41 through 43.

25 Am. Jur. 2d Elections §59, et seq.; 68 Am. Jur. 2d Schools §12.

20-20-303. Elector challenges.

Compiler's Comments

2005 Amendment: Chapter 130 in (1) at end of first sentence after "provisions of" deleted "13-2-404 and"; and made minor changes in style. Amendment effective October 1, 2005.

Case Notes

No Authority in School Board to Remove Unqualified Voters From List of Registered Voters: Under 20-9-428 a school board of trustees removed from the certified list of registered voters the names of several persons who the board determined were disqualified to vote. The court held that 20-9-428 must be read with other statutes governing elections, including this section, concerning how an elector's qualifications may be challenged; 13-13-301, et seq., concerning how qualifications are determined; and 13-15-101, concerning general canvassing requirements. The court determined the school board had no authority to remove names of unqualified voters. Bischoff v. School District, 230 M 336, 749 P2d 533, 45 St. Rep. 253 (1988).

Attorney General's Opinions

Elector Residency Qualifications: An elector in a school election may be challenged on election day by any registered elector of the district and may be disqualified from voting by the election judges if he is not a resident of the school district in which the election is held. 35 A.G. Op. 56 (1974).

Collateral References

Elections *key* 223.
29 C.J.S. Elections §328.

20-20-311. Closure of registration.

Collateral References

Elections *key* 105.
29 C.J.S. Elections §§59 through 61.
25 Am. Jur. 2d Elections §§102, 103.

20-20-312. Listing of registered electors.

Collateral References

Elections *key* 108.
29 C.J.S. Elections §67.
25 Am. Jur. 2d Elections §109.

Part 4
Election Procedure

Part Compiler's Comments

Preamble: The preamble attached to Ch. 414, L. 2003, provided: "WHEREAS, the U.S. Supreme Court in Bush v. Gore, 531 U.S. 98 (2000), found that the lack of uniform procedures for determining voter intent in Florida during the 2000 presidential election led to a violation of the U.S. Constitution's Equal Protection Clause of the 14th Amendment; and

WHEREAS, at the request of the 57th Legislature, the State Administration and Veterans' Affairs Interim Committee devoted much of the 2001-2002 interim to a review of Montana election laws with respect to voting systems and counting processes in light of Bush v. Gore; and

WHEREAS, the interim study found that Montana's statutory provisions relating to ballots, voting systems, and vote counting processes needed to be updated, clarified, and in some instances revised to better define uniform standards and procedures to provide equal protection for votes cast by Montana voters; and

WHEREAS, the Subcommittee on Voting Systems of the State Administration and Veterans' Affairs Interim Committee agreed that statutory changes should be made with an eye on future technology but should also standardize current practices to the greatest extent possible.

THEREFORE, this legislation will enable the Secretary of State to adopt a statewide benchmark performance measure that voting systems must meet before they can be approved for use in the state; allow local election administrators to continue to choose which of the approved voting systems should be used locally; require the Secretary of State to adopt uniform statewide rules regarding ballot form, votes and vote counts, and other operational procedures specific to each voting system and to provide training to local election administrators; and require all counting boards to use the uniform counting procedures specified."

20-20-401. Trustees' election duties — ballot certification.

Compiler's Comments

1999 Amendment: Chapter 514 in first sentence in (2) substituted "25 days" for "15 days" and in third sentence substituted "at least 20 days before the election" for "at least 11 days before the election". Amendment effective July 1, 1999.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

1997 Amendment: Chapter 144 in (2), at end of third sentence, inserted exception clause; and made minor changes in style.

1987 Amendment: In (2) inserted third sentence concerning absentee ballots; and deleted former (3) that read: "(3) The trustees are authorized to and shall administer oaths to election judges."

1983 Amendment: At end of (1) inserted "unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417".

Transition — 1979: Section 404, Ch. 571, L. 1979, was a transition section, the text of which may be found in the compiler's comment to 13-1-104.

Collateral References

Elections *key* 163, 200 through 204, 227(2), (6).
29 C.J.S. Elections §§265, 313 through 316.
26 Am. Jur. 2d Elections §§227 through 229.

20-20-411. Conduct of election.

Case Notes

Consolidation Election Void — Ballots Improperly Counted: Where judge's intentional withdrawal of five votes "for consolidation", rather than drawing by lot as required by statute, left the result of the election doubtful, then the election was void under 20-20-414 (since repealed). Woolsey v. Carney, 141 M 476, 378 P2d 658 (1963).

Validity of Ballots: Former statute relating to validity of ballots in general elections was applicable to school elections. Woolsey v. Carney, 141 M 476, 378 P2d 658 (1963).

Bond Election Void — Ballots Improperly Counted: Bond election was void under 20-20-414 (since repealed) where judges and clerks turned ballots right side up, placed "yes" ballots and "no" ballots in separate piles before counting them and then disallowed sufficient number of "no" ballots to allow "yes" ballots to prevail. Hehn v. Olson, 138 M 576, 358 P2d 431 (1960).

Collateral References

Elections *key* 197, et seq.
29 C.J.S. Elections §308, et seq.
26 Am. Jur. 2d Elections §221, et seq.

20-20-415. Trustees to canvass votes.

Case Notes

Failure to Canvass Bond Election: Failure of trustees to canvass vote as required by former statute did not make bonds issued by school district illegal and void. Long v. School District, 149 M 220, 425 P2d 822 (1967).

Collateral References

Elections *key* 257, 258, 265.
29 C.J.S. Elections §§375 through 399.
26 Am. Jur. 2d Elections §§281 through 284.

20-20-416. Certificate of election.

Compiler's Comments

1999 Amendment: Chapter 132 near beginning of second sentence after "trustee election" inserted "either by vote or by acclamation"; and made minor changes in style. Amendment effective March 23, 1999.

20-20-421. Voting systems.

Compiler's Comments

2003 Amendment: Chapter 414 near beginning substituted "a voting system, as defined in 13-1-101, is" for "voting machines or electronic voting systems are", substituted "voting system" for "voting devices", and substituted "voting system has been approved pursuant to 13-17-101 and if the election administrator complies with" for "voting machine or an electronic voting

system shall do so in accordance with"; and made minor changes in style. Amendment effective October 1, 2003.

1981 Amendment: Substituted "chapter 17" for "chapters 17 or 18" and "that chapter" for "those chapters".

Collateral References

Elections *key* 222.
29 C.J.S. Elections §323.
26 Am. Jur. 2d Elections §§230, 245.

CHAPTER 25
UNIVERSITY SYSTEM

Chapter Compiler's Comments

Joint Committee on Postsecondary Education Policy (now Education and Local Government Interim Committee): Chapter 526, L. 1991, created a joint committee on postsecondary education policy and budget (now Education and Local Government Interim Committee).

Preamble: The preamble attached to Ch. 526, L. 1991, provided: "WHEREAS, the 1987 Legislature recognized the need to review the adequacy of the funding method for the Montana University System and appointed an eight-member committee to study University System funding issues in conjunction with the Commissioner of Higher Education and the Governor's Office of Budget and Program Planning; and

WHEREAS, the 1989 Legislature, through adoption of House Bill No. 354, provided for appointment of an eight-member, bipartisan postsecondary education study committee to study postsecondary education fiscal policy and accountability issues; and

WHEREAS, the Postsecondary Education Study Committee recognizes the need for ongoing communication between the Legislative and Executive Branches and the Board of Regents; and

WHEREAS, at present, there is no effective mechanism for these parties to communicate on a regular basis; and

WHEREAS, the Legislature recognizes not only the need to be regularly informed of the long-range plans and short-range goals developed by the Board of Regents for the Montana University System, the community colleges, and the vocational-technical center [now colleges of technology] system but also the need to be informed of the success or failure in attaining those plans and goals; and

WHEREAS, the Legislature recognizes the need to develop a link between planning and funding in postsecondary education; and

WHEREAS, the Legislature endorses the concept of outcome assessment as an accountability tool in postsecondary education; and

WHEREAS, the Legislature acknowledges that the Montana Constitution gives the Board of Regents full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana University System and to supervise and coordinate other public educational institutions assigned by law; and

WHEREAS, the Legislature is vested with the exclusive authority to appropriate money; and

WHEREAS, the Legislature embraces its constitutional responsibility to ensure by law strict accountability of all revenue received and money spent by the state; and

WHEREAS, the Board of Regents has indicated its desire to work cooperatively with the Legislature for the benefit of the Montana University System and the State of Montana; and

WHEREAS, formation of a statutory joint committee on postsecondary education policy and budget [now Education and Local Government Interim Committee] would enhance communication among the Legislature, the Board of Regents, and the Executive Branch for the benefit of the State of Montana."

Powers and Duties of Committee: Section 8, Ch. 526, L. 1991, provided: "(1) The committee may:

(a) organize and adopt rules to govern its proceedings; and

(b) exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;
(iv) outcome assessment programs; and
(v) any other area that the committee considers to have significant educational or fiscal policy impact;
(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;
(c) periodically review the results of outcome assessment programs;
(d) develop mechanisms to ensure strict accountability of the revenues and expenditures of the university system;
(e) act as a liaison between both the legislative and executive branches and the board of regents;
(f) encourage cooperation between the legislative and executive branches and the board of regents; and
(g) report its activities, findings, recommendations, and any proposed legislation to the legislature."

Chapter Law Review Articles

Voters Wisely Reject Proposed Constitutional Amendment 30 to Eliminate the Montana Board of Regents, Aronofsky, 58 Mont. L. Rev. 333 (1997).

The Legal Status of the Montana University System Under the New Montana Constitution, Schaefer, 35 Mont. L. Rev. 189 (1974).

Constitutional Control of the Montana University System: A Proposed Revision, Waldoch, 33 Mont. L. Rev. 76 (1972).

Part 1
University System — General

20-25-101. Antidiscrimination.

Collateral References

Colleges and Universities *key* 1.
14A C.J.S. Colleges and Universities §2.
15A Am. Jur. 2d Colleges and Universities §6.
Condition of buildings or equipment. 34 ALR 3d 1166.
Immunity: comment note on rule of governmental tort nonliability as applied to public schools and institutions of higher learning. 33 ALR 3d 703.

20-25-103. Authority to accept gifts.

Collateral References

Colleges and Universities *key* 6(2).
14A C.J.S. Colleges and Universities §12.
15A Am. Jur. 2d Colleges and Universities §43.

20-25-107. Regulation of award of degrees — penalty.

Collateral References

Colleges and Universities *key* 5; Schools and School Districts *key* 178.
14A C.J.S. Colleges and Universities §8; 78A C.J.S. Schools and School Districts §508.
15A Am. Jur. 2d Colleges and Universities §29.
Certificates and certification: student's right to compel school officials to issue degree, diploma, or the like. 11 ALR 4th 1182.

20-25-109. Authorized university system employee or individual activities.

Compiler's Comments

Effective Date: Section 3, Ch. 379, L. 2001, provided that this section is effective on passage and approval. Approved April 26, 2001.
Source: 51.912 Texas Statutes.

20-25-110. Student construction project — disclosure — immunity.

Compiler's Comments

Effective Date: Section 4, Ch. 521, L. 2005, provided that this section is effective July 1, 2005.
Applicability: Section 5, Ch. 521, L. 2005, provided: "[This act] applies to student labor on construction projects regardless of the completion date of the project if the disclosure provided for in [section 1(1)] [20-25-110(1)] is made."

Part 2
University Units

20-25-201. Units constituting university system.

Compiler's Comments

1995 Amendment: Chapter 308 substituted current text establishing reorganized University System with University of Montana campuses at Missoula, Butte, Dillon, and Helena and Montana State University campuses at Bozeman, Billings, Havre, and Great Falls for former text that provided system units, including: "(1) University of Montana, located at Missoula; (2) Montana state university, located at Bozeman; (3) Montana college of mineral science and technology, located at Butte; (4) Western Montana college of the university of Montana, located at Dillon; (5) Eastern Montana college, located at Billings; and (6) Northern Montana college, located at Havre"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In (4), after "Western Montana college", inserted "of the university of Montana". Amendment effective March 22, 1989.

Name change: Section 5, Ch. 224, L. 1989, provided: "In all sections of the Montana Code Annotated not contained in [this act] and in all provisions passed by the 51st legislature in which reference is made to western Montana college, the code commissioner shall change the reference to western Montana college of the university of Montana."

Collateral References

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity. 68 ALR 4th 228.

Malpractice: tort liability of public schools and institutions of higher learning for educational malpractice. 1 ALR 4th 1139.

Incorporated educational body as an institution belonging to the state. 65 ALR 1394.

20-25-205. Purpose of university — law and forestry schools.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Case Notes

Restriction on Continuing Study of Law: The practices, policies, rules, and procedures under which the fitness of a student to continue the study of law is appraised, as applied to plaintiff, do not violate constitutional requirements of due process and equal protection or 37-61-204 (now repealed). Johnson v. Sullivan, 174 M 491, 571 P2d 798 (1977).

Collateral References

Tort liability of public schools and institutions of higher learning for educational malpractice. 1 ALR 4th 1139.

20-25-207. Bureau of government research — purpose — funding.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

20-25-211. Montana tech of the university of Montana — purpose — fees for assays.

Compiler's Comments

1995 Amendment: Chapter 308 in (1) and (3) substituted "Montana tech of the university of Montana" for "Montana college of mineral science and technology"; in (2), after "established at", substituted "Montana tech of the university of Montana" for "the college"; in (3) and (4) substituted "chancellor" for "president"; and made minor changes in style. Amendment effective July 1, 1995.

20-25-212. Bureau of mines and geology — purpose.

Compiler's Comments

1995 Amendment: Chapter 418 in (11), near beginning, substituted "department of natural resources and conservation" for "department of state lands"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana college of mineral science and technology" to "Montana tech of the university of Montana".

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Collateral References

15A Am. Jur. 2d Colleges and Universities §7.

20-25-221. Montana state university-Bozeman — designation and purpose.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Morrill Act: The Morrill Act of 1862, referred to in this section, is compiled in the U.S.C. as Title 7, §§301 through 308.

Collateral References

Colleges and Universities *key* 3.

14A C.J.S. Colleges and Universities §§4, 5.

15A Am. Jur. 2d Colleges and Universities §3.

Incorporated educational body as an institution belonging to the state. 65 ALR 1394.

20-25-222. Agricultural experiment station — establishment and purpose.

Compiler's Comments

Hatch Act: The Hatch Act, referred to in subsection (1), is compiled in the U.S.C. as Title 7, §§361 through 379.

Case Notes

Agricultural Experiment Station and Extension Service Not Parts of Agricultural College: Under former law, the agricultural experiment station and the agricultural extension service were not parts of the agricultural college or component parts of the University of Montana (now University of Montana-Missoula). Hence, appropriations made for them could not be charged to receipts from the 1 ½-mill levy for state purposes authorized for the maintenance of the University. State ex rel. Jones v. Erickson, 75 M 429, 244 P 287 (1926).

Collateral References

15A Am. Jur. 2d Colleges and Universities §7.

20-25-225. Experimental farms.

Compiler's Comments

2001 Amendment: Chapter 34 in (1) after "Montana" substituted "permanent fund" for "nonexpendable trust fund"; in (2) after "10%" deleted "in the aggregate" and at end after "Morrill permanent" deleted "trust"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: In middle of (1), substituted "Montana nonexpendable trust fund" for "Montana trust and legacy fund"; and at end of (2), substituted "trust fund" for "account in the Montana trust and legacy fund".

Morrill Act: The Morrill Act of 1862, referred to in this section, is compiled in the U.S.C. as Title 7, §§301 through 308.

20-25-226. Assents to acts of congress.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Reference to Federal Laws: The Act of March 16, 1906, was repealed by Act of August 11, 1955, c. 790, §2, 69 Stat. 674. Existing rights and liabilities were not affected by the repeal.

The Act of May 8, 1914, is compiled in the U.S.C. as Title 7, §§341 through 348.

20-25-229. Montana seed laboratory.

Compiler's Comments

1989 Amendment: In (1) substituted "Montana seed laboratory" for "Montana grain and seed laboratory".

20-25-230. Acceptance of donations.

Collateral References

Colleges and Universities *key* 6(2).
14A C.J.S. Colleges and Universities §12.
15A Am. Jur. 2d Colleges and Universities §37.

20-25-231. Federal grants and cooperative research studies.

Collateral References

15A Am. Jur. 2d Colleges and Universities §§36 through 38.

20-25-232. Income from sale of products — disposition.

Collateral References

15A Am. Jur. 2d Colleges and Universities §§36 through 38.

20-25-234. Purpose.

Compiler's Comments

1995 Amendment: Chapter 206 at end of (4) inserted "including ostriches, rheas, and emus".

Applicability: Section 14, Ch. 206, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

Preamble: The preamble attached to Ch. 659, L. 1989, provided: "WHEREAS, an ever-increasing number of farmers and ranchers in Montana are seeking ways to adopt resource conserving, energy efficient, and economical production techniques that improve soil quality, protect ground and surface water resources, reduce soil erosion, and generate higher value cash crops; and

WHEREAS, over the long term, adoption of more diversified, resource conserving systems of agricultural production can benefit the producing, consuming, and tax-paying public; and

WHEREAS, the widespread adoption of environmentally sound and economically viable agriculture production management systems depends on a program that will allow effective broad-based transfer of low-input, sustainable agriculture information to Montana producers."

20-25-236. Report to legislature.

Compiler's Comments

1993 Amendment: Chapter 349 after "service" substituted "may" for "shall".

1991 Amendment: Near middle inserted reference to 5-11-210. Amendment effective March 20, 1991.

20-25-237. Local government center — purpose — funding.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

20-25-241. Montana forest and conservation experiment station established.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Collateral References

Woods and Forests *key* 8.
98 C.J.S. Woods and Forests §12.
Constitutionality of reforestation or forest conservation legislation. 13 ALR 2d 1095.

20-25-242. Purpose of station.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

20-25-252. Donations to Montana state university-Billings.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "eastern Montana college" to "Montana state university-Billings".

Collateral References

Colleges and Universities *key* 6(2).
14A C.J.S. Colleges and Universities §12.
15A Am. Jur. 2d Colleges and Universities §43.

20-25-253. Purpose of university of Montana-western.

Compiler's Comments

2001 Amendment: Chapter 38 substituted "The university of Montana-western" for "Western Montana college of the university of Montana". Amendment effective March 13, 2001.

1989 Amendment: After "Western Montana college" inserted "of the university of Montana". Amendment effective March 22, 1989.

20-25-254. Donations to university of Montana-western.

Compiler's Comments

2001 Amendment: Chapter 38 substituted "university of Montana-western" for "western Montana college of the university of Montana". Amendment effective March 13, 2001.

1989 Amendment: After "western Montana college" inserted "of the university of Montana". Amendment effective March 22, 1989.

Collateral References

Colleges and Universities *key* 6(2).
14A C.J.S. Colleges and Universities §12.
15A Am. Jur. 2d Colleges and Universities §43.

20-25-255. Acceptance of public lands.

Compiler's Comments

2001 Amendment: Chapter 38 in two places substituted "university of Montana-western" for "western Montana college of the university of Montana"; and made minor changes in style. Amendment effective March 13, 2001.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "eastern Montana college" to "Montana state university-Billings.

1989 Amendment: In (1) and (2), after "western Montana college" inserted "of the university of Montana"; and made minor changes in phraseology. Amendment effective March 22, 1989.

Text of Enabling Act: The Enabling Act, referred to in this section, is set forth in Vol. 1, MCA Annotations, under the division titled "Federal Materials".

Collateral References

Colleges and Universities *key* 6(3).
14A C.J.S. Colleges and Universities §11.
15A Am. Jur. 2d Colleges and Universities §§36 through 38.

20-25-256. Purposes of Montana state university-northern.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "northern Montana college" to "Montana state university-northern".

Part 3
Administration of University System

20-25-301. Regents' powers and duties.

Compiler's Comments

2003 Amendment: Chapter 114 in (16) in first sentence after "data" deleted "and information technology resources"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 308 in (9) inserted "or chancellor"; inserted (17) requiring Board of Regents to offer courses in vocational-technical education; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 349 deleted second sentence of (13) that read: "The regents shall prepare and, as provided in 5-11-210, submit a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information"; and made minor changes in style.

1991 Amendment: In second sentence of (13), after "prepare", inserted "and, as provided in 5-11-210, submit". Amendment effective March 20, 1991.

1987 Codification: The Code Commissioner has codified sec. 4, Ch. 592, L. 1987, requiring Board of Regents to assure an adequate level of security for data and information technology resources within the state University System, as (16).

1985 Amendment: Deleted former (5) that read: "adopt and use an official seal in the authentication of its acts"; deleted former (11) that read: "appoint an executive secretary of the system, who shall not be a unit president, fix his term of office and salary, and generally prescribe his duties. The executive secretary is not a member of the board, but he shall serve as the secretary for the regents"; deleted former (12) that read: "appoint every 2 years a budget committee composed of four members selected from the appointive members of the regents which shall review the budget requests presented by the units of the system and transmit such requests and its recommendations to the regents"; deleted former (16) that read: "investigate the needs of the units by each member of the regents visiting each unit at least once each year"; and in (15) deleted requirement that seal "shall remain in the custody of the executive secretary".

1983 Amendment: Deleted former (7), which read: "report as provided in 2-7-102".

Board of Regents Created — Cases Still Applicable: Following the adoption of the 1972 Montana Constitution, the control of the Montana University System passed from the State Board of Education to the Board of Regents of Higher Education, created by Art. X, sec. 9, Mont. Const. Because some or all of the reported cases dealing with the power and authority of the Board of Education over the Montana University System under the 1889 Constitution may be applicable to the Board of Regents, all of those cases have been included below.

Case Notes

DECISIONS UNDER 1972 CONSTITUTION

Open Public Meeting Laws Liberally Construed — University System Policy Committee Meetings Open to Public: Plaintiff media organizations sued the Commissioner of Higher Education, alleging that policy meetings between the Commissioner and other University System senior employees were subject to state open meeting laws. The District Court concluded that the meetings should be open to the public, and on appeal, the Supreme Court concurred. The Legislature created open meeting laws with the intent that deliberations of state agencies be conducted openly, and to that end, the open meeting laws are liberally construed. In the context of 2-3-203, public or governmental bodies means a group of individuals organized for a governmental or public purpose. Although the university policy committee was not formally created by a government entity to accomplish a specific function, the committee brought together public officials for an undeniably public purpose. The committee was not merely a staff meeting or factfinding body, nor was it an ad hoc group that came together to consider a specific matter or to gather facts on a particular issue. Rather, the group met to deliberate on matters of substance that were the public's business and thus was considered a public body within the meaning of Art. II, sec. 9, Mont. Const., whose meetings were required to be open to the public. The Commissioner argued that: (1) even if the committee was considered a public body, it did not hold meetings as contemplated in the open meeting laws; (2) because the committee's membership was not fixed, no number of members were required to attend to constitute a quorum; and (3) neither direct action nor votes were taken at committee meetings. The Supreme Court disagreed. A quorum of any body of an indefinite number consists of the members who attend a meeting. All that is required under 2-3-202 is that a quorum of the membership convene to conduct public

business, not that the meeting produces some particular result or action or that a vote be taken. The constitution protects the public's right to observe the deliberations of public bodies, and the policy committee meetings were required to be open to the public. Assoc. Press v. Crofts, 2004 MT 120, 321 M 193, 89 P3d 971 (2004).

Uniformity Doctrine of 1889 Constitution Embodied in Equal Protection Clause of 1972 Constitution: Plaintiffs challenged the constitutionality of 20-25-439, asserting that the tax levy for vocational-technical schools resulted in an unequal tax burden on five counties where the schools are located, even though the schools are part of the statewide University System. The state contended that the levy is not unconstitutional because it is rationally related to a legitimate government purpose. The 1889 Montana Constitution contained a uniformity doctrine that required a tax to be levied by a general law that is uniform within the same class of subjects within the territorial limits of the authority levying the tax; however, that uniformity doctrine does not appear in the plain language of the 1972 Montana Constitution. Nevertheless, plaintiffs asserted that the uniformity doctrine is still a constitutional requirement apart from equal protection guarantees. The state argued that because the uniformity doctrine is not part of the 1972 Montana Constitution, the levy could not be violative of the doctrine. The District Court agreed with the state and plaintiffs appealed. The Supreme Court agreed that the statement defining the uniformity doctrine in Hilger v. Moore, 56 M 146, 182 P 477 (1919), was subsequently applied in post-1972 cases, but disagreed that the definition supports any stricter limitation on taxation than that imposed by equal protection. The framers of the 1972 Montana Constitution intended to preserve the uniformity doctrine only as it is equivalent to equal protection requirements. Thus, the uniformity doctrine as interpreted under the 1889 Montana Constitution, which provided for equal protection in the area of taxation, is still embodied in the 1972 Montana Constitution in the equal protection clause. Analysis of the constitutionality of the levy in question was therefore conducted under the equal protection clause. Kottel v. St., 2002 MT 278, 312 M 387, 60 P3d 403 (2002).

Failure to Obtain Degree — University's Discretion — Summary Judgment Upheld: The University was entitled to summary judgment against plaintiff's claim of bad faith and breach of contract when plaintiff failed to fulfill his duties under the contract he alleged. The discretion vested in the University is the core substantive principle entitling it to summary judgment. The University did not abuse its discretion. Bindrim v. Univ. of Mont., 235 M 199, 766 P2d 861, 45 St. Rep. 2316 (1988).

Letter Removing Chairman of English Department Privileged Publication: Small brought suit alleging that he had been libeled when he was removed as chairman of the English Department at Eastern Montana College (now Montana State University-Billings). The basis of the libel charge was the letter informing him that he was being removed and detailing the reasons for the removal. The court found that McRae had the authority to remove Small and that the letter was a privileged publication because it was made in the proper discharge of an official duty. Since the letter was within the proper discharge of an official duty, it enjoyed an absolute privilege and could therefore not be the subject of libel action. Small v. McRae, 200 M 497, 651 P2d 982, 39 St. Rep. 1896 (1982).

Nontenured Professor — Acceptance of Termination Contract: Because of alleged personal misconduct, a nontenured professor was offered a contract to teach one more year and then be terminated. He requested but was denied a formal hearing on the matter. The professor's subsequent demand for a tenured contract did not, as he contends, amount to acceptance of the termination contract that he was offered. Leland v. Heywood, 197 M 491, 643 P2d 578, 39 St. Rep. 704 (1982).

Discrimination Regarding Teacher Tenure — State Action Violating Equal Protection: The Montana university tenure system is maintained under authority of state statutes by the Board of Regents and the presidents of the Montana University System's institutions. Therefore, any action by the Board or a president in regard to tenure is state action, and a discriminatory application of the tenure process would be a denial of equal protection. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Teacher Tenure Standards — Use of Single Factor as Basis for Equal Protection Violation Claim: Differences in treatment of persons in regard to promotions do not all constitute deprivation of either due process or equal protection, particularly where the difference is one of evaluating facts rather than in resolving them. Where college evaluated tenure candidates in three basic areas and balanced all the factors and appellant teacher who was denied tenure claimed discrimination in that he had published an article and two candidates granted tenure had published no articles, publication being one of the factors, there was no equal protection violation. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Property Interest in Teacher Tenure — Proof — School's Codification of Tenure Matters: College's codification of rank and tenure matters, specifically drafted to clarify the faculty contract and a college handbook issued to the faculty, approved by a committee as not in conflict with the contract or with the handbook, stated to be an operating manual for the college rank and tenure committee, limited to reference and informational use, and subject to future contract negotiations, was by its nature a pseudoextension of the faculty contract but was not a part of the contract. Therefore, the codification could not be the source for a property interest in teacher tenure to which due process protection would attach. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Denial of Teacher Tenure — Due Process Property Right — Burden of Proof: The question of whether due process protections of teacher denied tenure were violated would not be considered unless he established the existence of a property right or liberty interest that is accorded due process protection. That tenure was denied would not benefit teacher in his pursuit of other employment, but it did not place such a stigma on him as to deprive him of a liberty interest. A vested property right protected by due process did not accrue to teacher upon his meeting the eligibility for tenure standards of requisite number of years of teaching and the rank of assistant professor, for beyond that, teacher was required by college policy to present evidence showing excellence in teaching, research, and public service. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Teacher Contracts — Procedures Not Constituting Breach — Time and Proper Party for Dean's Recommendation: College's codification of teacher tenure matters stated that with respect to the procedure to determine whether tenure would be granted, the rank and tenure committee was to request the teacher's dean to examine the teacher's package and make a written recommendation. Assuming the codification to be part of the teacher's contract, it was not a breach of the contract for the dean to send his recommendation to the academic vice-president rather than to give it to the rank and tenure committee first. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Teacher Tenure Actions — Admissibility of Evidence — Decisions as to Other Teachers: Teachers' union member who was denied tenure offered evidence, in suit arising from the denial, that union member who had resigned from the teachers' negotiating team shortly before he applied for tenure was granted tenure. The offered evidence was refused as irrelevant. On appeal, the Supreme Court stated that the evidence was relevant but affirmed the ruling below, saying that the evidence would only have shown that a teacher who resigned from the bargaining team was thereafter granted tenure and that one union member was granted tenure and another was not. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Whether college's academic vice-president acted impermissibly in the tenure application process of a different individual under a different contract in a different academic year was not relevant to vice-president's actions in appellant's tenure evaluation, and it was proper to refuse, for lack of relevance, to admit exhibit and testimony on it relating to a report on the tenure evaluation of another person. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Continuous Tenure Defined: The District Court's conclusion that a director of a department within the Montana University System, who was tenured as to professional rank and salary under the terms of her previous contract, could nevertheless be paid at a reduced rate in the following year because her duties were diminished from director to professor must be overturned. Reversal is required because of the nature of continuous tenure, which connotes "freedom and economic security", and because of the fact that the respondent university had it completely within its power to describe tenured rights otherwise. Keiser v. Bd. of Regents, 193 M 35, 630 P2d 194, 38 St. Rep. 674 (1981).

Employment Relationship of Regents With Faculty: Since Board of Regents is competent body for determining priorities in higher education and an important priority is hiring and keeping competent personnel, appropriations bill which controlled salaries of university employees denied the Board power to function effectively by setting its own personnel policies and determining its own priorities and was unconstitutional. Bd. of Regents of Higher Educ. v. Judge, 168 M 433, 543 P2d 1323 (1975).

DECISIONS UNDER 1889 CONSTITUTION

Delegation of Powers: The State Board of Education is restricted from delegating to college officials its power to select teachers or instructors. Brown v. St. Bd. of Educ., 142 M 547, 385 P2d 643 (1963).

Actions Against State Board of Education: The State Board of Education may be sued for a breach of contract without the consent of the state to the action. Meens v. St. Bd. of Educ., 127 M 515, 267 P2d 981 (1954).

Employment Relationship With Faculty: The relationship between the State Board of Education and a professor of the state university is that of employer and employee, contractual in character. State ex rel. Phillips v. Ford, 116 M 190, 151 P2d 171 (1944).

Resignation of Faculty Member — Report Required: A provision of the rules of the State Board of Education that the president of the state university shall report appointments and resignations of members of the faculty and other employees did not authorize the president to accept the resignation of a professor of the institution but merely required him to report it to the State Board. State ex rel. Phillips v. Ford, 116 M 190, 151 P2d 171 (1944).

Vested Right Created by Regulation: A regulation of the State Board of Education providing that reappointment of a professor after 3 years of service shall be deemed a permanent appointment, under which the Board had functioned for some 21 years, was valid and clearly within its authority under Art. XI, sec. 11, 1889 Mont. Const. (now Art. X, sec. 9, Mont. Const.), and this section. Reappointment of a professor after such years of service was a permanent appointment, and his status was not changed by the Board's striking the regulation from its rules and regulations printed on the back of the sixth contract because he came within the regulation upon execution of his fourth annual contract. State ex rel. Keeney v. Ayers, 108 M 547, 92 P2d 306 (1939), distinguished in Eastman v. School District, 120 M 63, 180 P2d 472 (1947).

Implied Authority to Construct Building: The State Board of Education, proceeding under Ch. 24, Ex. L. 1933-34 (an emergency measure), continued in force until July 1, 1937, by Ch. 135, L. 1935, and under chapters 79 through 83, R.C.M. 1935, had implied authority to authorize the construction of a chemistry-pharmacy building at the state university with funds granted by the federal government in addition to those to be secured by a bond issue. State ex rel. Dragstedt v. St. Bd. of Educ., 103 M 336, 62 P2d 330 (1936).

Pledge of Land-Grant Income Allowed: Under the facts presented and under prior decisions, a pledging of a portion of the income and interest from the land grant is permissible. State ex rel. Dragstedt v. St. Bd. of Educ., 103 M 336, 62 P2d 330 (1936). See also State ex rel. Wilson v. St. Bd. of Educ., 102 M 165, 56 P2d 1079 (1936).

Exclusive Control of Funds Derived From Land Grant: The State Board of Education was vested with exclusive power to receive and control the funds derived from lands granted the state for the use of its institutions of learning, among them the state normal school, and therefore was free from the limitations and restrictions of the state constitution as to the expenditures of the ordinary revenues of the state, namely, only on appropriations made by the Legislature and on warrants drawn by the State Auditor. State ex rel. Blume v. St. Bd. of Educ., 97 M 371, 34 P2d 515 (1934).

Implied Powers: The power expressly granted to the State Board of Education to manage and control the business and finances of the state education institutions carried with it the implied power to do all things necessary and proper to the exercise of its general powers. State ex rel. Veeder v. St. Bd. of Educ., 97 M 121, 33 P2d 516 (1934).

Attorney General's Opinions

Legislative Appropriation of University System "Excess" Revenue: The Attorney General concluded in an advisory opinion (in answer to question concerning hypothetical legislative action) that the Legislature may not appropriate revenue generated from sources pledged to cover university system revenue bond requirements when the revenue obtained from these sources exceeds the bond requirements. The law grants the Board of Regents authority to use pledged revenue in a variety of ways to discharge its statutory duties. Any legislative appropriation of those "excess" revenues would interfere with or prevent the discharge of those duties. 40 A.G. Op. 67 (1984).

Status of Mandatory Student Fees — Expenditures: Since the authority to impose mandatory student fees is vested in the Board of Regents, a division of state government, and ultimate control and supervision of these funds rest with the regents, mandatory student fees are public funds. Whether a student committee can expend these funds to remove an elected public officer requires a decision by the regents or their delegated agents that such expenditure is a public purpose. Electing a political officeholder would not be an expenditure for a public purpose. 35 A.G. Op. 74 (1974).

Authority to Regulate Alcoholic Beverages: The regents of the Montana University System have the authority to allow or prohibit the possession and consumption of alcoholic beverages in

a student's room in a residence hall on a campus of a unit of the Montana University System. 34 A.G. Op. 42 (1972).

Collateral References

Colleges and Universities *key* 7.

14A C.J.S. Colleges and Universities §18.

15A Am. Jur. 2d Colleges and Universities §4.

Privileged nature of statements or utterances by members of governing body of public institution of higher learning in course of official proceedings. 33 ALR 4th 632.

Certificates and certification: student's right to compel school officials to issue degree, diploma, or the like. 11 ALR 4th 1182.

Regulations as to school fraternities. 10 ALR 3d 389.

Application to tenured positions in educational institutions of provisions of Civil Rights Act of 1964, as amended (42 U.S.C.S. §2000e, et seq.) prohibiting discrimination on basis of sex. 55 ALR Fed. 842.

20-25-302. Revenue-producing facilities — powers of regents.

Compiler's Comments

1997 Amendment: Chapter 243 in (2) deleted third and fourth sentences regarding increase of student building fees (see 1997 Session Law for former text); and made minor changes in style. Amendment effective July 1, 1997.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

1987 Amendment: At end of last sentence of (2) substituted "made pursuant to 20-25-421 for nonresident students" for "made to nonresident students as defined in 20-25-421".

Case Notes

Leasing of University Facilities to Private Persons Consistent With Established "Academic Purposes": The Duck Inn filed an action seeking an injunction against Montana State University-Northern (Northern), alleging that Northern's decision to lease its facilities to private persons and organizations placed Northern in direct competition with the Duck Inn's business, in violation of state statutes and the Montana Constitution. The District Court dismissed the Duck Inn's complaint, ruling that Northern's leasing activities under this section did not violate Art. VIII, sec. 1, Mont. Const. On appeal, the Supreme Court affirmed, ruling that this section is not an unconstitutional delegation of legislative authority to the Board of Regents. Northern's leasing activities under this section appear to have "public purposes" as that term is used in Art. VIII, sec. 1, Mont. Const. Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179, 54 St. Rep. 1295 (1997).

Attorney General's Opinions

Legislative Appropriation of University System "Excess" Revenue: The Attorney General concluded in an advisory opinion (in answer to question concerning hypothetical legislative action) that the Legislature may not appropriate revenue generated from sources pledged to cover university system revenue bond requirements when the revenue obtained from these sources exceeds the bond requirements. The law grants the Board of Regents authority to use pledged revenue in a variety of ways to discharge its statutory duties. Any legislative appropriation of those "excess" revenues would interfere with or prevent the discharge of those duties. 40 A.G. Op. 67 (1984).

Collateral References

Colleges and Universities *key* 7.

14A C.J.S. Colleges and Universities §18.

15A Am. Jur. 2d Colleges and Universities §4.

20-25-303. Local executive boards — terms and compensation.

Compiler's Comments

1995 Amendment: Chapter 308 in (1) substituted "within each county in which a university system campus is located" for "for each unit of the system"; in (2)(b) inserted "or the chancellor of a campus"; and made minor changes in style. Amendment effective July 1, 1995.

Collateral References

Colleges and Universities *key* 7.

14A C.J.S. Colleges and Universities §17.

15A Am. Jur. 2d Colleges and Universities §9.

20-25-304. Powers of local executive boards.

Collateral References

Colleges and Universities *key* 7.

14A C.J.S. Colleges and Universities §18.

20-25-305. President — powers and duties.

Compiler's Comments

2005 Amendment: Chapter 139 inserted (5) authorizing presidents of university system units, under supervision of regents, to offer athletic coaches multiyear contracts; and made minor changes in style. Amendment effective October 1, 2005.

Collateral References

Misconduct of college or university student off campus as grounds for expulsion, suspension, or other disciplinary action. 28 ALR 4th 463.

Physical or mental illness as basis of dismissal of student from school, college, or university. 17 ALR 4th 519.

20-25-307. Disposition of land.

Compiler's Comments

1997 Amendment: Chapter 425 deleted (1)(b) authorizing Board of Regents to sell, exchange, and lease lands and grant easements and licenses on land that "was not granted to the state, the board of regents, or the system in trust"; inserted (6)(a)(ii) requiring Board to provide proof that land proposed for sale or lease is free of use restrictions, encumbrances, or conditions; inserted (6)(a)(iii) and (6)(a)(iv) authorizing sale or lease only upon compliance with Montana Environmental Policy Act and Montana antiquities laws; in (6)(b)(ii) substituted language authorizing Board not to concur if criteria in requests or sale procedure and selection process did not provide public reasonable opportunity to submit proposal or have proposals selected for "the sale procedure did not provide the public a reasonable opportunity to submit proposals to purchase the land"; at end of (6)(b)(iii), after "state", deleted "or system"; inserted (6)(b)(iv) authorizing Board not to concur in sale or lease if University System has not complied with subsection (6)(a); and made minor changes in style.

Effective Date: Section 5, Ch. 370, L. 1995, provided: "[This act] is effective July 1, 1995."

20-25-308. Prohibition on transfer to foundation.

Compiler's Comments

2005 Amendment: Chapter 130 at beginning of former (1) deleted "Except as provided in subsection (2)"; deleted former (2) that read: "(2) Subsection (1) does not apply to the lease for the athletic complex at Montana state university-Bozeman provided for in section 5, Chapter 478, Laws of 1995. The land lease for the athletic complex must be of a term not to exceed 7 years from the date of approval of the lease"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 478 at beginning of (1) inserted exception clause; inserted (2) concerning athletic complex at Montana State University (now Montana State University-Bozeman); adjusted internal references; and made minor changes in style. Amendment effective April 14, 1995.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Effective Date: Section 3, Ch. 371, L. 1995, provided: "[This act] is effective July 1, 1995."

20-25-311. Motor vehicle regulation — parking and operation.

Case Notes

Vehicle Registration and Penalties — Constitutionality: Montana State University (now Montana State University-Bozeman) had authority under this section to make regulations for the registration of student vehicles and to assess a penalty for failure to pay fines within 7 days, and this section was not unconstitutional under Art. III, sec. 1, Mont. Const., as being an improper delegation of legislative powers. Mont. St. Univ. v. Ransier, 167 M 149, 536 P2d 187 (1975).

20-25-312. Motor vehicle regulation — enforcement of regulations — appeals.

Compiler's Comments

2003 Amendment: Chapter 220 in (1)(b) near middle after "published schedule" inserted "approved by the regents" and at end after "unit" deleted "in an amount not to exceed $10 per offense"; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendments: Chapter 91 in (1)(a) substituted text concerning assessment of fees for parking on campus after regents' consultation with the student governing body of the respective unit for "assess fees not to exceed $10 per quarter for parking on campus".

Chapter 160 in (1)(e) after "subject to" deleted "the concurrence of the state auditor under".

Case Notes

Vehicle Registration and Penalties — Constitutionality: Montana State University (now Montana State University-Bozeman) had authority under this section to make regulations for the registration of student vehicles and to assess a penalty for failure to pay fines within 7 days, and this section was not unconstitutional under Art. III, sec. 1, Mont. Const., as being an improper delegation of legislative powers. Mont. St. Univ. v. Ransier, 167 M 149, 536 P2d 187 (1975).

20-25-321. Security department members — appointment — campus security officer powers.

Compiler's Comments

2003 Amendment: Chapter 416 in (1) at end of first sentence deleted "as such security departments are constituted on July 1, 1971, or may thereafter be constituted" and at beginning of second sentence after "Persons" inserted "who are qualified under 7-32-303 to be campus security officers" and after "compensated" substituted "by a security department as campus security officers" for "as members of the security departments when so appointed"; inserted (1)(c) allowing the exercise of authority pursuant to agreement; inserted (3) allowing any university system security department to seek an agreement with local law enforcement agencies that specifies geographic and subject matter jurisdiction of campus security officers; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

DUI Arrest on Street Contiguous to University Campus Proper Under Jurisdiction Agreement Between University, City, and County: O'Neill was arrested for DUI by a University of Montana security officer on a street contiguous to but outside the boundaries of the university campus. O'Neill moved for dismissal on grounds that the arrest was unlawful because the offense occurred outside the geographic boundaries of the officer's jurisdiction. However, in 1993, the university entered an agreement with the city and county of Missoula under 20-25-322 that expanded the jurisdiction of campus security officers to make arrests for parking and moving violations on streets and alleys contiguous to the campus. The officer was patrolling the campus when he observed O'Neill's vehicle, and as a result, the streets contiguous to the campus were within the officer's jurisdiction. Thus, denial of O'Neill's motion to dismiss on jurisdictional grounds was proper. Missoula v. O'Neill, 2004 MT 328, 324 M 124, 102 P3d 21 (2004).

Collateral References

Liability of university, college, or other school for failure to protect student from crime. 1 ALR 4th 1099.

20-25-322. Traffic citations — agreements with city or county.

Case Notes

DUI Arrest on Street Contiguous to University Campus Proper Under Jurisdiction Agreement Between University, City, and County: O'Neill was arrested for DUI by a University of Montana security officer on a street contiguous to but outside the boundaries of the university campus. O'Neill moved for dismissal on grounds that the arrest was unlawful because the offense occurred outside the geographic boundaries of the officer's jurisdiction. However, in 1993, the university entered an agreement with the city and county of Missoula under this section that expanded the jurisdiction of campus security officers to make arrests for parking and moving violations on streets and alleys contiguous to the campus. The officer was patrolling the campus when he observed O'Neill's vehicle, and as a result, the streets contiguous to the campus were within the officer's jurisdiction. Thus, denial of O'Neill's motion to dismiss on jurisdictional grounds was proper. Missoula v. O'Neill, 2004 MT 328, 324 M 124, 102 P3d 21 (2004).

20-25-324. Firearms.

Compiler's Comments

1991 Amendment: After "board of regents" substituted language relating to consulting with the student body government for "(1) between 5 p.m. and 8 a.m.; and

(2) whenever guarding money or other valuables".

1981 Amendment: Inserted "who have successfully completed the basic course in law enforcement conducted by the Montana law enforcement academy" after "security guards"; changed "shall be authorized to" to "may"; granted policymaking authority to the board of regents; changed "between sunrise and sunset" to "between 5 p.m. and 8 a.m."; and made minor changes in phraseology.

20-25-331. Definitions.

Compiler's Comments

Effective Date: Section 4, Ch. 545, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

20-25-332. Competition between for-profit fitness centers and university fitness centers prohibited — exception.

Compiler's Comments

Effective Date: Section 4, Ch. 545, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

Part 4
Miscellaneous Finance

Part Compiler's Comments

Extension of Termination Date: Section 1, Ch. 381, L. 1995, amended sec. 11, Ch. 387, L. 1993, by extending the termination date imposed by that chapter. Effective April 12, 1995.

Preamble: The preamble attached to Ch. 431, L. 1995, provided: "WHEREAS, seven tribally controlled community colleges exist in the State of Montana; and

WHEREAS, the tribal community colleges provide a quality, low-cost, and accessible college program to Indian and non-Indian students each year; and

WHEREAS, approximately 450 of these students are nonbeneficiary students who do not qualify for financial support through the Bureau of Indian Affairs or under the Tribally Controlled Community College Assistance Act of 1978; and

WHEREAS, the tribal community colleges currently subsidize the costs of providing services to nonbeneficiary students, allowing them to continue their educations at a lower cost to the state; and

WHEREAS, without support, tribal community colleges will not be able to serve nonbeneficiary students without increasing student fees, which may result in students dropping out of college."

Appropriation: Section 1, Ch. 431, L. 1995, provided: "(1) There is appropriated from the general fund to the board of regents $1.4 million for the biennium ending June 30, 1997, to provide financial assistance to tribally controlled community colleges for enrolled nonbeneficiary students.

(2) Each tribal community college shall apply for this assistance to the board of regents. Except as provided in subsection (6), the money appropriated in subsection (1) must be distributed on a prorated basis according to the resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the Montana university system by the board of regents. The distribution to any student is limited to a maximum of $1,500 each year per full-time equivalent student. Any remaining balance in this appropriation on June 30, 1997, must revert to the general fund and may not be diverted to other purposes.

(3) An expenditure from this appropriation is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest association of schools and colleges;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the board of regents to provide the board with information relating to eligibility of nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the Montana university system; and

(c) filing with the board of regents evidence that the college's enrollment of Indian students is at least 51% as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) It is the intent of the legislature that the appropriation in subsection (1) be considered an amount in addition to the Montana university system budget appropriation for the biennium ending June 30, 1997.

(5) All funds appropriated under subsection (1) that are unspent revert to the general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall:

(a) grant to resident nonbeneficiary students who meet the residency requirements, as prescribed for the Montana university system by the board of regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the university system bears to the total enrollment in the university system; and

(b) subtract the costs of nonbeneficiary fee waivers granted under subsection (6)(a) from the total amount of prorated money to be distributed." Effective April 13, 1995.

Interim Committee on Postsecondary Education Policy and Budget (now Education and Local Government Interim Committee): Chapter 387, L. 1993, provided: "Section 1. **Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Committee" means the joint committee on postsecondary education policy and budget [now education and local government interim committee] created in [section 2].

(2) "University system" means those units listed in 20-25-201 and the vocational-technical centers designated in 20-16-106 [now repealed].

Section 2. **Joint committee on postsecondary education policy and budget [now education and local government interim committee] — appointment and composition.** (1) There is a joint committee on postsecondary education policy and budget [now education and local government interim committee].

(2) The committee is composed of:

(a) four members of the senate, appointed by the committee on committees on a bipartisan basis, and four members of the house of representatives, appointed by the speaker of the house on a bipartisan basis. One of the legislative members shall serve as presiding officer upon election by a vote of committee members.

(b) two regents appointed by the chairman of the board of regents and one student of the university system appointed by the governor; and

(c) a representative from the executive branch appointed by the governor.

(3) Legislative appointments must be made before final adjournment of a regular session.

(4) All other appointments must be made prior to the first committee meeting following adjournment of a regular session.

Section 3. **Term of office.** (1) Legislative appointments to the committee are for 2 years. A legislative member of the committee shall serve until the legislator's term of office is ended.

(2) Appointments of members of the board of regents and the student to the committee are for 2 years or until the expiration of the members' terms on the board of regents, whichever occurs first.

(3) The appointment of an executive branch representative to the committee is for 2 years.

Section 4. **Vacancies.** (1) A legislative vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A legislative vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) All other vacancies must be filled in the same manner as the original appointment.

(4) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. **Officers — quorum — meetings.** (1) The committee shall select one of its legislative members as presiding officer and may elect other officers it considers necessary.

(2) A simple majority of the committee constitutes a quorum to do business.

(3) The committee shall meet at least quarterly.

Section 6. **Compensation.** (1) Legislative members are entitled to receive compensation and expenses as provided in 5-2-302.

(2) Members appointed by the board of regents are entitled to:

(a) $50 for each day in which a member is actually and necessarily engaged in the performance of committee duties; and

(b) travel expenses, as provided for in 2-18-501 through 2-18-503.

Section 7. **Staff assistance.** The legislative fiscal analyst shall provide staff assistance to the committee. The legislative fiscal analyst has the same authority of investigation and examination on behalf of the committee as provided under 5-12-303.

Section 8. **Powers and duties of committee.** (1) The committee may:

(a) organize and adopt rules to govern its proceedings; and

(b) exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenues and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

(f) act as a liaison between both the legislative and executive branches and the board of regents;

(g) encourage cooperation between the legislative and executive branches and the board of regents; and

(h) report its activities, findings, recommendations, and any proposed legislation to the legislature." The Committee was established April 19, 1993, and terminates July 1, 1995.

20-25-402. Borrowing by regents.

Attorney General's Opinions

Legislative Appropriation of University System "Excess" Revenue: The Attorney General concluded in an advisory opinion (in answer to question concerning hypothetical legislative action) that the Legislature may not appropriate revenue generated from sources pledged to cover university system revenue bond requirements when the revenue obtained from these sources exceeds the bond requirements. The law grants the Board of Regents authority to use pledged revenue in a variety of ways to discharge its statutory duties. Any legislative appropriation of those "excess" revenues would interfere with or prevent the discharge of those duties. 40 A.G. Op. 67 (1984).

Status of Mandatory Student Fees — Expenditures: Since the authority to impose mandatory student fees is vested in the Board of Regents, a division of state government, and ultimate control and supervision of these funds rest with the regents, mandatory student fees are public funds. Whether a student committee can expend these funds to remove an elected public officer requires a decision by the regents or their delegated agents that such expenditure is a public purpose. Electing a political officeholder would not be an expenditure for a public purpose. 35 A.G. Op. 74 (1974).

Collateral References

Colleges and Universities *key* 6(1).

14 C.J.S. Colleges and Universities §10.

20-25-403. State not obligated.

Attorney General's Opinions

Legislative Appropriation of University System "Excess" Revenue: The Attorney General concluded in an advisory opinion (in answer to question concerning hypothetical legislative action) that the Legislature may not appropriate revenue generated from sources pledged to cover university system revenue bond requirements when the revenue obtained from these sources exceeds the bond requirements. The law grants the Board of Regents authority to use pledged revenue in a variety of ways to discharge its statutory duties. Any legislative appropriation of those "excess" revenues would interfere with or prevent the discharge of those duties. 40 A.G. Op. 67 (1984).

20-25-407. Prior obligations not affected.

Compiler's Comments

Effective Date: The effective date of Ch. 85, Title 75, R.C.M. 1947, was January 18, 1971.

20-25-421. Charges for tuition — waivers.

Compiler's Comments

2005 Amendments — Code Commissioner Correction: Chapter 577 inserted (2)(e) providing a tuition waiver for up to 5,000 credits each academic year in accordance with the Montana national guard education benefit program and providing that the credits are available for up to 5 years after a person qualifies; deleted former (3) that read: "(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year in accordance with the national guard education benefit program provided for in 10-1-121"; and made minor changes in style. Amendment effective May 2, 2005, and terminates June 30, 2009.

In (3) the code commissioner inserted the brackets to reflect the repeal of the national guard education benefit program in 10-1-121.

Saving Clause: Section 2, Ch. 577, L. 2005, was a saving clause.

Effective Date — Applicability: Section 4, Ch. 577, L. 2005, provided: "[This act] is effective on passage and approval and applies to waivers granted on or after [the effective date of this act." Effective May 2, 2005.

2003 Amendment: Chapter 255 in (2)(c)(ii) at end after "52-5-112" inserted "or 53-1-214". Amendment effective July 1, 2003.

Retroactive Applicability: Section 5, Ch. 255, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to a person exonerated on or before [the effective date of this act]." Effective July 1, 2003.

1997 Amendments: Chapter 41 inserted (2)(c)(vi) allowing waiver for the spouse and children of a National Guard member who dies while in the line of duty; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 418 inserted (3) relating to fee waivers for the National Guard; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 in (4)(b) substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: At beginning of (2), after "waive", deleted "at their discretion"; inserted (4) relating to waiver of tuition and fees; inserted (5) relating to waiver of tuition charges for certain qualified survivors; and made minor changes in punctuation and style. Amendment effective March 20, 1989.

Composite Section: Section 75-8601, R.C.M. 1947, was amended three times in 1971, once by Ch. 231, sec. 1 (approved March 9, 1971), once by Ch. 286, sec. 1 (approved March 11, 1971), and once by Ch. 432, sec. 1 (approved March 18, 1971). None of the amendments mentioned any of the other amendments. The compiler has made a composite section incorporating the changes made by all the amendments. Chapter 432 deleted a first subsection reading: "Except in the law and medicine departments and for extra studies, tuition shall ever be free to all students who shall have been residents of the state for not less than one year next preceding their admission to any unit of the University of Montana" ["Montana university system" in Ch. 231 and 286] and redesignated subsections (2) and (3) as (1) and (2). Chapter 432 rewrote subsection (2)(a), which read: "prescribe tuition rates for students enrolled in the law school or for extra studies, and for nonresident students; and". In subsection (2)(b), Ch. 231 added . . . "except . . . mineral engineering education"; Ch. 286 substituted "full-time . . . year" for "total number of students enrolled at that unit"; and Ch. 432 substituted "their" for "its" before "discretion".

Attorney General's Opinions

Status of Mandatory Student Fees — Expenditures: Since the authority to impose mandatory student fees is vested in the Board of Regents, a division of state government, and ultimate control and supervision of these funds rest with the regents, mandatory student fees are public funds. Whether a student committee can expend these funds to remove an elected public officer requires a decision by the regents or their delegated agents that such expenditure is a public purpose. Electing a political officeholder would not be an expenditure for a public purpose. 35 A.G. Op. 74 (1974).

Collateral References

Colleges and Universities *key* 9.

14A C.J.S. Colleges and Universities §§27, 28.

15A Am. Jur. 2d Colleges and Universities §20.

Workers' compensation: student athlete as "employee" of college or university providing scholarship or similar financial assistance. 58 ALR 4th 1259.

20-25-422. Support of university system.

Compiler's Comments

1999 Amendment: Chapter 122 in (1)(a) near end inserted reference to 77-1-108. Amendment effective July 1, 1999.

1995 Amendment: Chapter 370 in (1)(a), near beginning after "income", inserted "the proceeds and revenue from the grant of any estate or interest disposed of pursuant to 20-25-307"; and made minor changes in style. Amendment effective July 1, 1995.

Repeal of Termination Date: Section 3, Ch. 157, L. 1995, repealed sec. 12, Ch. 533, L. 1993, that terminated this section. Repealer effective June 30, 1995.

1993 Amendment: Chapter 533 in (1)(a), at end, inserted "to the university fund after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

Collateral References

Colleges and Universities *key* 4.

14A C.J.S. Colleges and Universities §9.

15A Am. Jur. 2d Colleges and Universities §§36 through 38.

20-25-423. State tax levy — support of public education institutions.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1998 Amendment by Referendum: Referendum No. 113 at end of first sentence extended the authority from 1989 until 1999; and made minor changes in style. Amendment effective January 1, 1999.

1988 Amendment: At end of first sentence substituted "1989" for "1979"; and at end of second sentence deleted "and other public educational institutions subject to board of regents' supervision". Amendment effective January 1, 1989.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

20-25-424. Receipt of funds.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

1985 Amendment: Near beginning of (2) substituted "December 1" for "September 1".

Reference to Federal Acts: The second Morrill Act, referred to in this section, is compiled in the U.S.C. as Title 7, §§321 through 328. The Nelson amendment is compiled as Title 7, §322.

20-25-426. Donations, grants, gifts.

Collateral References

Colleges and Universities *key* 6(2).
14A C.J.S. Colleges and Universities §12.
15A Am. Jur. 2d Colleges and Universities §43.

20-25-427. Allocation of indirect cost reimbursements.

Compiler's Comments

2003 Amendment: Chapter 114 before "current fund" deleted "university". Amendment effective October 1, 2003.

Effective Date: Section 3, Ch. 624, L. 1989, provided that this section is effective July 1, 1990.

20-25-428. Financial assistance for resident nonbeneficiary students.

Compiler's Comments

2005 Amendment: Chapter 147 in (1) at end inserted exception clause and language requiring eligible tribal community college students to be taking courses for which credit is transferable to another Montana college or university; in (2) in second sentence and in (6) before "resident" inserted "eligible"; in (2) in third sentence at end inserted exception clause and language requiring eligible tribal community college students to be taking courses for which credit is transferable to another Montana college or university and in fourth sentence increased per student distribution from $1,500 to $3,024; inserted (3)(c) providing that expenditure is contingent upon tribal community college providing regents with documentation that certain credits taken by nonbeneficiary students will be accepted at another Montana college or university; deleted former (6)(b) that read: "(b) subtract the costs of resident nonbeneficiary fee waivers granted under subsection (6)(a) from the total amount of prorated money to be distributed"; inserted (8) exempting transfer requirement for courses directly related to vocational degree program or to a 2- or 4-year degree program or certificate program; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 362, L. 1997, provided: "WHEREAS, seven tribally controlled community colleges exist in the State of Montana; and

WHEREAS, the tribal community colleges provide a quality, low-cost, and accessible college program to Indian and non-Indian students each year; and

WHEREAS, resident nonbeneficiary students do not qualify for financial support through the Bureau of Indian Affairs or under the Tribally Controlled Community College Assistance Act of 1978; and

WHEREAS, as a result of House Bill No. 544, enacted by the 1995 Legislature, the Board of Regents entered into contracts with tribal community colleges to provide financial assistance to approximately 589 resident nonbeneficiary students in the 1997 biennium; and

WHEREAS, without continuing state support, tribal community colleges will not be able to serve resident nonbeneficiary students without increasing student fees, which may result in students dropping out of college."

Effective Date: Section 4, Ch. 362, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 22, 1997.

20-25-439. Vocational-technical education — mill levy required.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Effective Date — Applicability: Section 38(2), Ch. 308, L. 1995, provided: "[Section 34] [20-25-439] is effective January 1, 1996, and applies to the operation of the vocational-technical system beginning in fiscal year 1997."

Case Notes

Equal Protection Analysis of Vocational-Technical School Levy — Rational Basis Test Applied: Plaintiffs challenged the constitutionality of this section, asserting that the tax levy for vocational-technical schools resulted in an unequal tax burden on five counties where the schools are located, even though the schools are part of the statewide University System. The state contended that the levy is not unconstitutional because it is rationally related to a legitimate

government purpose. The District Court found that the levy is constitutional because it is rationally related to the legitimate government interest of supporting the schools, in that the schools provide specific benefits to their individual counties. The Supreme Court agreed that the rational basis analysis applied. The constitutional tax provisions in Art. VIII, sec. 1 and 3, Mont. Const., are broad directives whose specifics are left to the Legislature, so no constitutionally significant interests are implicated that require greater than a rational basis analysis. A tax classification under the rational basis test will be upheld if it is reasonable and not arbitrary and if it applies equally to all who fall within the same classification. A classification is not reasonable if it confers particular privileges or imposes particular disabilities on a class of persons arbitrarily selected from a larger number of persons, all of whom stand in the same relation to privileges conferred or disabilities imposed. Neither the uniformity doctrine nor equal protection prevent the state from making classifications that result in different state taxes among the various counties as long as the classifications are rationally related to a legitimate government purpose. Simply because other state taxes for education funding are assessed in every county does not mean that the Legislature is prohibited from creating subclasses for tax purposes. Attendance at vocational-technical schools by local residents and course offerings related to local interests serve as a rational basis for putting the five counties in a separate class for purposes of the levy. Counties with vocational-technical schools are not arbitrarily selected from the rest of the state because those counties do not stand in the same relation to the greater privileges conferred on those counties by the schools than the rest of the state, so the disability of the levy is rationally imposed. The constitutionality of this section was affirmed. Kottel v. St., 2002 MT 278, 312 M 387, 60 P3d 403 (2002), following Leuthold v. Brandjord, 100 M 96, 47 P2d 41 (1935), and distinguishing State ex rel. Woodahl v. Straub, 164 M 141, 520 P2d 776 (1974), Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336 (1989), and Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295 (1999).

Uniformity Doctrine of 1889 Constitution Embodied in Equal Protection Clause of 1972 Constitution: Plaintiffs challenged the constitutionality of this section, asserting that the tax levy for vocational-technical schools resulted in an unequal tax burden on five counties where the schools are located, even though the schools are part of the statewide University System. The state contended that the levy is not unconstitutional because it is rationally related to a legitimate government purpose. The 1889 Montana Constitution contained a uniformity doctrine that required a tax to be levied by a general law that is uniform within the same class of subjects within the territorial limits of the authority levying the tax; however, that uniformity doctrine does not appear in the plain language of the 1972 Montana Constitution. Nevertheless, plaintiffs asserted that the uniformity doctrine is still a constitutional requirement apart from equal protection guarantees. The state argued that because the uniformity doctrine is not part of the 1972 Montana Constitution, the levy could not be violative of the doctrine. The District Court agreed with the state and plaintiffs appealed. The Supreme Court agreed that the statement defining the uniformity doctrine in Hilger v. Moore, 56 M 146, 182 P 477 (1919), was subsequently applied in post-1972 cases, but disagreed that the definition supports any stricter limitation on taxation than that imposed by equal protection. The framers of the 1972 Montana Constitution intended to preserve the uniformity doctrine only as it is equivalent to equal protection requirements. Thus, the uniformity doctrine as interpreted under the 1889 Montana Constitution, which provided for equal protection in the area of taxation, is still embodied in the 1972 Montana Constitution in the equal protection clause. Analysis of the constitutionality of the levy in question was therefore conducted under the equal protection clause. Kottel v. St., 2002 MT 278, 312 M 387, 60 P3d 403 (2002).

20-25-440. Honors college program building.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Effective Date: Section 4, Ch. 22, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 8, 1993.

20-25-441. Lease of university of Montana-Missoula property for stadium authorized.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Preamble: The preamble attached to Ch. 477, L. 1985, provided: "WHEREAS, the Legislature consented to the Board of Regents' authorization to the University of Montana [now University of Montana-Missoula] to renovate Dornblaser Stadium or construct a new stadium complex at the University of Montana [now University of Montana-Missoula] through adoption by the 48th Legislature of Senate Joint Resolution No. 14; and

WHEREAS, private funding for the construction of the project is available through the University of Montana [now University of Montana-Missoula] Foundation, a private nonprofit foundation organized to solicit, manage, and administer gift revenues on behalf of the University of Montana [now University of Montana-Missoula]; and

WHEREAS, some of the funding is available in the form of in-kind donations of goods and services; and

WHEREAS, the laws of the State of Montana governing public contracts for the construction of public facilities are not compatible with the provision of in-kind goods and services; and

WHEREAS, the best interests of the people of the State of Montana would be served by allowing the University of Montana [now University of Montana-Missoula] Foundation to help in any way it can to provide an improved stadium at the University; and

WHEREAS, the Legislature wishes to facilitate the project while protecting vital state interests in life/safety and long-term maintenance responsibilities."

Legislative Authorization: SJR 14 of the 48th Legislature, referred to in this section, provided: "WHEREAS, the University of Montana [now University of Montana-Missoula] stadium is inadequate and potentially unsafe; and

WHEREAS, the University of Montana [now University of Montana-Missoula] participates in the Big Sky Athletic Conference and Division 1-AA of the National Collegiate Athletic Association but has a stadium facility that is far below standard for this participation; and

WHEREAS, a special study committee of students, faculty, staff, and community representatives is developing a plan for improvement of the stadium; and

WHEREAS, the funding for renovation of the current stadium or construction of a new stadium will be from private gifts and from sources other than Student building fees, Regent building fees, or state-appropriated money, and no State Long-Range Building Program funds will be sought; and

WHEREAS, the project cost will reflect the option of renovation or construction finally approved, but is estimated not to exceed an amount of $4.5 million; and

WHEREAS, this project may need to begin during the coming biennium; and

WHEREAS, the Board of Regents has approved this project in principle, subject to a review of the project proposal and final authorization by the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature consents to the Board of Regents' authorization to the University of Montana [now University of Montana-Missoula] to renovate Dornblaser Stadium or construct a new stadium complex at the University of Montana [now University of Montana-Missoula]."

Part 5
University Students — Qualifications and Rights

Part Case Notes

Damages for Course Terminated: When students enrolled in a 6-quarter aviation course that, after 3 quarters, was terminated due to lack of funds, the state was liable for damages to the students. Peretti v. St. Bd. of Educ., 464 F. Supp. 784, 36 St. Rep. 254 (D.C. Mont. 1979), reversed on other grounds, 661 F2d 756 (9th Cir. 1981).

Relationship Between School and Student: The relationship between a public postsecondary educational institution and a student enrolled there is contractual in nature. Peretti v. St. Bd. of Educ., 464 F. Supp. 784, 36 St. Rep. 254 (D.C. Mont. 1979), reversed on other grounds, 661 F2d 756 (9th Cir. 1981).

Part Collateral References

Misconduct of college or university student off campus as grounds for expulsion, suspension, or other disciplinary action. 28 ALR 4th 463.

Physical or mental illness as basis of dismissal of student from school, college, or university. 17 ALR 4th 519.

20-25-501. Definitions.

Compiler's Comments

1997 Amendment: Chapter 42 deleted definition of emancipated minor that read: ""Emancipated minor" means a person under the age of 18 years who is self-supporting from personal earnings or is married. A person who received more than 25% of the cost of support from any person other than an agency of the government may not be considered an emancipated minor"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment: Chapter 308 in (1)(e)(ii), after "school", inserted "who is a citizen or resident alien of the United States"; and made minor changes in style. Amendment effective July 1, 1995.

Case Notes

Indigent Student's Right to County Medical Assistance — Residence Question: A college student born and raised in Cascade County was injured far from home. During recuperation at her parents' residence in Cascade County, she applied for medical assistance. She was denied. The Supreme Court of Montana found her to be a resident of Cascade County for purposes of county medical assistance, noting that she gives the county as her permanent address and intends to reside there after she finishes school and citing the rule that it is customary to look to the parents' residence in order to determine the residence of the student. Michels v. Dept. of Social and Rehabilitation Services, 187 M 173, 609 P2d 271, 37 St. Rep. 546 (1980).

20-25-503. Presumptions and rules as to domicile.

Compiler's Comments

1997 Amendment: Chapter 243 in (6)(a), at end, substituted "and" for "or". Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in (6), after "graduates", inserted "who are citizens or resident aliens of the United States"; and made minor changes in style. Amendment effective July 1, 1995.

Case Notes

Indigent Student's Right to County Medical Assistance — Residence Question: A college student born and raised in Cascade County was injured far from home. During recuperation at her parents' residence in Cascade County, she applied for medical assistance. She was denied. The Supreme Court of Montana found her to be a resident of Cascade County for purposes of county medical assistance, noting that she gives the county as her permanent address and intends to reside there after she finishes school and citing the rule that it is customary to look to the parents' residence in order to determine the residence of the student. Michels v. Dept. of Social and Rehabilitation Services, 187 M 173, 609 P2d 271, 37 St. Rep. 546 (1980).

Attorney General's Opinions

Rebuttable Presumption of Nonresidence Not Violative of Due Process: The holding of the U.S. Supreme Court in Vlandis v. Kline, 412 US 441, that a permanent irrebuttable presumption of nonresidence of students who were nonresidents at the time of enrollment in Connecticut's University System violated the Due Process Clause of the federal Constitution does not affect Montana's residency law dealing with payment of fees at units of the Montana University System, because the Montana law establishes only a rebuttable presumption of nonresidence. 35 A.G. Op. 18 (1973).

Collateral References

Colleges and Universities *key* 9.

14A C.J.S. Colleges and Universities §§25, 27.

15A Am. Jur. 2d Colleges and Universities §23.

Residence: determination of residence or nonresidence for purpose of admission to public college. 56 ALR 3d 641; 83 ALR 2d 497.

20-25-504. Evidence as to domiciliary intent — changes in status.

Attorney General's Opinions

Rebuttable Presumption of Nonresidence Not Violative of Due Process: The holding of the U.S. Supreme Court in Vlandis v. Kline, 412 US 441, that a permanent irrebuttable presumption of nonresidence of students who were nonresidents at the time of enrollment in Connecticut's University System violated the Due Process Clause of the federal Constitution does not affect Montana's residency law dealing with payment of fees at units of the Montana University

System, because the Montana law establishes only a rebuttable presumption of nonresidence. 35 A.G. Op. 18 (1973).

20-25-511. Student's right of privacy — legislative intent.

Compiler's Comments

1981 Amendment: Substituted "peace officers" for "police".

Collateral References

Liability of university, college, or other school for failure to protect student from crime. 1 ALR 4th 1099.

Part 6
Health Education — Drug and Alcohol Instruction

20-25-604. Department in advisory capacity.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

Part 7
Work-Study Program

20-25-707. Antidiscrimination.

Compiler's Comments

1997 Amendment: Chapter 472 near end substituted "disability" for "handicap"; and made minor changes in style.

20-25-709. Contributions from employers.

Compiler's Comments

Severability Clause: Section 75-9111, R.C.M. 1947, was a severability clause.

Part 9
Family Education Savings Program

Part Compiler's Comments

Effective Date: Section 15, Ch. 540, L. 1997, provided: "[This act] is effective July 1, 1997."

20-25-901. Family education savings program oversight committee — membership — powers and duties.

Compiler's Comments

2003 Amendment: Chapter 566 in (5)(a) after "act as the" deleted "depositories and"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 deleted former (2)(b) that read: "(b) the director of the department of commerce or the director's designee"; in (2)(d) increased the general public's representation on the committee from three members to four members; and made minor changes in style. Amendment effective July 1, 2001.

Implementation of Staggered Terms: Section 13, Ch. 540, L. 1997, provided: "(1) To implement the staggered-term system provided for in [section 6] [20-25-901], the first terms of the members are as follows:

(a) one member shall serve a 1-year term;

(b) two members shall serve 2-year terms;

(c) two members shall serve 3-year terms; and

(d) two members shall serve 4-year terms.

(2) Upon expiration of the terms provided for in subsection (1), each member shall serve a 4-year term."

20-25-902. Board — powers and duties.

Compiler's Comments

2005 Amendment: Chapter 549 inserted (1)(h) through (1)(j) granting additional powers to board; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 566 in (1)(e) after "act as the" deleted "depository and". Amendment effective October 1, 2003.

Part 10
Motorcycle Safety Training Program

20-25-1001. Definitions.

Compiler's Comments

Effective Date: Section 15, Ch. 181, L. 1999, provided that this section is effective July 1, 1999.

20-25-1002. State motorcycle safety account — proceeds earmarked for account.

Compiler's Comments

2001 Amendment: Chapter 574 in (2) near beginning substituted "motorcycle safety fees" for "motorcycle registration fees". Amendment effective July 1, 2001.

Effective Date: Section 15, Ch. 181, L. 1999, provided that this section is effective July 1, 1999.

20-25-1003. Motorcycle safety promotion.

Compiler's Comments

1999 Amendment: Chapter 181 near beginning after "justice" substituted "and the board of regents" for "and the superintendent of public instruction" and near end after "encouraging" inserted "both publicly and privately offered". Amendment effective July 1, 1999.

Termination Provision Repealed: Section 8, Ch. 701, L. 1991, repealed sec. 10, Ch. 324, L. 1989, which terminated this section June 30, 1993. Repealer effective July 1, 1991.

Effective Date: Section 9, Ch. 324, L. 1989, provided that this section is effective July 1, 1989.

20-25-1004. Motorcycle safety advisory committee.

Compiler's Comments

1999 Amendment: Chapter 181 throughout section substituted "board of regents" for "superintendent of public instruction"; in (3)(b) substituted "instructor of motorcycle safety training" for "motorcycle safety instructor" and substituted "20-25-1005" for "20-7-512"; in (5)(b) near beginning substituted "instructor of motorcycle safety training" for "motorcycle safety instructor" and near middle substituted "an instructor of motorcycle safety training certification" for "a motorcycle safety instructor certification"; and made minor changes in style. Amendment effective July 1, 1999.

Termination Provision Repealed: Section 8, Ch. 701, L. 1991, repealed sec. 10, Ch. 324, L. 1989, which terminated this section June 30, 1993. Repealer effective July 1, 1991.

Effective Date: Section 9, Ch. 324, L. 1989, provided that this section is effective July 1, 1989.

20-25-1005. Standards for motorcycle safety training.

Compiler's Comments

1999 Amendment: Chapter 181 in two places substituted reference to board of regents for reference to superintendent of public instruction and substituted "20-25-1006" for "20-7-513". Amendment effective July 1, 1999.

Termination Provision Repealed: Section 8, Ch. 701, L. 1991, repealed sec. 10, Ch. 324, L. 1989, which terminated this section June 30, 1993. Repealer effective July 1, 1991.

Effective Date: Section 9, Ch. 324, L. 1989, provided that this section is effective July 1, 1989.

20-25-1006. Motorcycle safety training course — tuition.

Compiler's Comments

2001 Amendment: Chapter 307 in (4) near middle after "purchases" deleted "or award grants". Amendment effective July 1, 2001.

1999 Amendment: Chapter 181 in (1) substituted language pertaining to the board of regents prescribing tuition rates and the disposition of the tuition collected for former (1) that read: "(1) The superintendent may charge a fee for the cost of conducting motorcycle safety training courses. The fee must be deposited in the state traffic education account, as provided in

20-7-504"; in (2) substituted language allowing board of regents to delegate authority to conduct motorcycle safety training courses and the approval of instructors for former (2) that read: "(2) The superintendent may contract with qualified persons throughout the state to conduct motorcycle safety training courses outside of the formal education system at times and places that will attract the greatest number of students"; and in (4) near middle substituted "board of regents" for "superintendent" and substituted "motorcycle safety account" for "traffic education account". Amendment effective July 1, 1999.

1991 Amendment: Deleted former (1) that read: "(1) The superintendent shall conduct motorcycle safety training courses throughout the state to the extent that funds are available"; in (1) and (4) substituted reference to state traffic education account for reference to motorcycle safety training account; at end of (1) substituted "20-7-504" for "61-2-406"; in (2), after "training", inserted "courses"; in (3), after "safety", inserted "training"; and made minor changes in style. Amendment effective July 1, 1991.

Termination Provision Repealed: Section 8, Ch. 701, L. 1991, repealed sec. 10, Ch. 324, L. 1989, which terminated this section June 30, 1993. Repealer effective July 1, 1991.

Effective Date: Section 9, Ch. 324, L. 1989, provided that this section is effective July 1, 1990.

Part 13
Group Benefits

Part Compiler's Comments

Effective Date: Section 8, Ch. 256, L. 1999, provided that this part was effective July 1, 1999.

CHAPTER 26
STUDENT FINANCIAL ASSISTANCE

Part 1
Resident Student Assistance
General Provisions

20-26-103. Definitions.

Compiler's Comments

2001 Amendment: Chapter 7 near middle of definition of postsecondary institution substituted "private postsecondary institution" for "postsecondary institution accredited or licensed under chapter 30 of this title". Amendment effective October 1, 2001.

1997 Amendment: Chapter 243 in definition of Program Advisory Council, before "student loan advisory council", deleted "guaranteed". Amendment effective July 1, 1997.

1985 Amendment: In (3) substituted "guaranteed student loan advisory council created by 2-15-1520" for "resident student financial assistance program advisory council created by 2-15-1517".

Part 6
Governor's Postsecondary Scholarship Program

Part Compiler's Comments

Preamble: The preamble attached to Ch. 489, L. 2005, provided: "WHEREAS, if Montana is to achieve success in attracting new businesses and in promoting a healthier climate for economic growth to provide quality, high-paying jobs for Montana citizens, it is essential that Montana's most talented high school graduates become the "engines" that drive the state's future economic growth; and

WHEREAS, the purpose of establishing the Governor's Postsecondary Scholarship Program is to provide Montana residents with greater access to Montana's postsecondary institutions and Montana's private colleges, through scholarship grants based on academic achievement and financial need, with a goal of alleviating student debt burdens, which will allow more Montanans to stay in the state upon graduation."

Implementation: Section 9(2), Ch. 489, L. 2005, provided: "(2) If the appropriation provided pursuant to subsection (1) is insufficient to fully fund the scholarship program provided for in [this act], after meeting the obligation to provide continuing scholarships for returning sophomore, junior, and senior students, the board shall reduce the number of scholarships awarded in each category under [section 6(2)] [20-26-612(2)] in proportion to the amount of

money appropriated and notify the office of budget and program planning of the reduction. Following consultation with the council, the board shall adopt procedures to implement this section."

Effective Date — Applicability: Section 11, Ch. 489, L. 2005, provided: "[This act] is effective on passage and approval and applies to the 2006 academic year." Approved April 28, 2005.

Part 11
Guaranteed Student Loan Program

20-26-1101. Definitions.

Compiler's Comments

1997 Amendments: Chapter 243 substituted agency for corporation as defined term and substituted "entity" for "corporation"; in definition of Council, before "student loan", deleted "guaranteed"; in definition of eligible educational institution substituted "secretary" for "commissioner" and before "student loan program" deleted "guaranteed"; inserted definition of eligible lender; substituted student loan program for guaranteed student loan program as defined term; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 446 inserted definitions of agency, delinquency, license, licensing authority, order suspending a license, and payment plan; deleted definition of corporation that read: ""Corporation" means the corporation designated by the board to administer student loans"; and made minor changes in style.

1993 Amendment: Chapter 205 inserted definition of corporation; and deleted definition of nonprofit corporation.

20-26-1102. Authorization to establish student loan program.

Compiler's Comments

1997 Amendment: Chapter 243 in (1) and (2), before "student loan program", deleted "guaranteed"; and made minor changes in style. Amendment effective July 1, 1997.

20-26-1103. Duties of board.

Compiler's Comments

2001 Amendment: Chapter 38 at end of (6) inserted "and other student financial aid-related activities for the benefit of students as determined by the board"; and made minor changes in style. Amendment effective March 13, 2001.

1997 Amendment: Chapter 243 in introductory clause and in (4), (5), and (6), before "student loan program", deleted "guaranteed"; in (1), near beginning after "guarantor", inserted "and administrator"; in (2), after "or credit institutions", deleted "insurance companies" and before "student loans" deleted "guaranteed"; in (4), after "United States", substituted "secretary" for "commissioner"; in (5), at beginning, substituted "provide" for "contract with a corporation", before "loan approval" substituted "conduct" for "provide", after "preclaims assistance" inserted "supplemental preclaims assistance", and after "lender" inserted "and school"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 205 near beginning of (5), before "corporation", deleted "nonprofit"; and made minor changes in style.

20-26-1104. Student loan advisory council — duties.

Compiler's Comments

1997 Amendment: Chapter 243 deleted former (2) that read: "(2) make recommendations to the board concerning the designation of a corporation"; in (2) substituted "program" for "corporation" and after "students" inserted "schools"; deleted (4) that read: "(4) advise on the adequacy and proper execution of any contracts entered into between the board and the corporation"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 205 in (2), (3), and (4), before "corporation", deleted "nonprofit".

20-26-1105. Student loan account.

Compiler's Comments

1997 Amendment: Chapter 243 in (1), in (2), in two places, and in (4), before "student loan", deleted "guaranteed"; in (3), near middle after "guarantor", inserted "and administrator"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: In (1) substituted "federal" for "other"; and made minor changes in grammar. Amendment effective July 1, 1989.

1987 Amendment: In (1) substituted "other special revenue funds" for "federal special revenue fund".

1983 Amendment: In (1), substituted "account within the federal special revenue fund provided for in 17-2-102" for "revolving account within the university student loan fund provided for in 17-2-102(11)".

20-26-1106. No state obligation.

Compiler's Comments

1997 Amendment: Chapter 243 in two places, before "student loan", deleted "guaranteed" and near middle of second sentence substituted "agency" for "nonprofit corporation". Amendment effective July 1, 1997.

20-26-1107. Dissolution — disposition of money.

Compiler's Comments

1997 Amendment: Chapter 243 in (1), near beginning, and in (2), near middle before "student loan", deleted "guaranteed"; in (1), after "and all loans", deleted "guaranteed" and at end inserted "or have been otherwise accounted for under Title IV of the Higher Education Act of 1965, as amended"; and made minor changes in style. Amendment effective July 1, 1997.

20-26-1117. Suspension, denial, and nonrenewal of licenses.

Compiler's Comments

1997 Amendment: Section 3(6), Ch. 446, which read: "(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with [sections 1 through 7]", was rendered void by sec. 11, Ch. 446, L. 1997, which provided that subsection (6) is void if House Bill No. 180 failed to receive the necessary two-thirds vote of the members of each house of the Legislature. House Bill No. 180 did not receive the necessary two-thirds vote.

Failure to Receive Two-Thirds Vote — Voidness Clause: Section 9, Ch. 446, L. 1997, provided: "Section 9. Two-thirds vote required. Because [section 3] [20-26-1117] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage."

Section 11, Ch. 446, L. 1997, provided: "Section 11. Required vote — voidness. If the two-thirds vote required by [section 9] is not obtained, then [sections 3(6) and 9] [20-26-1117(6) and section 9] of [this act] are void." The bill failed to receive the necessary two-thirds vote.

Part 15
Rural Physician Incentive Program

20-26-1501. Rural physician incentive state special revenue account.

Compiler's Comments

1999 Amendment: Chapter 389 throughout section substituted "account" for "fund" and in first sentence substituted "state special revenue account" for "expendable trust fund"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date: Section 6, Ch. 394, L. 1991, provided: "[This act] is effective July 1, 1991."

Applicability: Section 5, Ch. 394, L. 1991, provided: "[This act] applies to students enrolling in a professional school on or after July 1, 1992."

20-26-1502. Fee assessments — deposits.

Compiler's Comments

1999 Amendment: Chapter 389 near end of third sentence substituted "state special revenue account" for "trust fund"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date: Section 6, Ch. 394, L. 1991, provided: "[This act] is effective July 1, 1991."

Applicability: Section 5, Ch. 394, L. 1991, provided: "[This act] applies to students enrolling in a professional school on or after July 1, 1992."

20-26-1503. Use of rural physician incentive state special revenue account.

Compiler's Comments

1999 Amendment: Chapter 389 in (1) and (5) substituted "state special revenue account" for "trust fund"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 89 in (4) increased maximum debt payment from "$30,000 over a 4-year period" to "$45,000 over a 5-year period".

Effective Date: Section 6, Ch. 394, L. 1991, provided: "[This act] is effective July 1, 1991."

Applicability: Section 5, Ch. 394, L. 1991, provided: "[This act] applies to students enrolling in a professional school on or after July 1, 1992."

CHAPTER 31
FIRE SERVICES TRAINING SCHOOL

Part 1
General Provisions

20-31-101. Definitions.

Compiler's Comments

1989 Amendment: In definition of board substituted "board of regents" for "board of public education", substituted "Article X, section 9, subsection (2)" for "Article X, section 9, subsection (3)", and substituted "2-15-1505" for "2-15-1507". Amendment effective July 1, 1989.

20-31-102. Fire services training school — creation — supervision by board of regents.

Compiler's Comments

1989 Amendment: In three places substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

Administrative Rules

ARM 10.51.104 Responsibility assigned by statute.
ARM 10.51.106 Agency functional chart.

20-31-103. Purpose of school.

Compiler's Comments

1987 Amendment: Substituted (1) through (5) (see 1987 Session Law for text) for former (1) through (7) that read: "(1) reduce the loss of life and personal injury caused by fire;

(2) reduce property damage and loss caused by fire;

(3) provide paid, volunteer, and other publicly or privately employed firefighters with professional training;

(4) provide training in investigating the cause of fire;

(5) develop new methods of fire prevention and firefighting;

(6) provide expertise for testing firefighting methods and firefighting equipment;

(7) provide public educational programs to promote fire prevention."

20-31-104. Coordination with other agencies.

Compiler's Comments

1989 Amendment: Substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

Part 2
Director

20-31-202. Duties of director.

Compiler's Comments

1989 Amendment: Substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

Part 3
Advisory Council

20-31-301. Organization — procedural rules — compensation of members.

Compiler's Comments

1989 Amendment: In (2) substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

Part 4
Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements.

Compiler's Comments

1989 Amendment: Substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

20-31-402. Cost recovery fee.

Compiler's Comments

1989 Amendment: Substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

CHAPTER 32
MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK

Part 1
General

Part Compiler's Comments

Preamble: The preamble attached to Ch. 622, L. 1991, provided: "WHEREAS, the school funding reform legislation in House Bill No. 28 (Chapter 11), Special Laws of June 1989, promotes the use of telecommunications technology for the purpose of enhancing the equal educational opportunities provided to students in the Montana public school system; and

WHEREAS, the Department of Administration, the Superintendent of Public Instruction, and the Montana University System, with the assistance of private consulting services and other private and public entities, have followed the directive in House Bill No. 28 and have completed the needs assessment and network design for improvements in the Montana education system through telecommunications technology; and

WHEREAS, Montana's future depends on the ability to provide quality educational opportunities and on the ability to train and retrain the state's work force, regardless of location in the state; and

WHEREAS, telecommunications can contribute to equal educational opportunity for all Montanans through improved access to a wide range of educational needs, such as specialized coursework in languages, mathematics, and the sciences, college credit coursework, adult education, teacher inservice training, and preparation for professional recertification; and

WHEREAS, by both past actions and future commitments, the private sector has demonstrated its willingness to share in the funding for development and enhancement of an educational telecommunications network in Montana."

Effective Date: Section 9, Ch. 622, L. 1991, provided that this part is effective on passage and approval. Approved April 24, 1991.

20-32-101. Purpose — definition.

Compiler's Comments

1995 Amendment: Chapter 308 in (3)(b), after "system", deleted "the vocational-technical centers". Amendment effective July 1, 1995.

20-32-102. Agency cooperation — responsibilities.

Compiler's Comments

1995 Amendment: Chapter 308 in (1)(c) and (4)(d), after "system", deleted "the vocational-technical centers"; in (4)(f), after "colleges", deleted "and vocational-technical centers"; and made minor changes in style. Amendment effective July 1, 1995.

20-32-103. Fee collection and disposition for operational costs.

Compiler's Comments

1997 Amendment: Chapter 243 in second sentence, after "commissioner of higher education", deleted "by July 1". Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in first sentence, after "system", deleted "vocational-technical centers" and after "units" deleted "centers". Amendment effective July 1, 1995.

1993 Amendment: Chapter 547 in first sentence, after "exceed", substituted "$5" for "$1"; in second sentence, after "July 1", deleted "of the fiscal year, beginning with fiscal year 1992"; and at end of third sentence deleted "as provided in 20-32-104". Amendment effective April 28, 1993.

TITLE 21
RESERVED

TITLE 22
LIBRARIES, ARTS, AND ANTIQUITIES

CHAPTER 1
LIBRARIES

Chapter Law Review Articles

Freedom of Speech for Libraries and Librarians, Smolla, 85 L. Libr. J. 71 (1993).
Libraries Invaded by the FBI, Lanier, 27 Free Speech Y.B. 68 (1989).
Closing the Book on the Public Lending Right, 63 N.Y.U. L. Rev. 878 (1988).

Part 1
State Library Commission

Part Administrative Rules

Title 10, chapter 101, ARM State Library Commission.

22-1-101. State library commission established.

Compiler's Comments

1985 Amendment: In (4) substituted "shall be compensated and receive travel expenses as provided for in 2-15-124" for "shall receive no compensation for their services except their travel expenses, as provided for in 2-18-501 through 2-18-503".

1983 Amendment: In (1) and (2), substituted language establishing commission and providing for its membership for "A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the university of Montana, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve 1, 2, and 3 years respectively. As these terms expire, annually thereafter one person shall be appointed for a term of 3 years."

22-1-102. Librarian and assistants.

Attorney General's Opinions

Authority to Classify Positions of State Librarian and Director of Montana Historical Society: Although repeals by implication are not favored, it would frustrate the purpose of the classification and pay plan law to hold that the positions of state librarian and Director of the Montana Historical Society are exempt from classification when the Legislature has not expressly approved such exemption in 2-18-103. Thus, the provisions of 22-3-107 and 22-1-102, which authorize the Board of Trustees of the historical society and the State Library Commission to set salary, are superseded by the classification and pay plan law, Title 2, ch. 18, parts 1 through 3. The Board and the Commission retain the authority to hire and to assign duties and responsibilities. 40 A.G. Op. 68 (1984).

Law Review Articles

Comparable Worth in Libraries: A Legal Analysis, Johnson, 79 L. Libr. J. 367 (1987).

Collateral References

States *key* 53.
81A C.J.S. States §§86, 92, 94.

22-1-103. State library commission — authority.

Compiler's Comments

2005 Amendment: Chapter 73 in (9) after "areas for" substituted "and establish" for "the establishment of" and after "libraries" deleted "and designate the headquarters library for the federations". Amendment effective October 1, 2005.

1997 Amendment: Chapter 472 in (6) substituted "for individuals with physical disabilities" for "physically handicapped"; and made minor changes in style.

1995 Amendment: Chapter 339 inserted (3)(b) relating to gifts, donations, bequests, and legacies to Montana State Library; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

Title 10, chapter 101, subchapter 2, ARM State Library Commission — procedural rules.
Title 10, chapter 102, subchapter 11, ARM Public library development.
Title 10, chapter 102, subchapter 36, ARM Public library grants.
Title 10, chapter 102, subchapter 51, ARM Federation areas.
Title 10, chapter 102, subchapter 81, ARM Depository procedures for state documents.

Part 2
State Library

22-1-212. Creation of distribution center.

Administrative Rules

Title 10, chapter 102, subchapter 81, ARM Depository procedures for state documents.

22-1-214. Depository libraries — eligibility.

Compiler's Comments

Depository Libraries: Libraries designated as depository libraries under this section as of March 1986 include the Montana Historical Society Library, Mansfield Library at the University of Montana (now University of Montana-Missoula), Renne Library at Montana State University (now Montana State University-Bozeman), Eastern Montana College (now Montana State University-Billings) Library, Northern Montana College (now Montana State University-Northern) Library, Western Montana College (now University of Montana-Western) Library, Library of Congress, Montana College of Mineral Science and Technology (now Montana Tech of the University of Montana) Library, Great Falls Public Library, Billings Public Library, Miles City Public Library, Flathead County Free Library, City-County Library of Missoula, Glasgow City-County Library, Glendive Public Library, Washington State Library in Olympia, Washington, Center for Research Libraries in Chicago, Illinois, and Dull Knife Memorial College Library in Lame Deer, Montana.

Administrative Rules

Title 10, chapter 102, subchapter 81, ARM Depository procedures for state documents.

22-1-218. Exemptions.

Compiler's Comments

1995 Amendment: Chapter 545 in (3), after "legislative", substituted "services division" for "council"; and made minor changes in style. Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1983 Amendment: Deleted former (2), which read: "the secretary of state in connection with his duties under 2-15-401(13)".

22-1-225. Montana state library trust — interest retention.

Compiler's Comments

2001 Amendment: Chapter 34 in (1) after "account in the" substituted "governmental fund category state special revenue fund type" for "fiduciary fund category expendable trust fund type". Amendment effective July 1, 2001.

Effective Date: Section 6, Ch. 339, L. 1995, provided that this section is effective July 1, 1995.

22-1-226. Use of Montana state library trust.

Compiler's Comments

2001 Amendment: Chapter 34 in (1) near middle after "22-1-225 is" deleted "intended to be an expendable trust". Amendment effective July 1, 2001.

Effective Date: Section 6, Ch. 339, L. 1995, provided that this section is effective July 1, 1995.

Part 3
Free Public Libraries

Part Administrative Rules

Title 10, chapter 102, subchapter 11, ARM Public library development.

Title 10, chapter 102, subchapter 36, ARM Public library grants.

Part Case Notes

Refusal to Order Libraries Created as De Facto Public Corporations or to Estop Denial of Their Creation: The record supported a conclusion that County Commissioners agreed and contracted to help provide towns with libraries and assisted in funding, but there was no persuasive evidence that the Commissioners intended to create county libraries under the library statutes then in effect or that the Commissioners complied with the statutory requirements for the establishment of county libraries. Therefore, the town libraries did not meet the requirements for creation of de facto public corporations, and the court would not order the county to continue funding them in the face of a county decision to cease the funding. The court would not apply public policy estoppel theory to prevent the county from challenging the existence of the libraries as county libraries. There never were county libraries or purported county libraries. Each town provided its own library facilities and ran its own library. The county only helped with funding, an insufficient basis to apply estoppel to the county. Choteau Library Bd. of Trustees v. Teton County Bd. of Comm'rs, 283 M 87, 938 P2d 1357, 54 St. Rep. 507 (1997).

Part Law Review Articles

From Little Acorns Great Oaks Grow: The Constitutionality of Protecting Minors From Harmful Internet Material in Public Libraries, Keller, 30 St. Mary's L.J. 549 (1999).

22-1-301. Definitions.

Compiler's Comments

1991 Amendment: In definition of state multilibrary card, after "created", inserted reference to Title 7. Amendment effective April 4, 1991.

1989 Amendment: Inserted definitions of Commission, public library, and state multilibrary card; and made minor changes in phraseology. Amendment effective July 1, 1989.

22-1-303. Creation of public library.

Compiler's Comments

1995 Amendment: Chapter 387 in (3)(d), after "special election", substituted "The special election must be held in conjunction with a regular or primary election" for "which date shall be as soon as the procedures for establishing a special election will allow"; and made minor changes in style.

Attorney General's Opinions

Power of County to Contract With Municipal Libraries: A county that has established a county free library pursuant to this section may contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund. 46 A.G. Op. 19 (1996).

Tax Freeze Limitations Applicable to Pre-1986 Library Services: A county that offered library services prior to 1986 may not form a new taxing unit to avoid the limitations on property taxes imposed under Initiative Measure No. 105 by establishing a public library pursuant to this section or by forming a multijurisdictional service district to provide library services pursuant to 7-11-1105. 46 A.G. Op. 19 (1996).

22-1-304. Tax levy — special library fund — bonds.

Compiler's Comments

2005 Amendment: Chapter 453 deleted former (3) that read: "(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 and 7-6-4453"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 495 in (1) in three places substituted "tax" for "special tax" and in second and third sentences substituted "on the taxable valuation of" for "on the dollar on" (amendment in second and third sentences rendered void by Ch. 574 amendment); in (2)(a) in first sentence substituted "imposing a tax levy" for "exceeding the maximum tax levy provided in subsection (1)" and substituted "an election as provided in 15-10-425" for "the next appropriate election or at a special election as provided in Title 13"; in (2)(b) in first sentence after "for the purpose of" substituted "imposing a" for "exceeding the maximum", substituted "15-10-425" for "Title 13", and substituted "imposing the mill levy" for "exceeding the maximum mill levy"; deleted (2)(c) through (2)(e) that read: "(c) The question must be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The ballots must also specify the amount of time during which the proposed increase exceeding the maximum mill levy is to be in effect.

(e) The votes cast for the adoption or rejection of the question must be canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the time specified on the ballot; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 574 in (1) deleted former last two sentences that read: "The special tax levy that may be levied by the governing body of a county may not exceed 5 mills on the dollar on all property in the county. The special tax that may be levied by the governing body of a city may not exceed 7 mills on the dollar on all property in the city"; in (2)(a) at end of first sentence substituted "question of imposing a tax levy to a vote of the qualified electors at an election as provided in 15-10-425" for "question of exceeding the maximum tax levy provided in subsection (1) to a vote of the qualified electors at the next appropriate election or at a special election as provided for in Title 13"; in (2)(b) in first sentence near beginning after "purpose of" substituted "imposing a mill levy" for "exceeding the maximum mill levy" and at end substituted "provided in 15-10-425 the question of imposing the mill levy" for "provided for in Title 13 the question of exceeding the maximum mill levy"; deleted former (2)(c) through (2)(e) that read: "(c) The question must be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The ballots must also specify the amount of time during which the proposed increase exceeding the maximum mill levy is to be in effect.

(e) The votes cast for the adoption or rejection of the question must be canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the time specified on the ballot; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded"; near end of (3) deleted reference to 7-6-4452; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 333 in (2)(a) and (2)(b) in first sentence after "election" inserted "or at a special election as provided for in Title 13" and in second sentence before "election" deleted "general"; inserted (2)(d) requiring ballots to specify time proposed increase exceeding maximum mill levy is to be in effect; in (2)(e)(i) at end substituted "time specified on the ballot" for "year in which the vote was taken"; in (6) substituted present language listing the uses for which bonds may be issued for former language that read: "(6) Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 584 at beginning of (1) inserted reference to 15-10-420; in (2)(a) in first sentence substituted "next appropriate election" for "next general election"; in (2)(b) in first and second

sentences substituted "election" for "general election"; and made minor changes in style. Amendment effective May 10, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1985 Amendment: In (2)(a) in second sentence, substituted "75 days" for "60 days".

1983 Amendment: In (1), increased permissible mill levies from 3 to 5 mills for counties and from 4 ½ to 7 mills for cities; and inserted (2) establishing voting procedures for adoption of resolution for exceeding maximum tax levy for library fund and (3) clarifying additional municipal tax.

Case Notes

Allocation of Costs — Permitted: A city has general authority in financing the construction of city vehicle repair shop complex and has implied power to allocate the proportionate share of costs among various city departments using the facility. Greener v. Great Falls, 157 M 376, 485 P2d 932 (1971).

Attorney General's Opinions

Power of County Commissioners to Regulate Library Funded by County General Fund — Limitations as if Funded by Five-Mill Levy: The fact that Big Horn County funds its library through the county general fund does not allow the County Commissioners to usurp the library trustees' statutory authority for setting the library's budget and compensation for the library staff. If the County Commissioners fund the library's budget through the county general fund, the power to decide the library staff compensation still rests with the library trustees. The Commissioners may limit the overall funding of the library budget to 5 mills, as if the library were being funded pursuant to the 5-mill tax levy authorized by this section (see 2001 amendment). To hold otherwise would allow the library trustees to adopt a budget that could assume the entire county general fund levy. 48 A.G. Op. 3 (1999).

Joint City-County Library — County Taxes Levied on City Property: A city and county may join to establish and maintain a joint city-county library. Other than maximum mill levies, no parameters have been set by the Legislature with regard to funding a joint library enterprise. Expenses of the joint city-county library may be apportioned between the city and county pursuant to the contract establishing the joint library, and the entities have broad discretion in negotiating the apportionment of expenses and funding for the provision of library services. Under 22-1-316, both the city and county may levy taxes as provided in this section, and there is no statutory exemption from the county levy for property located in the city. 47 A.G. Op. 6 (1997).

Power of County to Contract With Municipal Libraries: A county that has established a county free library pursuant to 22-1-303 may contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund. 46 A.G. Op. 19 (1996).

Authority of Library Trustees — Obligation of County Commissioners to Levy Property Taxes: County library trustees have direct responsibility for administering county libraries in a manner largely independent of city or county control. Even though library employees may be considered city or county employees for certain purposes, the library trustees' express authority to fix such employees' compensation prohibits County Commissioners from establishing a different wage level. A Board of County Commissioners may not modify the decision of county library trustees concerning wage and salary amounts for library employees, may not modify an annual library budget adopted by the county library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the county library trustees. 41 A.G. Op. 91 (1986). See also 48 A.G. Op. 3 (1999).

22-1-309. Trustees — powers and duties.

Case Notes

Powers of Board of Trustees — Limitations: While the Board of Trustees is not a "public employer" for the purposes of the Collective Bargaining for Public Employees Act, there is no inconsistency between the Library Systems Act and the collective bargaining law since the Board of Trustees is given independent powers to manage and operate the library under the Library Systems Act. Local 2390 v. Billings, 171 M 20, 555 P2d 507 (1976).

Allocation of Costs — Permitted: A city has general authority in financing the construction of city vehicle repair shop complex and has implied power to allocate the proportionate share of

costs among various city departments using the facility. Greener v. Great Falls, 157 M 376, 485 P2d 932 (1971).

Attorney General's Opinions

County Commission Generally Obligated to Fund Library Budget — County Allowed to Bind Itself to Fund Library Budget Through Interlocal Agreement: The Board of County Commissioners is generally obligated to fund the county library budget, as submitted by the library board pursuant to this section, within the limits set in 15-10-420. The 2001 statutory changes did not delete a library board's authority to determine the amount of financial support required by the library, nor did the changes confer on the Board of County Commissioners the authority to modify a library budget submitted by the library board. Further, nothing in the 2001 tax and budget amendments prevents a county from voluntarily entering an interlocal agreement to provide that the county would accept a library board's budget proposal and levy the necessary mills to fund it. 49 A.G. Op. 16 (2002). See also 41 A.G. Op. 91 (1986), and 48 A.G. Op. 3 (1999).

Power of County Commissioners to Regulate Library Funded by County General Fund — Limitations as if Funded by Five-Mill Levy: The fact that Big Horn County funds its library through the county general fund does not allow the County Commissioners to usurp the library trustees' statutory authority for setting the library's budget and compensation for the library staff. If the County Commissioners fund the library's budget through the county general fund, the power to decide the library staff compensation still rests with the library trustees. The Commissioners may limit the overall funding of the library budget to 5 mills, as if the library were being funded pursuant to the 5-mill tax levy authorized by 22-1-304. (See 2001 amendment to 22-1-304.) To hold otherwise would allow the library trustees to adopt a budget that could assume the entire county general fund levy. 48 A.G. Op. 3 (1999).

City Library Board Decision to Retain Property Not Subject to City Commission Override: A city commission did not have authority to overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs. 42 A.G. Op. 98 (1988). See also 48 A.G. Op. 3 (1999).

Authority of Library Trustees — Obligation of County Commissioners to Levy Property Taxes: County library trustees have direct responsibility for administering county libraries in a manner largely independent of city or county control. Even though library employees may be considered city or county employees for certain purposes, the library trustees' express authority to fix such employees' compensation prohibits County Commissioners from establishing a different wage level. A Board of County Commissioners may not modify the decision of county library trustees concerning wage and salary amounts for library employees, may not modify an annual library budget adopted by the county library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the county library trustees. 41 A.G. Op. 91 (1986). See also 48 A.G. Op. 3 (1999).

22-1-310. Chief librarian — personnel — compensation.

Case Notes

Trustees as "Public Employer" of Library Employees — Discharge of Employee: The local governing body and not the Board of Trustees is the "public employer" for the purposes of the Collective Bargaining for Public Employees Act, and the trustees may not discharge an employee because that Act is subject to the agreement. Local 2390 v. Billings, 171 M 20, 555 P2d 507 (1976).

Attorney General's Opinions

Power of County Commissioners to Regulate Library Funded by County General Fund — Limitations as if Funded by Five-Mill Levy: The fact that Big Horn County funds its library through the county general fund does not allow the County Commissioners to usurp the library trustees' statutory authority for setting the library's budget and compensation for the library staff. If the County Commissioners fund the library's budget through the county general fund, the power to decide the library staff compensation still rests with the library trustees. The Commissioners may limit the overall funding of the library budget to 5 mills, as if the library were being funded pursuant to the 5-mill tax levy authorized by 22-1-304. (See 2001 amendment to 22-1-304.) To hold otherwise would allow the library trustees to adopt a budget that could assume the entire county general fund levy. 48 A.G. Op. 3 (1999).

Authority of Library Trustees — Obligation of County Commissioners to Levy Property Taxes: County library trustees have direct responsibility for administering county libraries in a manner largely independent of city or county control. Even though library employees may be considered

city or county employees for certain purposes, the library trustees' express authority to fix such employees' compensation prohibits County Commissioners from establishing a different wage level. A Board of County Commissioners may not modify the decision of county library trustees concerning wage and salary amounts for library employees, may not modify an annual library budget adopted by the county library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the county library trustees. 41 A.G. Op. 91 (1986). See also 48 A.G. Op. 3 (1999).

22-1-315. City library may assume functions of county library.

Attorney General's Opinions

Formation of Multijurisdictional Library Service Districts — Statutory Requirements — Equalization of Tax Burden Among Users: A city and a county may form a multijurisdictional library service district if they meet the statutory requirements of Title 7, ch. 11, part 11, and Title 15, ch. 10, part 4, and if any existing contract for providing library services involving residents of one or more of the participating jurisdictions has expired. A multijurisdictional service district may not be formed for the sole purpose of equalizing the tax burden among those currently using the service; however, one increased service of the district may be to equalize the tax burden among users as long as the district provides services in the manner required by 7-11-1101. 46 A.G. Op. 23 (1996), distinguishing 44 A.G. Op. 11 (1991).

Power of County to Contract With Municipal Libraries: A county that has established a county free library pursuant to 22-1-303 may contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund. 46 A.G. Op. 19 (1996).

22-1-316. Joint city-county library.

Compiler's Comments

1999 Amendment: Chapter 584 in (3) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Attorney General's Opinions

Joint City-County Library — County Taxes Levied on City Property: A city and county may join to establish and maintain a joint city-county library. Other than maximum mill levies, no parameters have been set by the Legislature with regard to funding a joint library enterprise. Expenses of the joint city-county library may be apportioned between the city and county pursuant to the contract establishing the joint library, and the entities have broad discretion in negotiating the apportionment of expenses and funding for the provision of library services. Under this section, both the city and county may levy taxes as provided in 22-1-304, and there is no statutory exemption from the county levy for property located in the city. 47 A.G. Op. 6 (1997).

Creation of Multijurisdictional Service District Within Existing Library District to Increase Allowable Mill Levy Improper: A multijurisdictional service district within an existing service district may not be created for the purpose of increasing the total mill levy within the existing district when the proposed service district would not increase the existing service area, serve people not currently receiving the service, or equalize the tax burden among those who would use the service. 44 A.G. Op. 11 (1991).

22-1-325. Short title.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

22-1-326. State aid to public libraries.

Compiler's Comments

2005 Amendment: Chapter 203 in (2) at end of first sentence inserted text regarding public library districts; in (2)(a) and (2)(b) at end inserted references to public library districts; in (3) at end of first sentence inserted reference to public library districts and in second sentence after "library" inserted "or district"; and made minor changes in style. Amendment effective October 1, 2005.

1991 Amendment: Inserted (1) defining public library. Amendment effective April 4, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

22-1-327. State aid — per capita — per square mile.

Compiler's Comments

2005 Amendment: Chapter 203 near middle inserted reference to public library districts. Amendment effective October 1, 2005.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

Administrative Rules

ARM 10.102.4003 Direct state aid to public libraries for per capita and per square mile served.

22-1-328. State interlibrary loan program — reimbursement — eligibility.

Compiler's Comments

1999 Amendment: Chapter 183 in (2) near end after "private" inserted "medical"; inserted (3) listing types of interlibrary loans ineligible for reimbursement; and made minor changes in style. Amendment effective October 1, 1999.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

Administrative Rules

ARM 10.102.4001 Reimbursement to libraries for interlibrary loans.

22-1-329. State multilibrary card.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

22-1-330. Commission rulemaking authority.

Compiler's Comments

2005 Amendment: Chapter 203 in (1) near middle inserted reference to public library districts. Amendment effective October 1, 2005.

1999 Amendment: Chapter 183 inserted (4) allowing commission to adopt rules for distribution of base grants; inserted (5) allowing commission to adopt rules for the composition of the library federation board of trustees; and made minor changes in style. Amendment effective March 26, 1999.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

Administrative Rules

ARM 10.102.4001 Reimbursement to libraries for interlibrary loans.

ARM 10.102.4003 Direct state aid to public libraries for per capita and per square mile served.

22-1-331. Base grants.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

Part 4
Library Systems

22-1-402. Library federations — definition.

Compiler's Comments

2005 Amendment: Chapter 73 in (2) substituted first sentence allowing governing body of library to participate in federation for former sentence that read: "The governing body of a public library may agree by contract to form a federation with the governing board of other public, school, special, college, or university library if one of the parties is or maintains a library that has been designated by the state library commission as a headquarters library for that federation area" and at end of second sentence after "libraries" deleted "specified in the contract"; in (3) after "participating libraries" deleted "as agreed upon in the contract", deleted former second sentence that read: "The funds of the federation must be maintained as a separate account as provided in the contract", and deleted former third sentence that read: "Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction"; and in (4) at end substituted "federation's bylaws" for "contract by the action of its governing body". Amendment effective October 1, 2005.

2001 Amendment: Chapter 80 deleted former (1) that read: "(1) Library systems must include library federations or library networks"; in (2) in first sentence at beginning substituted "The governing body of a library" for "Two or more cities, towns, or counties; a city and one or more counties; or school, special, college, or university libraries" and after "federation" substituted "with the governing body of another public, school, special, college, or university library" for "by action of their respective governing bodies or duly created boards of library trustees"; deleted former (3) that read: "(3) A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for exchange of information or to provide specific library services not provided in existing library federations"; in (4) after "governing body" deleted "or by a majority of its qualified voters at a general or special election" and deleted former second sentence that read: "A special election must be held in conjunction with a regular or primary election"; inserted (5) authorizing a federation to contract with certain other entities to provide federation services; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 183 in (2)(a) in second sentence after "public" inserted "school, special, college, or university"; in (2)(b) near beginning after "more counties" inserted "or school, special, college, or university libraries"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 387 in (2)(d), at end, inserted "A special election must be held in conjunction with a regular or primary election"; and made minor changes in style.

Library Federations: Library federations established under this section as of March 1986 include the Golden Plains Federation headquartered at the Glasgow City-County Library, Pathfinder Federation headquartered at the Great Falls Public Library, Sagebrush Federation headquartered at the Miles City Public Library, South Central Federation headquartered at the Parmly Billings Library, Tamarack Federation headquartered at the Missoula City-County Library, and Broad Valleys Federation headquartered at the Bozeman Public Library.

1981 Amendment: Deleted "apportioned between or among the towns, cities, and counties involved on such basis" and inserted "based on funds received from the state or participating libraries" after "shall be" near the beginning of subsection (1)(c); substituted the last sentence of subsection (1)(c) relating to accounting of money for "The treasurer of one of the participating units, as shall be provided in the contract, shall have the custody of the funds of the federation, and the participating governments concerned shall transfer semiannually to him all moneys collected for the free library fund in their respective jurisdiction."

Collateral References

Counties *key* 107.

20 C.J.S. Counties §147.

22-1-404. Board of trustees — coordinator.

Compiler's Comments

2005 Amendment: Chapter 73 in (1) in first sentence after "advisory powers only" substituted "appointed according to the federation's bylaws" for "the operation of the library federation having been specified by contract"; in (2) at beginning substituted "The federation membership shall appoint a coordinator of the federation who shall serve" for "The library director or a designee of the headquarters library shall serve as the coordinator of the federation and"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 80 in (2) substituted "library director or a designee" for "librarian". Amendment effective October 1, 2001.

1999 Amendment: Chapter 183 in (1) substituted second and third sentences authorizing state library commission to adopt rules governing federation board of trustees and requiring majority of federation board trustees to be trustees of a public library for former second sentence that read: "The board of trustees of each participating library shall name one of their members to the federation advisory board of trustees, and each participating entity without a duly appointed library board shall name a layman to represent that entity on the library federation board of trustees"; and made minor changes in style. Amendment effective October 1, 1999.

Collateral References

Counties *key* 62, 65, 74(1).

20 C.J.S. Counties §§98, 101 through 103.

22-1-412. Purpose.

Compiler's Comments

1997 Amendment: Chapter 42 near beginning substituted "22-1-413 and this section" for "22-1-412 and 22-1-413". Amendment effective March 12, 1997.

1981 Amendment: Substituted "and 22-1-413" for "through 22-1-416" after "22-1-412" in the first sentence of the section; inserted "may be" after "state funds" near the beginning of the section; deleted "may be allocated among three different grant programs. Such program of state funding is intended" after "library commission" near the middle of the section.

22-1-413. Administration by Montana state library commission.

Compiler's Comments

2001 Amendment: Chapter 80 in third sentence substituted "annually" for "semiannually". Amendment effective October 1, 2001.

1999 Amendment: Chapter 183 in third sentence after "shall" inserted "submit annual plans for the expenditure of state funds and"; and made minor changes in style. Amendment effective October 1, 1999.

1981 Amendment: Substituted "among such types of grant programs and shall allocate funds among federations according to such formulas for distribution as it shall establish from time to time by rules adopted pursuant to 22-1-103" for "to three types of grant programs according to 22-1-415 and shall make grants to duly constituted library federations according to program applications submitted to and approved by the commission" after "such appropriation" in the second sentence; substituted "state funds from the commission" for "grant moneys" after "receiving" near the beginning of the third sentence; deleted "grants have been" and inserted "was" after "state funding" in the third sentence; changed "report" to "reports" after "received, which" in the third sentence; substituted "state" for "grant" after "for all" near the end of the section.

Statement of Intent: The statement of intent attached to SB 88 (Ch. 373, L. 1981) provided: "A statement of intent is required for this bill because it provides for rulemaking in section 2 [22-1-413]. When the provisions being amended by this bill were adopted, it was intended that the formula for allocating appropriations to library federations would be used. The formula proved to be unworkable and has not been in use. Therefore, there is a need for rules to provide guidance for the allocation of funding, to establish funding formulas, and to determine what type of grant programs should be implemented. The rules authorized by this bill should address the preceding concerns and should incorporate flexibility because the needs change and the funding should accommodate the varying needs."

Administrative Rules

Title 10, chapter 102, subchapter 36, ARM Public library grants.

ARM 10.102.5102 Allocation of funding between federations and grant programs.

Part 5
Law Library

Part Law Review Articles

Perception Versus Reality: Electronic Data Interchange in the Law Library Environment, Bluh, 93 L. Libr. J. 269 (2001).

Organization and Management of Judicial Branch Law Libraries, Conti, 17 St. Ct. J. 18 (1993).

A Survey of Legal Research Guides, Anson & Woodward, 84 L. Libr. J. 543 (1992).

Preservation Treatment Options for Law Libraries, 84 L. Libr. J. 259 (1992).

Technology Usage in United States Law Libraries, Moyer, 23 L. Libr. 135 (1992).

The Impact of Technology on Law Library Collection Growth and Space Requirements, Finet, 12 Legal Ref. Services Q. 73 (1992).

Symposium on Law Library Management, 81 L. Libr. J. 177 (1989).

Comparable Worth in Libraries: A Legal Analysis, Johnson, 79 L. Libr. J. 367 (1987).

Part Collateral References

Sufficiency of access to legal research facilities afforded defendant confined in state prison or local jail. 23 ALR 4th 590.

Recommendation for a Quality Control System for State Government Publications, A Report to the 53rd Legislature, Mont. Leg. Council & Mont. State Librarian (1992).

22-1-501. State law library created.

Compiler's Comments

1991 Amendment: Near middle of second sentence, after "in the law library", deleted "in the capitol building" and at end substituted reference to 22-1-502 for "herein"; and made minor changes in style.

Collateral References

States *key* 82.

81A C.J.S. States §144.

22-1-502. Location — control by board of trustees.

Compiler's Comments

1981 Amendment: Deleted "the capitol building at" after "located in" in the middle of the section.

Collateral References

States *key* 82.

81A C.J.S. States §144.

22-1-503. Authority of board.

Compiler's Comments

1983 Amendment: Deleted former (6), which read: "to report as provided in 2-7-102".

22-1-504. Duties of librarian — library staff state employees.

Compiler's Comments

2001 Amendment: Chapter 585 inserted (2) designating members of staff of state law library, except librarian, as state employees; and made minor changes in style. Amendment effective July 1, 2002.

Saving Clause: Section 55, Ch. 585, L. 2001, was a saving clause.

Collateral References

States *key* 73.

81A C.J.S. States §§136, 140.

22-1-505. Use of library.

Collateral References

Sufficiency of access to legal research facilities afforded defendant confined in state prison or local jail. 23 ALR 4th 590.

22-1-506. Liability for injury to books or failure to return.

Collateral References

States *key* 87.

81A C.J.S. States §147.

Part 7
Public Library Districts

Part Compiler's Comments

Effective Date: This part is effective October 1, 2001.

22-1-702. Creation or enlargement of public library district.

Compiler's Comments

2005 Amendment: Chapter 203 deleted former (8) that read: "(8) Except as provided in 22-1-705, if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall adjust the boundaries of the district to exclude the territory served by the public library." Amendment effective October 1, 2005.

22-1-705. Consolidation of existing public libraries and public library districts.

Compiler's Comments

2005 Amendment: Chapter 203 in (1)(a) at end substituted "the governing body of each county with territory included in the district shall notify the governing body of the city or county that established the public library that the territory served by the library is included in the district boundaries. The governing body of the city or county that established the public library shall hold a public hearing on the question of whether the territory served by the library should be included in the district. If the governing body determines that the territory served by the public library should be consolidated into the district, it shall adopt a resolution, following the public hearing, to that effect. If the governing body of the city or county that established the public library determines that the territory served by the library should not be included in the district, it shall adopt a resolution to that effect and the boundaries of the district must be adjusted to exclude the territory served by the public library" for "the territory served by the public library may be consolidated into the district upon the adoption of a resolution, following a public hearing, by the governing body of the city or county that established the public library and by the board of trustees of the district"; and in (1)(b) near middle inserted reference to library district. Amendment effective October 1, 2005.

22-1-707. Duties and powers of board of trustees.

Compiler's Comments

2005 Amendment: Chapter 203 in (2)(c)(i) near middle inserted text regarding owning buildings and facilities; inserted (2)(h) relating to depreciation reserve fund; and made minor changes in style. Amendment effective October 1, 2005.

22-1-716. Library depreciation reserve fund.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Part 11
Library Records Confidentiality Act

Part Compiler's Comments

Source: Chapter 476, L. 1985, is derived from the "Library Confidentiality Act", Model Suggested State Legislation, 1984-85, Council of State Governments.

CHAPTER 2
ARTS

Part 1
Montana Arts Council

Part Administrative Rules

Title 10, chapter 111, ARM Montana Arts Council.

22-2-102. Membership of council — appointment.

Compiler's Comments

1989 Amendment: At end deleted "without compensation"; and made minor changes in grammar.

Administrative Rules

Title 10, chapter 111, subchapter 6, ARM Financial grants.

22-2-103. Council membership — tenure — compensation.

Compiler's Comments

1989 Amendment: Near beginning, after "5 years", deleted clause concerning terms of first appointees, in second sentence, after "serve", substituted "in those capacities" for "as such", and in last sentence, after "council", substituted "must be compensated and receive travel expenses as provided in 2-15-124" for "shall not receive any compensation for their services but shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the performance of their duties as members of the council"; and made minor changes in phraseology.

22-2-106. Council duties.

Compiler's Comments

2005 Amendment: Chapter 115 inserted (5) requiring the council to provide three nominees for poet laureate to the governor; and made minor changes in style. Amendment effective March 24, 2005.

1983 Amendment: Deleted former (5), which read: "report as provided in 2-7-102".

22-2-107. Gifts and donations.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

22-2-109. Financing of council.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Part 3
Cultural and Aesthetic Projects

Part Compiler's Comments

Cultural and Aesthetic Grants: The cultural and aesthetic grants approved and funded by the 1995 Legislature are contained in Ch. 548, L. 1995.

Part Administrative Rules

Title 10, chapter 111, subchapter 6, ARM Financial grants.

Title 10, chapter 111, subchapter 7, ARM Cultural and aesthetic project grant proposals.

Title 10, chapter 121, subchapter 8, ARM Cultural and aesthetic project grants.

Part Law Review Articles

The Federal Role in Supporting the Arts: Decline in Great Britain, Canada, and the United States, Cooper, 16 Hastings Int'l & Comp. L. Rev. 237 (1993).

Sorting Out Our Roles: The State Arts Agencies and the National Endowment for the Arts, Love, 21 J. Arts Mgmt. & L. 215 (1991).

State Advocacy in the Arts: A Historical Overview, Dworkin, 21 J. Arts Mgmt. & L. 199 (1991).

22-2-301. Cultural and aesthetic projects grants.

Compiler's Comments

1991 Amendment: Near end of (1) substituted "Montana arts council" and "August 1" for "Montana historical society" and "September 1".

1983 Amendment: In (1), substituted the cultural and aesthetic projects advisory committee for the board of trustees of the Montana historical society; changed the grant submission date from December 1 to September 1; inserted "regular" before "legislative session" at end of (1); deleted first sentence of (2), which read: "The board of trustees of the Montana historical society shall present to the legislature by the 15th day of any legislative session a list of grant proposals to be made from the cultural and aesthetic projects account to any department, agency, board, commission, or other division of the state government or to any local government unit."; deleted former (3) and (4) that required legislative appropriation before a grant could be awarded and provided that grant proposals be approved by the Legislature and administered by the historical society.

22-2-302. Advisory committee — powers and duties.

Administrative Rules

ARM 10.111.706 Evaluation criteria.

ARM 10.111.707 Criteria for recommendations.

22-2-303. Rulemaking authority.

Compiler's Comments

1985 Amendment: Inserted (2) requiring arts council to adopt rules to implement three sections.

1985 Statement of Intent: The statement of intent attached to Ch. 732, L. 1985, provided: "A statement of intent is required for this bill because section 22-2-303, MCA, is amended to include rulemaking by the Montana arts council to implement sections 1 and 2 of the bill [22-2-308 and 22-2-309].

The rules should address specific criteria that the Montana arts council intends to employ in determining whether local support is being given to public and private facilities and, if so, how much support is involved.

The rules must also address the requirements for matching funds, for both capital grants and challenge grants. Involved in these rules should be a method for an applicant to determine what constitutes donated goods and services, and what time periods for the receipt of gifts are involved to qualify for matching funds.

The rules should address the incremental disbursements of grants. Grantees must be able to conform their cash flow upon reliance of receipt of regular grant disbursements, and to this end the Montana arts council should in the rules provide explanations of proper allowable costs and proper unexpended prior grant balances it will examine prior to making further disbursements."

1983 Statement of Intent: The statement of intent attached to HB 110 (Ch. 99, L. 1983) read: "A statement of intent is required for this bill because it grants rulemaking authority to the Montana Historical Society and the Montana Arts Council for the purpose of specifying the criteria the advisory committee shall use when evaluating and making recommendation on cultural and aesthetic grant proposals submitted to the legislature.

It is contemplated that the Montana Historical Society and the Montana Arts Council will adopt rules that specify the following general criteria that the advisory committee will consider in making recommendations:

(1) Quality - ability/experience of project staff; excellence of performers.

(2) Cultural impact - how important is the project to the cultural development of the state? Will the project stimulate a large number of people or a number of communities?

(3) Project diversity - a variety of different interests and disciplines should be served.

(4) Geographical diversity - to the extent possible, the grants should assist the entire state.

(5) Project costs - if grant funds are limited, some preference should be given to projects requiring smaller grants.

(6) Seed money requests - will a grant enable the project or its sponsors to generate other funds or otherwise to make the project self-supporting?

(7) Availability/appropriateness - have applicants attempted to procure other funds? Are there other sources that are appropriate?

(8) Self-help - does the applicant seek full funding from coal tax funds, or has he arranged alternate financing to the extent possible?

(9) Creativity - is the project so innovative, beneficial, and practical that by example it will stimulate other projects?"

Administrative Rules

Title 10, chapter 111, subchapter 7, ARM Cultural and aesthetic project grant proposals.

22-2-304. Cultural and aesthetic project appropriations — administration.

Compiler's Comments

1992 Special Session Amendment: Chapter 8 in (1) substituted "created in 15-35-108 for cultural and aesthetic projects" for "created in 15-35-108(3)(e)". Amendment effective July 1, 1992.

1989 Amendment: In (1) changed reference to 15-35-108(3)(f) to reference to 15-35-108(3)(e). Amendment effective July 1, 1989.

Preamble: The preamble to Ch. 626, L. 1989, provided: "WHEREAS, elimination of the allocation of coal severance tax revenues in section 15-35-108, MCA, to the alternative energy and energy conservation research development and demonstration account would allow those revenues to be deposited in the state general fund from which the Legislature can appropriate that money to fund the Department of Natural Resources and Conservation."

1985 Amendment: In (3) deleted requirement that grant proposals be heard before legislative appropriations subcommittee that hears budget requests of the Montana arts council and Montana historical society.

22-2-305. Allocation and disbursement of funds.

Compiler's Comments

1987 Amendment: At end of (2), after "funds", substituted "in accordance with the provisions of the appropriation act" for "as follows:

(a) Projects of an ongoing nature during the full course of the grant period must receive the first priority for allocation of account funds. For purposes of this section, "ongoing project" means a project designed to operate throughout the grant period with a full-time staff and obligations to be met monthly.

(b) All other projects must be allocated the remaining funds on a percentage basis. The percentage must be determined for each such project by dividing the amount appropriated for each such project by the total amount appropriated for all such projects."

1985 Reappropriation — Reversion of Funds Not Disbursed: Section 6, Ch. 732, L. 1985, provided: "(1) On January 1, 1986, all project funds reappropriated from the 1985 biennium, but not disbursed, shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

(2) On July 1, 1987, any unencumbered balance of the 1987 biennium grants shall revert to the cultural and aesthetic projects account provided for in 15-35-108." See also sec. 5, Ch. 732, L. 1985, reappropriating funds and providing for allocation and disbursement of funds notwithstanding any provision of 22-2-305 to the contrary.

Administrative Rules

ARM 10.111.708 Incremental disbursements of grants.

22-2-306. Grant conditions — additional funds — accounts and reports.

Compiler's Comments

1989 Amendment: Inserted last sentence of (6) regarding holding 30% of a grant award pending receipt of final reports; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendment: Inserted (4)(c) relating to grant budget award modification.

1985 Amendments: In (3), deleted from second sentence that read: "If the grant award proves to be inadequate for the administration of the project as originally submitted, the grantee may submit, prior to the beginning of the grant period, modifications to the proposal and an operational budget supporting the modifications", and at beginning of last sentence substituted "All funds granted to" for "All granted funds to be expended by"; and in (4) substituted language relating to disbursements to grantees based on need and revenues for former text that read: "No project may receive more than 25% of the total grant award during any 6-month period, except that a grantee may accumulate grant payments. The second and each succeeding payment may be made only after an examination of the costs incurred and expenditures made to date by the grantee and a determination of any remaining balance from prior grant periods is made."

Administrative Rules

ARM 10.111.708 Incremental disbursements of grants.

22-2-308. Application procedure — grant criteria.

Compiler's Comments

1993 Amendment: Chapter 479 near beginning of first sentence of (1), after "owned", inserted "and operated" and before "support" deleted "and in-kind", inserted second sentence providing that a grant for a facility owned by a county or municipality but operated by a nonprofit organization have at a minimum in-kind support from the county or municipality, and at end of third sentence, after "project", inserted "and the facility"; and made minor changes in style.

1991 Amendment: At beginning of (1), before "financial", substituted "A grant for a facility owned by a county or municipality must require financial and in-kind support for the facility from the county or municipality" for "As set forth in subsections (1)(a) and (1)(b), certain grants require local financial or in-kind support" and deleted third sentence that read: "In the following circumstances, local support is required"; and deleted (1)(a) and (1)(b) concerning county or municipally owned facilities receiving in-kind support from local governments in order to receive cultural and aesthetic grant funds and concerning private museums, art centers, and cultural facilities receiving local in-kind support in order to receive grant funding.

Administrative Rules

ARM 10.111.702 Application form for grant proposals.

ARM 10.111.704 Eligible projects.

ARM 10.111.705 Challenge grants for permanent endowment development.

22-2-309. Grant categories.

Compiler's Comments

1989 Amendment: Near end of (4), after "bequests", inserted "and paid-up life insurance policies. A devise may include retention of an irrevocable life estate by the donor"; and made minor change in phraseology. Amendment effective July 1, 1989.

1987 Amendment: At end of (1)(b), after "2 years", inserted remainder of subsection referring to budgets; inserted (2) authorizing Montana Arts Council to require matching funds or services for special project and operational support grants; and at end of (4) inserted last two sentences referring to match in form of cash, wills, devises, and bequests.

Part 4
Art for State Buildings

22-2-401. Short title.

Compiler's Comments

Source and Name: Although many states have acts entitled "Percent-for-Arts", Montana's Act is unique and not modeled after any of them.

Part 5
Sale of Fine Art by Art Dealer

Part Compiler's Comments

Source: This part is derived from sections 1738 through 1738.9 of the California Civil Code.

Saving Clause: Section 6, Ch. 534, L. 1985, provided: "This act does not apply to a written contract executed prior to October 1, 1985, unless:

(1) the parties agree that this act will apply; or

(2) the contract is extended or renewed after the effective date of this act."

Part Law Review Articles

Art Forgery: The Role of the Document Examiner, Hanna, 37 J. Forensic Sci. 1096 (1992).

Made in America; Law Protecting Indian Art Stirs Controversy, Goldberg, 78 A.B.A.J. 32 (1992).

Regulation of Fine Art Multiples; A Valiant but Ineffective Attempt to Quell the Market of Fraud, Thompson, 10 Entertainment & Sports Law. 8 (1992).

Paying the Price Under the Internal Revenue Code: For How Much Should Fine Art Appraisers Be Liable?, Lee, 16 Colum. - VLA J.L. & Arts 143 (1991).

The United States - Canada Free Trade Agreement: Exporting Art by the Numbers, Nafzinger & Rooklidge, 18 Pepperdine L. Rev. 449 (1991).

The Visual Artists Rights Act, Casey, 14 Hasings Com. & Entertainment L.J. 85 (1991).

Part Collateral References

18 C.J.S. Copyrights and Intellectual Property §31.

Part 6
American Indian Monument and Tribal Circle of Flags

22-2-601. American Indian monument and tribal flag circle — competition for design.

Compiler's Comments

2003 Amendment: Chapter 569 in (1) at end inserted "including specific recognition of the contributions and sacrifices made by Montana's past, present, and future American Indian war veterans"; and made minor changes in style. Amendment effective on occurrence of contingency.

Preamble: The preamble attached to Ch. 569, L. 2003, provided: "WHEREAS, American Indians have participated with distinction in United States military actions for more than 200 years and, according to the United States Department of Defense, as an ethnic group, have the highest record of service per capita; and

WHEREAS, prior to being granted official United States citizenship in 1924, American Indians voluntarily participated in the War of 1812, fought as auxiliary troops for both the North and South in the Civil War, served as Indian scouts for the United States Army in the late 1880s, rode with Teddy Roosevelt after being recruited to become members of the Rough Riders during the Spanish-American War in 1898, accompanied General John J. Pershing's expedition in pursuit of Pancho Villa in 1916, and volunteered in numbers exceeding 12,000 to fight in World War I; and

WHEREAS, it is estimated by the United States Department of Defense that more than 44,000 American Indians, out of a total population of 350,000, served with distinction in World War II between 1941 and 1945; and

WHEREAS, more than 42,000 American Indians, 90% of whom were volunteers, fought in Vietnam and saw combat duty in Grenada, Panama, Somalia, and the Persian Gulf; and

WHEREAS, according to the 2002 United States census, 12% of Montana's total population of American Indians are military veterans who have served with distinction in every military campaign, with many receiving the Purple Heart, the Silver Star, and other campaign and commendation medals for their valor; and

WHEREAS, a tribute to American Indians from throughout Montana would highlight the contributions of individual soldiers, including a great-grandson of Salish Chief Charlo, Private First Class Louis Charles Charlo, who died on Iwo Jima after being one of the original Marines to plant a flag on Mount Suribachi, which action later was memorialized and serves as the basis for the Iwo Jima U.S. Marine Corps Memorial in Arlington, Virginia; and

WHEREAS, it is fitting that the Legislature honor the sacrifice, patriotism, and long tradition of military participation by its American Indian citizens by specifically recognizing past, present, and future American Indian veterans in the construction of the American Indian monument and Montana tribal flag circle."

Effective Date: Section 4, Ch. 755, L. 1991, provided that this section is effective July 1, 1991.

22-2-602. Advisory committee — composition — duties.

Compiler's Comments

Effective Date: Section 4, Ch. 755, L. 1991, provided that this section is effective July 1, 1991.

CHAPTER 3
ANTIQUITIES

Chapter Compiler's Comments

Moss Mansion — State Interest for Payment of Inheritance and Estate Taxes: The preamble attached to Ch. 54, L. 1987, provided: "WHEREAS, House Bill No. 701 (Chapter 736, Laws of 1985) was adopted during the 49th Legislative Session; and

WHEREAS, House Bill 701 provided for the in-kind payment of estate and inheritance taxes by the transfer to the state of unique objects, sites, or buildings of significant or unique historical interest; and

WHEREAS, House Bill 701 further provided for a rigorous application and review process before property could be accepted as in-kind payment of estate and inheritance taxes; and

WHEREAS, the Montana Historical Society has made application to the Department of Revenue for in-kind payment of inheritance and estate taxes in the form of the Moss Mansion; and

WHEREAS, the Moss Mansion was the family home of the P.B. and Mattie Moss family in Billings, Montana, and is a site of unique and significant historical interest to the State of Montana; and

WHEREAS, the rigorous review process specified in House Bill 701 involves direct participation by the Montana Historical Society, the Department of Revenue, the Legislature's Revenue Oversight Committee [now Revenue and Transportation Interim Committee], and others; and

WHEREAS, the results of the application and review process are a recommendation by the Montana Historical Society, the Department of Revenue, and the Legislature's Revenue Oversight Committee [now Revenue and Transportation Interim Committee] to the 50th Legislature that the Department of Revenue be allowed to accept as in-kind payment for $113,000 due in estate and inheritance taxes an ownership interest in the Moss Mansion."

Part 1
Historical Society

Part Administrative Rules

Title 10, chapter 120, ARM Montana Historical Society.

Title 10, chapter 121, ARM Procedural rules.

22-3-101. Historical society.

Attorney General's Opinions

Daly Mansion Restoration Subject to Public Construction Contracts: The Daly Mansion is a "building" within the definition in 18-2-101, and work on the mansion constitutes "construction" under the statute. Therefore, restoration and repair of the state-owned Daly Mansion are subject to 18-2-102 and 18-2-103 regarding public construction contracts. 42 A.G. Op. 66 (1988).

22-3-104. Appointment and qualifications of board of trustees.

Case Notes

Power to Remove Director: Power to remove Director of State Historical Society lies in the Board of Trustees. It may do so without notice or opportunity to be heard because when provision is made for appointment of an officer, but no definite term is prescribed, the appointing power may remove the appointee at will. State ex rel. MacGilvra v. District Court, 148 M 182, 418 P2d 874 (1966).

22-3-105. Compensation and expenses of trustees.

Compiler's Comments

1985 Amendment: Substituted language relating to payment of compensation and expenses as provided in 2-15-124 for: "Each member of the board of trustees is entitled to be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for their travel expenses."

22-3-107. Authority of board.

Compiler's Comments

2005 Amendment: Chapter 148 in (9) at beginning of second sentence after "Money" deleted "in the amount of less than $500" and deleted former third sentence that read: "Unless otherwise provided by donor, donations, gifts, bequests, or legacies in the amount of $500 or more must be deposited in the acquisitions trust established in 22-3-113." Amendment effective April 7, 2005.

1993 Amendment: Chapter 4 in (9), at beginning of second sentence, substituted "Money in the amount of less than $500" for "Moneys" and inserted third sentence requiring deposit of amounts of $500 or more in the acquisitions trust; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning of (8) inserted reference to 5-11-210. Amendment effective March 20, 1991.

1983 Amendment: Inserted (16) authorizing trustees to publish Montana roadside history.

Administrative Rules

ARM 10.120.101 Organizational rule.
ARM 10.121.101 Model procedural rules.
Title 10, chapter 121, subchapter 5, ARM Acquisitions policy.
Title 10, chapter 121, subchapter 7, ARM Collections loan policy.
Title 10, chapter 121, subchapter 8, ARM Cultural and aesthetic project grants.

Case Notes

Power to Remove Director: Power to remove Director of State Historical Society lies in the Board of Trustees. It may do so without notice or opportunity to be heard because when provision is made for appointment of an officer, but no definite term is prescribed, the appointing power may remove the appointee at will. State ex rel. MacGilvra v. District Court, 148 M 182, 418 P2d 874 (1966).

Attorney General's Opinions

Authority to Classify Positions of State Librarian and Director of Montana Historical Society: Although repeals by implication are not favored, it would frustrate the purpose of the classification and pay plan law to hold that the positions of state librarian and Director of the Montana Historical Society are exempt from classification when the Legislature has not expressly approved such exemption in 2-18-103. Thus, the provisions of 22-3-107 and 22-1-102, which authorize the Board of Trustees of the historical society and the State Library Commission to set salary, are superseded by the classification and pay plan law, Title 2, ch. 18, parts 1 through 3. The Board and the Commission retain the authority to hire and to assign duties and responsibilities. 40 A.G. Op. 68 (1984).

22-3-108. Function of director — employment of assistants.

Case Notes

Power to Remove Director: Power to remove Director of State Historical Society lies in the Board of Trustees. It may do so without notice or opportunity to be heard because when provision is made for appointment of an officer, but no definite term is prescribed, the appointing power may remove the appointee at will. State ex rel. MacGilvra v. District Court, 148 M 182, 418 P2d 874 (1966).

22-3-112. Renumbered 22-2-301.

Administrative Rules

Title 10, chapter 121, subchapter 8, ARM Cultural and aesthetic project grants.

22-3-113. Acquisitions trust.

Compiler's Comments

2001 Amendment: Chapter 34 near beginning after "account in the" substituted "governmental fund category permanent fund type" for "fiduciary fund category nonexpendable trust fund type". Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 4, L. 1993, provided: "WHEREAS, the Montana Historical Society fulfills a unique and vital role in the preservation and presentation of historical Montana records through the acquisition and maintenance of items and collections of public interest; and

WHEREAS, timely acquisitions are vital to the Montana Historical Society's ability to maintain the viability of collections and items for research and exhibit; and

WHEREAS, it is to the benefit of the Montana Historical Society's role and in the interest of all Montanans that the Society have a readily available source of funds to purchase important historical records, items, and collections as they become available."

Effective Date: Section 6, Ch. 4, L. 1993, provided: "[This act] is effective July 1, 1993."

22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue.

Compiler's Comments

2005 Amendment: Chapter 148 in (2) at beginning deleted "Unless otherwise provided by the donor, donations of $500 or more received pursuant to 22-3-107(9) and"; and made minor changes in style. Amendment effective April 7, 2005.

2001 Amendment: Chapter 34 in (1) substituted "permanent fund" for "permanent, nonexpendable trust". Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 4, L. 1993, provided: "WHEREAS, the Montana Historical Society fulfills a unique and vital role in the preservation and presentation of historical Montana records through the acquisition and maintenance of items and collections of public interest; and

WHEREAS, timely acquisitions are vital to the Montana Historical Society's ability to maintain the viability of collections and items for research and exhibit; and

WHEREAS, it is to the benefit of the Montana Historical Society's role and in the interest of all Montanans that the Society have a readily available source of funds to purchase important historical records, items, and collections as they become available."

Effective Date: Section 6, Ch. 4, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 2
Preservation of Records

Part Administrative Rules

Title 10, chapter 121, subchapter 5, ARM Acquisitions policy.

Part Collateral References

Recommendation for a Quality Control System for State Government Publications, A Report to the 53rd Legislature, Mont. Leg. Council & Mont. State Librarian (1992).

22-3-201. Public policy.

Compiler's Comments

1993 Amendment: Chapter 420 in three places inserted references to local governments; and made minor changes in style. Amendment effective April 20, 1993.

22-3-202. Archives created — appointment, duties, and compensation of archivist.

Compiler's Comments

1993 Amendment: Chapter 420 in first sentence, near middle after "state", inserted "and local governments"; and made minor changes in style. Amendment effective April 20, 1993.

22-3-203. Preservation of noncurrent records of permanent value.

Compiler's Comments

1993 Amendment: Chapter 420 in first sentence, after "value", inserted "to the state and is responsible for the ultimate preservation of local government records of permanent value" and in second sentence, after "state government", inserted "and in local governments"; and made minor changes in style. Amendment effective April 20, 1993.

22-3-221. Storing and safekeeping of war records.

Collateral References

States *key* 86 through 88.

81A C.J.S. States §147.

Part 4
Antiquities

Part Compiler's Comments

Severability: Section 15, Ch. 563, L. 1979, was a severability clause.

Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "HB 785 formally establishes the Historic Preservation Office and identifies its duties

and responsibilities. This bill is not creating a new office, but simply renames the old one to conform with the accepted title shared by similar offices in states throughout the country. The duties and responsibilities are also the same and are those established by federal rules and regulations for Historic Preservation offices in all states and trust territories. Such duties and responsibilities are necessary for the state to qualify for historic preservation grant monies appropriated by Congress each year.

HB 785 requires that the State Historic Preservation Office maintain the required staffing to assure that federal funds will continue to come into Montana. As written, the committee is assured that the State Historic Preservation Office must meet the requirements, even if changes should be made when the legislature is not in session.

The proposed bill departs from the current Antiquities Act in the establishment of a Preservation Review Board, in concert with the federal designation.

The proposed Review Board will be increased to nine members, of which a majority are professionals trained in fields relating to historic preservation and archaeology. The bill mandates that one member will be the State Liaison Officer for the federal Land and Water Conservation Fund, and although it is not a federal requirement, the inclusion of the Liaison Officer is particularly important in Montana. The Liaison Officer is the Parks Director at the Department of Fish and Game [now the Department of Fish, Wildlife, and Parks], and since many of the state parks and monuments are established around historic sites, participation of the Liaison Officer on the Review Board is crucial in coordinating efforts in the state.

The proposed legislation continues the Antiquities Permit section as exists in the current Antiquities Act, but this bill will clarify provisions for who qualifies for a permit and the permit system is expanded to include all state lands rather than only registered properties.

HB 785 will substitute the National Register of Historic Places for the little-known state register as the official listing of important historic or heritage properties. The adoption of the National Register designation will simplify the registering system and avoid needless duplication of efforts.

The proposed bill continues the penalties sections but increases protection for private landowners and allows prosecution for violation on private lands.

Most importantly, the bill provides for state agency participation in the protection of heritage properties through a coordinated effort with the Historic Preservation Office. Coordination and cooperation is essential in assuring adequate consideration of heritage properties and paleontological remains in the everyday affairs of state government."

Part Attorney General's Opinions

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

Determination of "Heritage Properties" on State-Owned Land Within Exclusive Authority of Preservation Review Board: The state antiquities law gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties" within the meaning of the law. 41 A.G. Op. 8 (1985).

Part Law Review Articles

Laser Bones: Copyright Issues Raised by the Use of Information Technology in Archaeology, Carson, 10 Harv. J.L. & Tech. 281 (1997).

The Economics of Antiquities Looting and a Proposed Legal Alternative, Borodkin, 95 Colum. L. Rev. 377 (1995).

T. Lex: A Survey of the Controlling Ownership, Disturbance, and Disposition of Fossils, Meteorites, Archaeological Treasures, and Other "Antiquities", Barkeley, 40 Rocky Mtn. Min. L. Inst. 4-1 (1994).

The Law and Stolen Art, Artifacts, and Antiquities, Collin, 36 How. L.J. 17 (1993).

The Protection of Cultural Property and the Promotion of International Trade in Art, Bersin, 13 N.Y.L. Sch. J. Int'l & Comp. L. 125 (1992).

Part Collateral References

Validity and construction of statute or ordinance protecting historical landmarks. 18 ALR 4th 990.

National Historic Preservation Act: application and construction of §106 of the National Historic Preservation Act of 1966 (16 U.S.C.S. §470f), dealing with federally sponsored projects which affect historic properties. 68 ALR Fed. 578.

22-3-421. Definitions.

Compiler's Comments

1995 Amendment: Chapter 343 inserted definitions of affected property owner and applicant. Amendment effective April 10, 1995.

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

1987 Amendment: In (1), after "granted for", substituted "excavation, removal, or restoration" for "exploration or field investigations".

22-3-422. Duties of preservation review board.

Attorney General's Opinions

Determination of "Heritage Properties" on State-Owned Land Within Exclusive Authority of Preservation Review Board: The state antiquities law gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties" within the meaning of the law. 41 A.G. Op. 8 (1985).

22-3-423. Duties of historic preservation officer.

Compiler's Comments

1995 Amendment: Chapter 343 at beginning of introductory clause inserted "Subject to the supervision of the director of the historical society"; inserted (10) regarding response to requests for consultation; inserted (11) regarding development of procedures and guidelines for evaluation of heritage property and paleontological remains; and made minor changes in style. Amendment effective April 10, 1995.

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

1987 Amendment: Inserted (10) relating to duty of historic preservation officer to protect from public disclosure the location or character of heritage properties if such disclosure would create a risk to the properties.

1983 Amendment: Inserted (9) authorizing historic preservation officer to adopt rules outlining procedures for agencies without rules to consider state-owned heritage properties or paleontological remains and avoid actions altering such properties.

1983 Statement of Intent: The statement of intent attached to SB 246 (Ch. 351, L. 1983) provided: "The primary purpose of the bill is to ensure that systematic consideration of heritage properties on state-owned land occurs in state agency planning and actions. The bill provides that agencies that do not choose to prepare their own regulations to afford systematic consideration to heritage properties on state lands adhere to general rules prepared by the Historical Society.

The rules promulgated pursuant to this bill should ensure that:

(a) the decision on whether to undertake a professional cultural resources inventory or site evaluation prior to a potentially harmful action is made by the agency in consultation with the Society;

(b) any heritage properties identified on state land are afforded direct consideration in an agency's decision on whether or how to undertake an action; and

(c) when feasible, damage to heritage properties is avoided or subject to an appropriate form of mitigation.

The rules are not intended to require a single course of action by the agency or absolute protection of all identified heritage properties.

The rules promulgated by either state agencies or the Historical Society should have as common elements:

(a) a requirement that prior to taking an action affecting state land or property, state agencies will check with the Historical Society to determine the presence or absence of previously identified historic or prehistoric resources, the relative value of any previously identified sites or buildings, and whether a field inventory or further site evaluation needs to occur to determine whether heritage properties might be impacted;

(b) a requirement that the Historical Society provide the information requested within a specified time and in a precise format;

(c) a requirement that each state agency have a system for making and documenting decisions on whether heritage properties identified as being affected by an agency decision or action can be afforded protection, avoidance, reuse, rehabilitation, or recording prior to impact and that the system adopted permits the Historical Society [to] comment to the agency on their decision; [and]

(d) a method for adjudicating differences in instances where the value of jeopardized sites appears to be high.

This bill would be applicable to state agencies in two separate contexts: decisions on remodeling or demolition of historic state-owned buildings and decisions made by state land managing agencies relative to leases, easements, access, [and] development.

In the case of the Montana University System, "rule" means procedures included in the Montana University System Policies and Procedures Manual through the formal and public process used by the Regents for that purpose."

1979 Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Section 6 [22-3-423] authorizes the historic preservation officer to carry out and enforce the provisions of sections 3 through 16 [2-15-1512(part), all sections in this part, repealer, and severability clause]. This may be done by rule."

Attorney General's Opinions

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

Determination of "Heritage Properties" on State-Owned Land Within Exclusive Authority of Preservation Review Board: The state antiquities law gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties" within the meaning of the law. 41 A.G. Op. 8 (1985).

22-3-424. Duties of state agencies.

Compiler's Comments

1983 Amendment: In (1), changed "Adopt policies for the preservation" to "In consultation with the historical society adopt rules for the identification and preservation", substituted "to avoid" for "and avoid", and inserted "or, in the absence of such rules, act in compliance with rules adopted under 22-3-423".

1983 Statement of Intent: For the 1983 statement of intent see compiler's comments under 22-3-423.

1979 Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Sections 9 through 11 [22-3-424, 22-3-433, and 22-3-434] require state agencies to participate in this program through development of procedures to include evaluation of heritage properties and paleontological remains in agency decisionmaking. These procedures may be adopted by rule."

Administrative Rules

Title 10, chapter 121, subchapter 9, ARM State Historic Preservation Office procedural rule.

Title 12, chapter 8, subchapter 5, ARM Cultural resources.

Title 36, chapter 2, subchapter 8, ARM Antiquities on state lands.

Attorney General's Opinions

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

22-3-428. Heritage property — procedures and guidelines required.

Compiler's Comments

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

Effective Date: Section 9, Ch. 343, L. 1995, provided that this section is effective on passage and approval. Approved April 10, 1995.

22-3-429. Requests for consultation — public notice — appeal of findings.

Compiler's Comments

1997 Amendment: Chapter 42 in (2) substituted "16 U.S.C. 470f" for "16 U.S.C. 470(f)". Amendment effective March 12, 1997.

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

Effective Date: Section 9, Ch. 343, L. 1995, provided that this section is effective on passage and approval. Approved April 10, 1995.

22-3-430. Avoidance and mitigation of impacts.

Compiler's Comments

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

Effective Date: Section 9, Ch. 343, L. 1995, provided that this section is effective on passage and approval. Approved April 10, 1995.

22-3-431. Registration of heritage properties.

Compiler's Comments

1987 Amendment: In (2)(a) substituted "private properties" for "properties not owned by the state" and after "officer" substituted remainder of (2)(a) (see 1987 Session Law) for former language that read: "may, upon approval by the preservation review board and with the written concurrence of the owner or owners of the property, nominate heritage properties to the register. In the case of a historic district, the historic preservation officer may nominate the property only with the concurrence of:

(a) a majority of the property owners of the district; and

(b) the owners of more than one-half of the property in the district"; inserted (2)(b) providing a process for determination of eligibility for registration of property not nominated due to owner objection; inserted (2)(c) requiring historic preservation officer to follow federal procedures relating to heritage property registration; in (3), near beginning after "state", inserted "a county, or a municipality" and in second sentence, after "appropriate", substituted "governmental agency" for "state agency" and after "when any" inserted "such governmental"; and made minor changes in phraseology.

1983 Amendment: Near middle of (2), after "review board and" changed "after written approval by the landowner" to "with the written concurrence of the owner or owners of the property"; and inserted last sentence of (2), (2)(a), and (2)(b) establishing requirements for nomination of a historic district.

Attorney General's Opinions

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

22-3-433. Environmental review process.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Sections 9 through 11 [22-3-424, 22-3-433, and 22-3-434] require state agencies to participate in this program through development of procedures to include evaluation of heritage properties and paleontological remains in agency decisionmaking. These procedures may be adopted by rule."

Part 5
Museum Loan Act

Part Compiler's Comments

Source: The provisions of this part are derived from section 1899 of the California Civil Code.

22-3-522. Uniform Unclaimed Property Act superseded.

Compiler's Comments

1991 Amendment: Near end substituted "5 years" for "7 years"; and made minor change in style.

Part 6
Local Management of Historic Properties

22-3-603. Management of historic sites and buildings — contracts.

Compiler's Comments

2005 Amendment: Chapter 10 in (4) near middle of second sentence substituted "reviewed biennially" for "audited quarterly" and inserted last sentence concerning audit of funds. Amendment effective March 15, 2005.

1997 Amendment: Chapter 42 in (4), near middle of first sentence, substituted "subsection (2)" for "subsection (3)"; and made minor changes in style. Amendment effective March 12, 1997.

Part 7
Law Enforcement Officers' Memorial

22-3-701. Creation of law enforcement officers' memorial.

Compiler's Comments

Preamble: The preamble attached to Ch. 45, L. 1991, provided: "WHEREAS, the law enforcement officers of Montana are our guardians of life, property, and well-being; defenders of the individual right to be free men and women; and soldiers in the war against crime and are dedicated to the preservation of life, liberty, peace, and the pursuit of happiness; and

WHEREAS, the State of Montana desires to honor and remember the valor, service, and dedication of its seldom recognized peace officers, former and present; and

WHEREAS, it is known that over 90 local, county, state, and federal officers have died in the line of duty in Montana since 1863."

Part 8
Human Skeletal Remains and Burial Site Protection

Part Compiler's Comments

Severability: Section 16, Ch. 748, L. 1991, was a severability clause.

Effective Date: Section 17, Ch. 748, L. 1991, provided in part that this part, except 22-3-804 and 22-3-811, is effective July 1, 1991.

Part Law Review Articles

Justifying Repatriation of Native American Cultural Property, Harding, 72 Ind. L.J. 723 (1997).

Science, Sovereignty, and the Sacred Text: Paleontological Resources and Native American Rights, Dussias, 55 Md. L. Rev. 84 (1996).

There Are Skeletons in the Closet: The Repatriation of Native American Human Remains and Burial Objects, Winski, 34 Ariz. L. Rev. 187 (1992).

Disputes Regarding the Possession of Native American Religious and Cultural Objects and Human Remains: A Discussion of the Applicable Law and Proposed Legislation, Boyd, 55 Mo. L. Rev. 883 (1990).

The Reburial of Native American Skeletal Remains: Approaches to the Resolution of a Conflict, Bowman, 13 Harv. Envtl. L. Rev. 147 (1989).

22-3-804. Board — composition — rights — responsibilities.

Compiler's Comments

2001 Amendment: Chapter 483 in (4) after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1991 Statement of Intent: The statement of intent attached to Ch. 748, L. 1991, provided: "A statement of intent is required for this bill because [section 4] [22-3-804] grants to the burial preservation board rulemaking authority to implement the provisions of this bill. At a minimum, it is the intent of the legislature that the board adopt rules:

(1) governing the conduct of board business;

(2) establishing and maintaining a registry of burial sites located in the state;

(3) establishing criteria for conducting field reviews upon notification of a discovery of human skeletal remains, burial sites, or burial materials; and

(4) establishing guidelines and forms for the issuance of a permit for scientific analysis of human remains or burial materials."

Effective Date: Section 17(1), Ch. 748, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

22-3-811. Disposition of fees, grants, and donations.

Compiler's Comments

Effective Date: Section 17(1), Ch. 748, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

Termination: Section 18, Ch. 748, L. 1991, provided that subsection (2) terminates June 30, 1993.

Part 9
Repatriation of Human Remains and Funerary Objects

Part Compiler's Comments

Effective Date: Section 15, Ch. 558, L. 2001, provided: "[This act] is effective on passage and approval." Approved May 2, 2001.

Part Law Review Articles

"Kennewick Man" or "Ancient One"?—A Matter of Interpretation, Flood, 63 Mont. L. Rev. 39 (2002).

Part 10
Heritage Preservation and Development

Part Compiler's Comments

Severability: Section 21, Ch. 469, L. 1997, was a severability clause.

22-3-1001. Purpose.

Compiler's Comments

2001 Amendment: Chapter 308 in first sentence near beginning after "acquire" inserted "and manage" and at end of second sentence after "property" inserted "and by managing those properties in a manner that protects the properties and encourages economic independence". Amendment effective October 1, 2001.

Effective Date: Section 23(1), Ch. 469, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved May 1, 1997.

22-3-1002. Montana heritage preservation and development commission.

Compiler's Comments

2003 Amendment: Chapter 485 in (1) in second sentence substituted "department of commerce" for "Montana historical society" and inserted reference to 2-15-121 and inserted third sentence relating to setting a specific indirect administrative rate; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 308 in (1) in third sentence increased commission membership from 11 to 14, in fifth sentence increased commission members appointed by governor from 7 to 9, and near end of sixth sentence added director of department of commerce to commission membership; inserted (2)(g) requiring that two governor-appointed members be from the public at large; inserted (4)(a)(iii) authorizing employment of staff necessary to manage commission properties; at end of (4)(b) inserted "and other commission staff"; and made minor changes in style. Amendment effective October 1, 2001.

Initial Appointments: Section 14, Ch. 469, L. 1997, provided: "The initial appointments to the commission must be for the following terms:

(1) the member with experience managing facilities that cater to the needs of tourists, 3 years;

(2) the member with experience in community planning, 4 years;

(3) the member with experience in historic preservation, 5 years;

(4) one member with broad experience in business, 3 years, and one member, 4 years;

(5) the tourism advisory council member, 5 years;

(6) the Montana historian, 5 years; and

(7) the legislative appointments, 2 years."

Effective Date: Section 23(1), Ch. 469, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved May 1, 1997.

22-3-1003. Powers of commission — contracts — rules.

Compiler's Comments

2003 Amendment: Chapter 542 in (3)(c) substituted "58th legislature" for "57th legislature"; in (4) after "sources" inserted "including the federal government"; inserted (5) concerning volunteers and their status; inserted (6) providing that volunteers are not salaried but may be reimbursed; inserted (7) concerning subcommittee to review and recommend sale of personal property; in (8) at end of first sentence inserted "and sales of real and personal property" and in second sentence after "acquisition" inserted "or sale"; in (8)(e) after "acquisition" inserted "or sale"; inserted (8)(f) through (8)(h) concerning support of historical society director, preservation covenants, and design review ordinances; inserted (9) concerning deposit of sale proceeds; in (10)

in first and second sentences after "acquisition" inserted "or sale of real property" and in first sentence after "acquire" inserted "or sell"; inserted (11) concerning trust funds; in (12) at end inserted clause concerning acquisition or sale of any assets; and made minor changes in style. Amendment effective April 30, 2003.

Transfer of Title: Section 3, Ch. 542, L. 2003, provided: "Title to the real and personal property acquired by the 55th legislature and commonly referred to as the "Bovey assets" is transferred from the Montana historical society to the state of Montana."

2001 Amendment: Chapter 308 at beginning of (2)(a) inserted exception clause; inserted (2)(b) authorizing the commission to enter into contracts under certain conditions for amounts exceeding $200,000 without legislative consent; in (3)(c) near beginning substituted "57th legislature" for "55th legislature"; in (7) near middle after "legislature" inserted "as provided in 5-11-210"; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 23(1), Ch. 469, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved May 1, 1997.

Administrative Rules

Title 10, chapter 125, subchapter 1, ARM Acquisition of real and personal property.

22-3-1004. Montana heritage preservation and development account.

Compiler's Comments

2003 Amendment: Chapter 542 in (1)(a) at end inserted reference to the federal special revenue fund; inserted (1)(b) concerning deposit of federal money; in (2), (3), and (4) substituted "accounts" for "account"; in (4) at beginning inserted "Unless otherwise prohibited by law or agreement"; and made minor changes in style. Amendment effective April 30, 2003.

2001 Amendment: Chapter 308 inserted (4) requiring interest earned on the heritage preservation and development account to be deposited in a special revenue fund to the credit of the commission. Amendment effective October 1, 2001.

Effective Date: Section 23(1), Ch. 469, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved May 1, 1997.

Part 11
Historic Sites

22-3-1101. Tower Rock — historic site.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

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